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# Protection of EU budgetary interests and security of financial management in the financial perspective 2014–2020

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## *Abstract*

The EU's action in the field of budgetary control to protect the European Union's (EU) financial interests is based on two principles: on the one hand, ensuring that the EU budget is properly spent and, on the other hand, protecting the EU's financial interests and combating fraud. The European Anti-Fraud Office (OLAF) is mandated to investigate fraud against the EU budget, corruption and serious irregularities and develops anti-fraud policies. The European Public Prosecutor's Office (EPPO) investigates, prosecutes and brings perpetrators to justice for crimes jeopardizing the EU budget. In order for citizens to be confident that their money is being used properly, the European Union must, together with the Member States, protect its financial interests. It is also important to monitor and control the activities of OLAF along with EPPO and to support their efforts to combat fraud and irregularities in the implementation of the EU budget.

**Key words:** protection, management, finances, security.

## *Introduction*

The EU's action in the field of budgetary control to protect the European Union's (EU) financial interests is based on two principles: on the one hand, ensuring that the EU budget is properly spent and, on the other hand, protecting the EU's financial interests and combating fraud. The European Anti-Fraud Office (OLAF) is mandated to investigate fraud against the EU budget, corruption and serious irregularities and develops anti-fraud policies. The European Public Prosecutor's Office (EPPO) investigates, prosecutes and brings perpetrators to justice for crimes jeopardizing the EU budget. In order for citizens to be confident that their money is being used properly, the European Union must, together with the Member States, protect its financial interests. It is also important to monitor and control the activities of OLAF along with EPPO and to support their efforts to combat fraud and irregularities in the implementation of the EU budget.

In European Union (EU) law, fraud is defined as a deliberate infringement that causes – or is likely to cause – damage to the EU budget. The fight against fraud and any other illegal activity – such as corruption – affecting the EU's financial interests is a shared responsibility between the EU and the Member States. Fraud and offences against the EU's financial interests are defined in the Convention on the Protection of the European Communities' Financial Interests of 26 July 1995 [Convention, 26 July 1995; Protocol, 27 September 1996; Protocol, 26 July 1995; Protocol, 19 June 1997]. Fraud, as a socially harmful phenomenon, has an impact on the EU budget and may result in funds being used for other unjustified purposes, thus limiting the effectiveness of EU action in the area of cohesion policy. The emergence of fraud calls into question the integrity of the EU's actions and undermines public confidence in its policies. Between 2014 and 2020 [34th Annual Report], the European Commission and Member States detected around 4,100 instances of fraudulent irregularities. The irregularities [European court of auditors: report], amounting to approximately €1.5 billion, concerned EU financial support to Member States, with 73% of the irregularly disbursed funds related to EU cohesion policy [European Court of Auditors, Special Report No 6/2019]. Managing authorities in the Member States are responsible for preventing and taking effective

measures against fraud in this area, taking into account the risks identified. Managing authorities are separate bodies, mainly in the public sector, which prepare procedures for monitoring and evaluation of the use of EU funds, prevention and detection of fraud. The activities of the Managing Authorities cover the entire anti-fraud management process, i.e. prevention, detection and response, including reporting of detected fraud cases and recovery of funds unduly paid. The Managing Authorities shall devise anti-fraud procedures, carry out risk assessments and implement appropriate fraud prevention and detection measures. The Managing Authorities are also tasked with informing investigative and law enforcement authorities of suspected fraudulent activity involving EU funds.

The rate of detected fraud in relation to the amount of financial support provided under cohesion policy in 2014–2020 ranged from 0% to 2.1%, depending on the Member State.

In Poland, reported and detected fraud accounted for 0.61% of the funds transferred by the European Commission for cohesion policy. A number of studies indicate that one of the most common errors made by beneficiaries during the implementation of projects is the incorrect application of public procurement rules. Audits carried out in the period 2010–2020 indicated that 41% of irregularities in the implementation of projects co-financed by the European Regional Development Fund and the Cohesion Fund were due to the improper application of public procurement rules [European Court of Auditors, Special Report No 6/2019]. In the current legal state in Poland, in the light of the Act of 27 August 2009 on public finances [Journal of Laws 2019, item 869 as amended], public funds are funds originating from the budget of the European Union and non-refundable funds from assistance granted by the Member States of the European Free Trade Agreement (EFTA). The recognition of the status of funds granted from the EU budget as public funds facilitates the recovery of these receivables, as well as the application of sanctions in connection with their improper use.

The aim of the article is to assess the scale and scope of the adverse phenomenon of fraud in the process of using EU budget funds in Poland and in the Member States. The article presents the legal regulations in force in the EU and in Poland aimed at ensuring the protection of the financial interests of the EU budget. The analysis of the empirical material made it possible to identify the fraud of EU funds and methods of detecting it in Poland, as well as to assess the phenomenon in the EU.

## ***Results and Discussion***

### **1. Rules on the management of funds from the EU budget**

The backbone of EU cohesion policy is formed by three of the European Structural and Investment Funds (EFSD): European Regional Development Fund (ERDF), Cohesion Fund and European Social Fund (ESF), collectively referred to as the EU Cohesion Policy Funds. They are implemented jointly by the European Commission and the Member States through Operational Programmes (OPs), which detail how Member States will spend EU funds in a given programming period. The rules for the management and earmarking of EU funds implemented in the financial perspective 2014–2020 are set out in the EU's most important programming document Europe 2020 Strategy for smart, sustainable and inclusive growth [Europe 2020] and at Member State level the Partnership Contract [Programming of the financial perspective 2014–2020. Partnership Agreement of 21 May 2014, December 2015. Document after changes resulting from supplementing the provisions with the EFF and after negotiations of operational programmes. Ministry of Development, Warsaw 2015].

Rules for the sound financial management of EU funds were laid down in Council Regulation (EC) No 1083/2006/51 relating to the previous financial perspective as well as in Regulation (EU) No 1303/2013 of the European Parliament and of the Council for the 2014–2020 programming period. These regulations oblige Member States to prevent, detect and correct irregular amounts unduly paid and to follow up irregularities and make the required financial corrections. The package of regulations governing EU cohesion policy for 2021–2027, in particular Regulation (EU) 2021/1060 of the European Parliament and of the Council, introduces new rules affecting the new quality of cohesion

policy in this perspective [Regulation (EU) 2021/1060]. It should be stated that the model of cohesion policy in the 2021-2027 financial perspective draws on the experience of the past, but also introduces new solutions to contribute more to development achievements.

Legal basis for the protection of the EU's financial interests applicable in the financial perspective 2021-2027:

- Articles 310(6) and 325 of the Treaty on the Functioning of the European Union (TFEU) on the fight against fraud;

- Article 287 TFEU concerning the European Court of Auditors;
- Article 86 TFEU concerning the establishment of a European Public Prosecutor's Office;
- Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014 and (EU) No 283/2014 and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, Titles XIII and XIV;
- Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council and the Commission on budgetary discipline, cooperation on budgetary matters and sound financial management and on new own resources, including the timetable for introducing the new own resources, Part III;
- Rules of Procedure of the European Parliament, Title II, Chapter 6, Articles 92, 93 and 94; Title V, Chapter 1, Article 129, Chapter 2, Article 134 and Chapter 4, Article 142; Annex V.
- In 2004, the first Hercule programme was launched to protect the financial interests of the EU by combating irregularities, fraud and corruption affecting the EU budget. Hercule I was followed by Hercule II (2007-2013) and then Hercule III (2014-2020). All Hercule programmes were managed by OLAF. In the context of the Multiannual Financial Framework (2021-2027), a new EU Anti-Fraud Programme was introduced. The programme aims to replicate and improve the Hercule III programme and combine it with the Anti-Fraud Information System, which is the technical infrastructure for the exchange of fraud-related information between national and EU administrations, and the Irregularity Management System, which is the data exchange system for EU institutions on OLAF investigations, both managed by OLAF.
- The Parliament supported the Commission's action plan to step up the fight against tax fraud and evasion proposed as part of the Fair and Simple Taxation package. This would imply a strategy for better and multidimensional cooperation and coordination between the Member States themselves and between the Member States and the Commission. Particular attention should be paid to the development of mechanisms for prevention, early detection and monitoring of customs transit. The Commission has introduced two new anti-fraud systems. The first is AFIS, which supports the application of customs and agricultural legislation by providing tools for the exchange of information and assistance in operational activities. The second scheme is the Irregularity Management System, which is an electronic system that facilitates the reporting of irregularities in various areas. This system is made available to Member States and beneficiaries. The Irregularity Management System is part of AFIS and is currently used by 35 countries.
- On 18 February 2020, new measures were adopted for the transmission and exchange of payment data to combat VAT fraud in e-commerce, including the launch of the Central Electronic Payment Information System (CESOP), which from 2024 will keep records of information on cross-border payments within the EU, as well as payments to third countries or third territories. This will enable tax authorities to properly monitor the correct fulfilment of VAT obligations in relation to cross-border supplies of goods and services between businesses and consumers. In recent years, Parliament has called on the Commission to take action to ensure full transparency regarding all beneficiaries of EU funds in the Member States

by publishing a list of all such beneficiaries on the Commission's website. Parliament has also asked Member States to cooperate with the Commission and provide it with full and reliable information on the beneficiaries of EU funds managed by Member States.

- From 1 January 2016. The Commission has introduced an early detection and debarment system. This system is used to protect the financial interests of the EU by detecting unreliable persons and entities applying for EU funds or having legal obligations to EU institutions, bodies, offices and agencies. Article 135 of the Financial Regulation sets out the rules for the early detection and debarment system.
- Arachne is an IT tool used for data mining and enrichment. It is used for administrative and management controls in the field of Structural Funds. Arachne is able to identify project beneficiaries, contracts and contractors where fraud, conflicts of interest and other irregularities may occur.
- New European anti-fraud policies and programmes.
- At the beginning of 2019. The European Court of Auditors stressed in its Special Report No. 1/2019 'Combating fraud in the spending of EU funds – action is needed' that the EU needs to step up the fight against fraud and that the Commission should play a leading role in this area and reconsider the role and responsibility of the Anti-Fraud Office.
- In April 2019. The Commission presented a new strategy updating the 2011 anti-fraud strategy. The new strategy aimed to increase coherence and coordination in the fight against fraud across different Commission departments. The strategy should also pave the way for the introduction of more data-driven anti-fraud measures in the coming years. It complements the Commission's governance package, which was adopted in November 2018, and designates OLAF as the main body responsible for designing and developing European anti-fraud policies.
- The introduction of the NextGenerationEU recovery plan has led to the launch of a new operation to protect the EU's financial interests under the supervision of Europol. Operation Sentinel will specifically target fraud in the use of EU reconstruction funds related to COVID-19. Launched on 15 October 2021, the operation involves cooperation between Europol, EPPO, Eurojust, OLAF and 19 Member States.
- With the adoption of Regulation (EU, Euratom) 2020/2092, a system of rule of law conditionality was introduced to protect the EU budget. The Regulation was adopted to counter ongoing breaches of the rule of law. It entered into force on 1 January 2021.
- C. Directive on combating fraud and protecting the financial interests of the Union.
- Member States [1] were required to implement by transposition into national law by 6 July 2019 Directive (EU) 2017/1371 ("PIF Directive") on the fight against fraud to the detriment of the financial interests of the Union through criminal law. All 26 Member States bound by the Directive have notified full transposition by April 2021. The new rules increase the level of protection of the EU budget by harmonising definitions, sanctions and limitation periods for offences against the EU's financial interests.
- European Anti-Fraud Office (OLAF).
- OLAF operates independently of the Commission and is empowered to investigate fraud against the EU budget, corruption and serious misconduct in the European institutions and develops anti-fraud policy for the Commission. In 1999. Parliament, the Council and the Commission signed an inter-institutional agreement on internal investigations to ensure the smooth running of OLAF's investigations. Some of these rules, now contained in the Staff Regulations of Officials of the European Union, oblige staff to cooperate with OLAF and provide, to a certain extent, for the protection of officials disclosing information on potential fraud or corruption.
- The new OLAF Regulation was adopted in 2013 and amended in July 2016. The new text introduces important improvements to make OLAF more effective, efficient and accountable, while maintaining its investigative independence. In particular, it contains a clearer definition

of the legal framework for fraud investigations. It also includes a definition of “irregularity”, “fraud, corruption or any other illegal activity affecting the financial interests of the Union” and the concept of “economic operator”. It contains references to the Charter of Fundamental Rights, ensuring the right of defence and procedural guarantees, the rights of witnesses and whistleblowers, and the right of access to records and other relevant documents during OLAF investigations.

- The latest version of the Regulation introduces arrangements for OLAF’s investigations in connection with the establishment of the EPPO in order to ensure the greatest possible complementarity and to enhance the effectiveness of OLAF’s investigative functions with regard to, inter alia, on-the-spot checks, inspections, assistance to national authorities, information on bank accounts, admissibility of evidence collected by OLAF, anti-fraud coordination units and coordination activities.
- The Commission draws up an annual report on the protection of the EU’s financial interests, which includes an assessment of the achievements of the year in terms of the fight against fraud and the protection of the EU’s financial interests.
- B. European Public Prosecutor’s Office (EPPO).
- The rules for the establishment of the EPPO are detailed in Article 86 TFEU, which provides that “in order to combat crimes affecting the financial interests of the Union, the Council, acting by means of regulations in accordance with a special legislative procedure, may establish a European Public Prosecutor’s Office from Eurojust”.
- The Regulation establishing the European Public Prosecutor’s Office was adopted under the enhanced cooperation procedure on 12 October 2017 and entered into force on 20 November 2017. There are currently 22 countries participating.

The European Public Prosecutor’s Office is a decentralised prosecution team of the European Union endowed with exclusive powers to investigate, prosecute and bring to justice the perpetrators of crimes prejudicial to the European Union budget. It has the same investigative powers in all participating Member States and operates under their national legal systems, within their structures. The seat of the European Public Prosecutor’s Office is in Luxembourg. In September 2019, Parliament and the Council decided to appoint Laura Codruța Kövesi as the first European Public Prosecutor. She will take office for a non-renewable seven-year term. On 28 September 2020, she was sworn in before the Court of Justice along with 22 European Prosecutors. The European Public Prosecutor’s Office became operational on 1 June 2021.

According to article 317 of the Treaty on the Functioning of the European Union (TFEU) and Article 36 of the Financial Regulation (FR)<sup>5</sup>, the Commission implements the EU budget in accordance with the principle of sound financial management and with effective and efficient internal control, which includes the prevention, detection, correction and follow-up of fraud and other irregularities. The Commission cooperates in this respect with the Member States, which collect and spend up to 80% of the EU budget. Accordingly, article 325(1) TFEU requires the Union and the Member States to counter fraud and any other illegal activities affecting the financial interests of the European Union.

The provisions of the Treaty on the Functioning of the European Union (TFEU) in article 317 and of the Financial Regulation [Regulation (EU, Euratom) 2018/1046] in Article 36 indicate that the European Commission implements the EU budget in accordance with the principle of sound financial management and with effective and efficient internal control, which includes the prevention, detection, correction and follow-up of fraud and other irregularities.

The Commission works on this with Member States, which collect and spend up to 80% of the EU budget. Article 325 TFEU states that the EU (represented by the European Commission) and the Member States are jointly responsible for combating fraud and any other illegal activities affecting the EU’s financial interests. This obligation applies to all EU spending and revenue programs and all policy areas. Member States are mainly responsible for detecting irregularities in the spending of EU

funds. If the amount involved in fraud exceeds PLN 10,000. euro, are obliged to inform the European Anti-Fraud Office – OLAF [Regulation 1303/2013].

The offenses against the EU's financial interests defined in the Convention for the Protection of the European Communities' Financial Interests indicate that they are directed against expenditure (misuse or unlawful retention of funds) and against revenue (unlawful diminution of revenue). Article 1(a) of the Convention specifies that fraud in relation to expenditure is any intentional act or omission to act relating to:

- the use or submission of false, incomplete or inaccurate declarations or documents resulting in the transfer and retention of undue funds from the general budget of the European Community (EC) or from budgets managed by or on behalf of the EC,
  - failure to provide information resulting in failure to fulfill a specific obligation, resulting in the same effect,
  - improper use of funds for purposes other than those for which they were granted.
- Any intentional act or omission relating to:
- the use or presentation of false, incorrect or incomplete statements or documents with the aim of unlawfully reducing resources of the general budget of the European Communities or of budgets managed by or on behalf of the EC,
  - failure to disclose information in breach of a specific obligation for the same purpose,
  - improper use of an advantage obtained in accordance with law for the same purpose.

Poland, as a party to the Convention, implemented the crimes or acts described in this document into its national legislation and recognized them as prosecuted in its territory. The Treaty Establishing the European Community [Treaty Establishing the European Community] (article 280) imposes on member states the obligation to protect the Community's financial interests and requires them to ensure an effective level of their protection.

Under this provision, Member States shall take the same measures to combat fraud affecting the financial interests of the Community as they use to combat fraud affecting their own financial interests. This means that EU countries are obliged to ensure effective protection of the Community budget at national level and are responsible for any violations of the EU's financial interests. This responsibility also extends to the inefficiency or incompetence of national institutions in this area. Correct and effective implementation of the obligation arising from Art. 280 of the Treaty Establishing the Community requires the cooperation of Polish ministries, services and institutions legally obliged to combat crimes related to financial fraud and to protect the financial interests of Poland and the EU.

In accordance with the decision of the European Commission of May 16, 2002, new member states – including Poland – established Anti-Fraud Coordination Units (AFCOS). In Poland, the AFCOS unit is the Department for the Protection of the Financial Interests of the European Union, located in the structure of the Department of Certification and Attestation of EU Funds of the Ministry of Finance, Investment and Development. The result of the administrative, legal and pre-accession obligations undertaken by Poland was the appointment of the Government Plenipotentiary for Combating Financial Irregularities to the Detriment of the Republic of Poland or the EU and the establishment of the Interministerial Team for Combating Financial Irregularities to the Detriment of the Republic of Poland or the EU – the GAFU Team (General Anti-Fraud Unit). The team includes senior representatives of the Ministry of Finance, the Ministry of Interior and Administration, the Ministry of National Defence, the Internal Security Agency, the Foreign Intelligence Agency, the Police Headquarters, and the Border Guard Headquarters. As part of its tasks, the Team coordinates, plans, monitors and controls the implementation of all activities undertaken by the authorities aimed at securing the financial interests of Poland and the EU. The consequences of disclosed irregularities are usually the return of funds to the EU budget, as well as financial sanctions. In the years 2014–2020, the European Commission and Member States identified approx. 4.1 thousand irregularities constituting fraud for a total amount of approximately EUR 1.5 billion (Table 1). Of the total amount of fraud reported, around 73% of incorrectly spent funds were related to EU cohesion policy.

Financial fraud in the area of the Common Agricultural Policy amounted to approximately EUR 350 million, i.e. 24%.

**Table 1. Irregularities reported as fraud by policy area (2014-2020)**

Policy areas	Irregularities reported as financial fraud		Amount of funds involved in fraud	
	Number	%	in million euro	%
Common Agricultural Policy	2081	50	350,9	24
Cohesion policy	1733	42	1.087,4	73
The remaining	339	8	50,3	3
Total	4153	100	1.488,3	100

Source: Own study based on: European Court of Auditors, Special Report No. 6/2021 – Combating fraud in the spending of EU funds in the area of cohesion [at]: op.europa.eu/ (read: 22/02/2020).

In the spending of EU funds in the 2014-2020 financial perspective, irregularities reported by Member States as fraud concerned 0.44% of EU funds paid in the area of cohesion policy.

This indicator, known as the “fraud detection rate”, had very different values depending on the Member State (Figure 1). In the case of EU funds in the area of cohesion throughout the 2014-2020 programming period, it ranged from 0% to 2.1%. This indicator reached zero for Luxembourg, Finland, Ireland and Sweden, and the highest level in Slovakia. In Poland, this rate was 0.61% and was higher than the average rate for the EU of 0.44%. The average value of a single irregularity reported as fraud was EUR 0.8 million (Fig. 1).

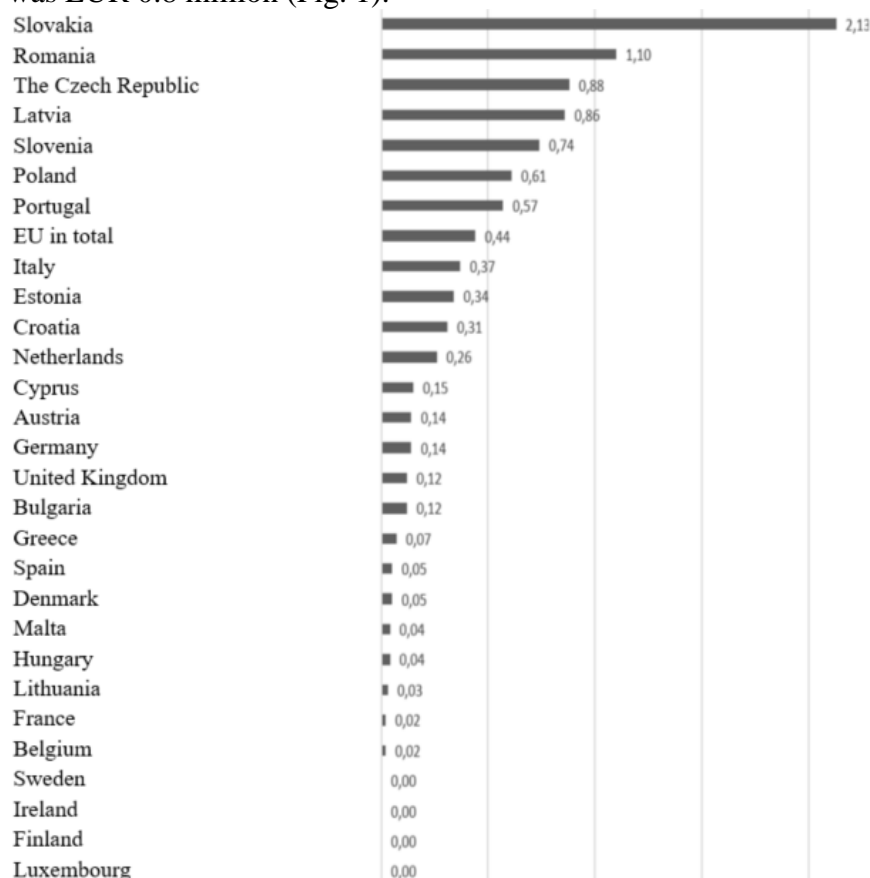


Figure 1 – Detected and reported cases of fraud expressed as a percentage of cohesion policy funds received by EU Member States in the 2014-2020 programming period (%).

Source: Own study based on: European Court of Auditors, Special Report No. 6/2021 – Combating fraud in the spending of EU funds in the area of cohesion [at]: op.europa.eu/ (read: 22/02/2020).

The diagnosed (Special report of the European Court of Auditors – Fighting fraud in EU spending – action is needed (01/2021)) cause of differences in the scale of the discussed unfavorable phenomenon in individual EU member states were different reporting methods. The European Commission states that significant discrepancies between Member States in reporting fraud and irregularities may be due to the different structure of national anti-fraud systems as well as to disharmonized reporting. Some Member States qualify an irregularity as an abuse only after a final court judgment, while others already at an earlier stage of the proceedings.

## **2. Irregularities and fraud concerning EU funds in Poland**

Further prospects for the implementation of EU funds indicate that even the best-developed control procedures will not eliminate the risk of fraud [Walenia, 2017, pp. 156-160]. This is confirmed by data published by the Ministry of Finance, which serves as the Paying Authority for funds from the European Union budget [Reports on monitoring and control].

The largest number of irregularities reported to the European Commission indicated fraud in the use of funds from the European Agricultural Fund for Rural Development, while the highest amount concerned the European Regional Development Fund (Table 1). It is important for the European Commission and the Member State whether the irregularity was detected before the funds were paid to the beneficiary or after the payment was made. More than 80% of the identified irregularities were detected before payment was made. In order to minimize the risk of incorrect spending of funds from the Structural Funds and the Cohesion Fund, it may be helpful to analyze the types of irregularities that reflect a violation of legal provisions. The most common irregularity (Fig. 2) was the incorrect application of the provisions of the Act of January 29, 2004 on Public Procurement Law [Journal of Laws of 2019, item 1843, as amended], in particular:

- competition rules and dissemination of information about the contract,
- activities related to the preparation of documentation (e.g. lack of design documentation at the time of publishing the public procurement notice, failure to provide the tenderers with the Specification of Essential Terms of the Procurement within the deadline specified in the Act),
- selecting the most advantageous offer.

The financial fraud that occurred was the falsification of documents - this occurred in relation to applications for project co-financing, in the case of which beneficiaries provide false data or attach falsified supporting documents (various types of statements, certificates). This type of activities are treated as suspicions of fraud to the detriment of the EU budget [Makuch, 2015, pp. 78-79]. Ineligible expenses – cases of financing by beneficiaries of activities that are not related to the implementation of the project and are not specified in the co-financing agreement are most often detected. If such irregularities are detected, beneficiaries cannot count on reimbursement of expenses from EU funds. However, when all payments are finally made to the beneficiary, actions are taken to enforce the incorrectly financed activities. Another irregularity was the incomplete implementation of planned tasks under the project, e.g. purchase of products or execution of works. This situation may arise if the output indicators specified in the project co-financing application and in the project implementation reports are not consistent with the works actually performed or services provided. Such cases are treated as confirmation of false information by the beneficiary and, consequently, considered as actions aimed at extorting EU funds, and therefore committing a crime.

In the process of implementing projects co-financed from EU funds, the following causes of irregularities can be identified:

- ignorance of legal provisions, in particular public procurement provisions and documents regarding the implementation of the operational program,
- non-compliance by beneficiaries with the rules specified in the subsidy agreement,
- variability of legal provisions,
  - unreliability or inaccuracy of documents submitted by the beneficiary, preparation of unreliable reports on project implementation and payment applications (lack of documentation, accounting errors).

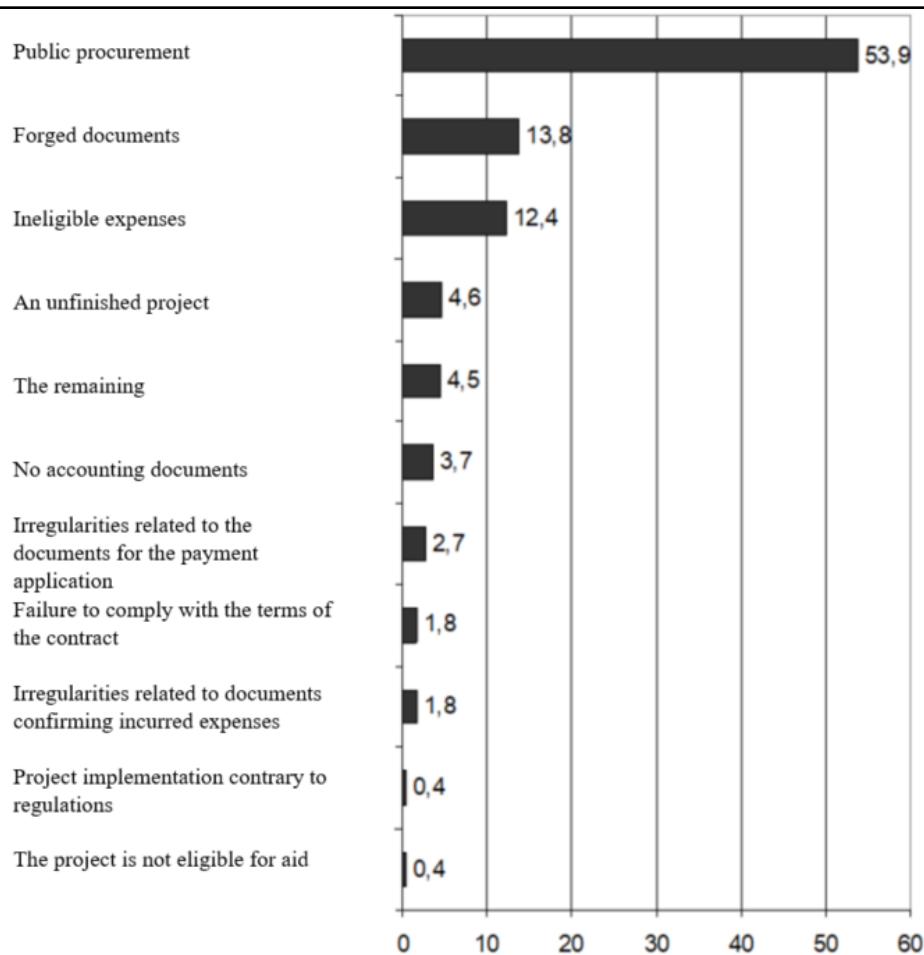
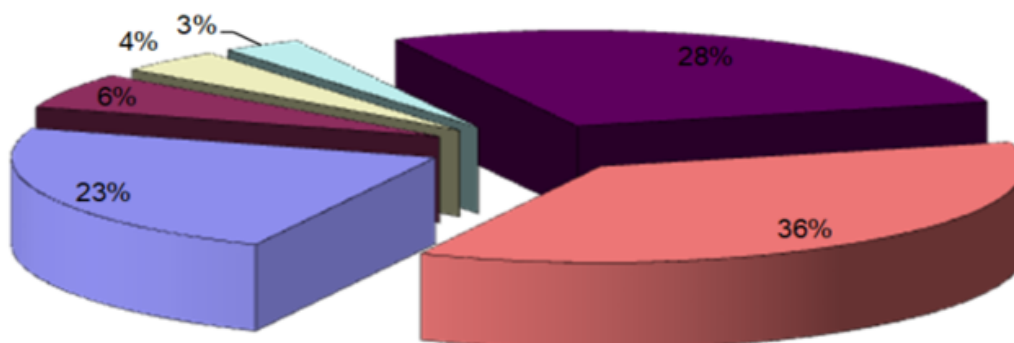


Figure 2 – Types of irregularities relating to EU funds reported to the European Commission (%)

Source: Data from the Ministry of Finance, Department of Certification and Attestation of EU Funds (reports and studies 2020).

Data from the Ministry of Finance, which serves as the Paying Authority in the process of managing EU funds (Fig. 3), confirmed that the most effective ways of detecting irregularities in the management of EU funds are: on-site inspection and preliminary verification activities, i.e. verification of applications for project financing and payment applications. Empirical material confirms that over 80% of cases of improper spending of EU funds are detected by institutions participating in the implementation of operational programs, i.e. managing authorities, intermediate institutions and implementing institutions. The state control system is not very effective in this respect, the state control bodies (KAS, NIK, RIO, President of the Public Procurement Office) detect only 4% of irregularities. In this respect, tools such as audits and management control should be used to support the effectiveness and efficiency of management [Kołcz, B., 2023].

Detection of irregularities by controlling institutions results in the application of sanctions specified in the provisions of the Public Finance Act and the project co-financing agreement (e.g. return of funds received so far, exclusion from receiving co-financing) [Wiśniewski, 2013, pp. 189-190]. Moreover, the Member State is obliged to inform the European Commission (European Anti-Fraud Office – OLAF) about the occurrence of irregularities in the implementation of the project and the entities whose actions led to the improper spending of EU funds.



Legend:

<span style="color: blue;">■</span> document control	<span style="color: purple;">■</span> other
<span style="color: yellow;">■</span> tax and fiscal control	<span style="color: cyan;">■</span> ex-post control
<span style="color: purple;">■</span> preliminary checking activities	<span style="color: red;">■</span> on-site inspection

Figure 3. Methods for detecting irregularities in the use of funds from the EU budget (% of individual methods in the total amount of irregularities in Poland).

Source: Data from the Ministry of Finance, Department of Certification and Attestation of EU Funds (reports and studies 2020).

Due to the fact that this type of irregularity constitutes a crime, reference is also made to Polish criminal law provisions. Although the Penal Code [Act of June 6, 1997] does not directly indicate what activities constitute a crime to the detriment of the EU budget, the current experience of law enforcement agencies, i.e. the police and the prosecutor's office, indicates that the provisions of the Penal Code regarding:

- submitting a counterfeit, forged, false or unreliable document or an unreliable written statement regarding circumstances of significant importance in order to obtain a subsidy (including a subsidy, loan) from a bank or organizational unit conducting similar economic activity under the Act or from a body or institution having funds at its disposal public (Article 297 §1) – this offense is punishable by imprisonment from 3 months to 5 years,
- counterfeiting or forging a document or using such a document as authentic – this offense is punishable by a fine and restriction of liberty or imprisonment from 3 months to 5 years,
- causing another person to dispose of one's own or another person's property in an unfavorable manner by misleading him or her or by taking advantage of an error or inability to properly understand the action taken in order to obtain a financial benefit – this offense is punishable by imprisonment from 6 months to 8 years.

In practice, the most frequently committed financial fraud is violating the provisions of the Public Procurement Law and falsifying documents or submitting false statements. The source of financial fraud may be not only the activities of beneficiaries, but also those responsible for making decisions in institutions participating in the implementation of the operational program. The following actions may also be considered financial abuse: making a decision to co-finance a project that does not meet the formal and legal requirements, inaccurately carrying out the required verification of the project co-financing application or payment application, making a payment despite the beneficiary's failure to complete the next stage of the project [Walenia, 2017, pp. 195-198]. Information about any

suspected abuses should be forwarded to the police and the prosecutor's office and then become the subject of proceedings conducted by the competent law enforcement authorities.

If irregularities are detected, in particular financial fraud, the beneficiaries must take into account the imposition of sanctions. Of course, the severity and type of penalty depend on the seriousness of the irregularity and its consequences for further implementation of the project. Legal provisions related to the detection of irregularities in the use of EU funds indicate the following types of sanctions applicable to beneficiaries who improperly spend EU funds, i.e.: – imprisonment – is imposed if the beneficiary is proven to have violated the provisions of the Penal Code. Depending on the qualification of the act, the beneficiary may be sentenced to a suspended prison sentence (e.g. Article 270, Article 280 and Article 297 of the Penal Code). – return of all co-financing funds – this sanction is applied in the event of failure to implement the project in accordance with the provisions of the project co-financing agreement and depends on the type of irregularities detected, e.g. if control institutions detect that the beneficiary has submitted false documents that were the basis for granting co-financing, then they will certainly will have to return the entire amount of funding received so far along with interest. Full repayment is most often ordered when the beneficiary is convicted of a crime (fraud) affecting the financial interests of the EU:

- exclusion from the possibility of receiving future funding – this situation occurs when the beneficiary uses the funds contrary to their intended purpose and thus fails to implement the full scope of the project. Pursuant to the Public Finance Act, the beneficiary will not be able to receive funding from EU funds for a period of 3 years,
- return of part of the refunded funds in connection with the recognition of certain expenses as incorrect - this sanction is applied both to projects that have already been completed and those in progress. If irregularities are detected in activities already reimbursed from EU funds, the beneficiary is obliged to return them. If the beneficiary refuses, the paying institution is obliged to comply other types of sanctions, i.e. deduction of funds from the next tranche of the refund (project under implementation) or initiation of debt collection proceedings (project completed),
- refusal to refund expenses deemed irregular – such action occurs when an irregularity is detected in relation to the beneficiary's expenses that have not yet been refunded,
- correction of funds deemed incorrect from the next tranche of the refund – applies to the case when the project is in progress and the beneficiary has not settled it. Then, it can be expected that the funds identified incorrectly by the control institution will be deducted from the next tranche of the refund to the beneficiary,
- compensation for damage - this sanction consists in the necessity to repeat activities that were considered incorrect and do not have significant financial consequences for the implementation of the project. We may encounter such a situation if an error was made when submitting a payment application or during tender procedures.

The presented sanctions most often do not appear individually, but are applied simultaneously, e.g. return of the entire subsidy and exclusion from receiving EU funds in the future. The consequences of detecting irregularities concern not only the beneficiary, but also the Member State. The European Commission may request a Member State to return EU funds that have been incorrectly used under individual operational programs or Community initiatives. The decision of the European Commission to return funds may be due to a large number of irregularities detected or the lack of sufficient action on the part of the Member State to recover the incorrectly spent amounts from the beneficiary.

## ***Conclusions***

It should be concluded that the issue of financial fraud related to the implementation of projects co-financed from EU funds is one of the important legal and organizational issues applicable in the Member States and the EU. Taking into account the fact that the EU funds intended for Poland in the 2014-2020 financial perspective have already been used, and the funds are currently being spent from

a new perspective, showing the issue of financial fraud in the previous programming period is important from a practical point of view. The EU's financial interests are directly linked to those of the Member States and are exposed to constant risks from various forms of fraud and other illegal activities that have a detrimental impact on the revenues and expenditure of the EU general budget. Therefore, in order to counteract such undesirable practices, a number of legal regulations have been introduced and many procedures have been developed to limit and eliminate the effects of occurring irregularities. In Poland, in connection with the implementation of EU law, legal regulations have been defined to protect EU funds and, therefore, EU budget interests. Despite broadly defined legal and organizational regulations preventing financial fraud from EU funds, reported and detected fraud in Poland accounted for 0.61% of the funds transferred by the European Commission for cohesion policy.

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