

Keeping Fraud in Check

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In the run-up to EU accession, Polish researchers are closely reviewing existing domestic regulations on corruption, financial crime and fraud

Under the European Union's "Grotius II Penal" program, our Institute has scrutinized financial crimes, corruption and money laundering in Poland. Polish penal legislation, court rulings and practice have been analyzed in terms of Polish solutions being harmonized with EU requirements. One important angle of the program studied the defrauding of EU subsidies and related corruption. Within the Polish legal framework, the defrauding of subsidies and grants falls under Article 297 of the Penal Code, which pertains to so-called "economic crimes," a category that encompasses credit fraud as well as any type of fraud involving bank loans, credit guarantees, public procurement, and any sort of subsidies and grants. This provision of law does not, therefore, make explicit reference to crimes involving EU subsidies. As a result, for the sake of legal clarity the Polish authors of the study submitted a *de lege ferenda* proposal to the Polish legislature, recommending that EU subsidies should be given explicit protection under Polish penal law, in order to prevent any non-uniform interpretation of legal provisions. Unless this type of crime is explicitly referred to by the Penal Code, the aforementioned article might be interpreted in differing ways. Gaining an idea of how widespread the phenomenon of EU subsidy fraud actually is in Poland, therefore, demanded a study of legal practice, based on an analysis of prosecutor records.

The study has shown that fraud involving EU subsidies has so far been marginal in Poland. However, it is too early for optimism. It is understandable that the current extent of EU subsidy fraud must be smaller in Poland than in EU member states. Nevertheless, we have to reckon with the possibility that this phenomenon may start to rise once Poland joins the EU. Polish provisions need to be reinforced with regards to other areas of law, mainly concerning public finances and auditing, which are essential to the process of preventing such crimes. The study also encompassed issues related to the Fiscal Penal Code, which also includes provisions to protect subsidies and grants, and *de lege ferenda* recommendations were submitted in this regard as well.

The defrauding of subsidies granted by domestic Polish institutions currently constitutes a much greater problem. In the majority of cases, such actions were related to organized crime (frequently tied to so-called money laundering).

On the basis of the research results, the Polish authors made a recommendation to the legislature that the current legal provisions concerning fraud and corruption in the public sector should be simplified, and that distinct provisions should be introduced into the Penal Code to specifically identify financial embezzlement (fraud) as crime involving "the economic abuse of powers," or so-called "civil servant fraud." An analysis of corruption-related legislation, court rulings, and practice has shown that the main shortcoming of Polish legislative solutions, hampering the battle against corruption, is that the Penal Code lacks the concept of an "individual performing a public function" - a concept that is utilized in penal regulations concerning so-called "active" and "passive" bribery. This shortcoming thus had to be remedied, and the Polish legislature did so in 2003.

As a study of police practice undertaken as another part of the program showed, corruption is mainly manifest in Poland in the functioning of local administration, followed by other most corruption-prone sectors: central administration, police, customs bodies, the justice system, and state financial agencies. Overall, although there have not been many corruption lawsuits to date, the study pointed to a high level of corruption danger in Poland, thereby confirming that the earlier *de lege ferenda* proposal had been well-founded. ■

Further reading:

Ferré Olivé J. H., Musco E., Kunicka - Michalska B., Almeida Cabral J. i in.
Vol I (2002): *Fraude de subvenciones comunitarias y corrupción*.
Vol III (2003): *Fraude y corrupción en la administración pública*. Ediciones Universidad de Salamanca.



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