

Subsidy fraud in protection of financial interests of European Union: achievements and challenges

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Abstract:

The article gives an overview of the development of the criminal protection of the financial interests of European Union. It presents the latest legislative proposal concerning the fight against fraud to the Union's financial interests: Proposal for a Directive on the fight against fraud to the Union's financial interests by means of criminal law. The article indicates legal effects of the differences in the material scope of the competence of Eurojust and European Public Prosecutor's Office in comparison with Directive. Croatian legislative solution is assessed as well as evaluation of protection of Union's financial interests through the official data of persons reported, accused and convicted for subsidy fraud.

Key words: *financial interests of European Union, substantive criminal law, Directive, subsidy fraud, material scope of competence of the EPPO.*

1. Introduction

The European Union is a unique economic and political partnership between 28 European countries. The first step towards the Europe of today was taken in 1951, when France, Germany, Italy, Belgium, the Netherlands and Luxembourg concluded the Treaty establishing the European Coal and Steel Community.¹ The following treaties were Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community in 1957.² Denmark, Ireland and the United Kingdom acceded to the Communities in 1973, Greece in 1981, Spain and Portugal in 1986. The Treaty of Maastricht on European Union in 1992 created a structure of a EU based upon three pillars.³ It was amended by the Treaty of Amsterdam in 1997 and the Treaty of Nice in 2001. The Constitution for Europe was adopted in 2004, but never entered into force.⁴ Although the inspiration for a new phase in the process of European integration in the Preamble of the Treaty establishing a Constitution for Europe is drawn from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human

¹ Klip, A., *European Criminal Law, An Integrative Approach*, 2012 Interesentia, p. 13.

² A separate convention established a single court and a single assembly for the three communities. In 1965, an agreement was reached that all three communities would also have one Commission and one Council. *Ibid.*

³ Finland, Austria and Sweden acceded in 1995, Cyprus, The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia in 2004, Bulgaria and Romania in 2007, Croatia in 2013.

⁴ OJ 2004, C 310/1.

person, freedom, democracy, equality and the rule of law, the main economic engine of the EU is the single or “internal” market.⁵ The Treaty of Lisbon was concluded in 2007 and the European Union is now primarily founded upon two new treaties: the Treaty on European Union and the Treaty on the Functioning of the European Union.⁶ The TEU regulates the institutional structure of the Union and the Treaty on the Establishment of the European Communities has been renamed into the TFEU. Article 26 TFEU provides adoption of measures aiming at establishing or ensuring the functioning of the internal market that should comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties. The Commission notably committed to delivering an investment plan for Europe in 2015: unlocking public and private investments in the real economy of at least 315 billion euro over next 3 years.⁷ This should be supported and complemented by the capital markets union – building a single market for capital.⁸

The protection of the European Union should not be identified with the protection of its financial interests, but, bearing in mind its historical origins, the particular importance for the protection of the EU engages the protection of its financial interests. After an overview of the development of the criminal protection of the financial interests of EU, the current legislative proposals shall be explained and critically analyzed in this article. Special focus will be applied to Croatian legislation on the subject.

2. Protection of the European Union’s financial interests in EU

Before the overview of the first steps in the protection of Union’s financial interests and discussion about the current legislation proposals, the main figures about EU budget and multiannual financial framework will be pointed out.

The general budget of the Union is the instrument which sets out and authorises the total amount of revenue and expenditure deemed necessary for the European Union and the European Atomic Energy Community for each year. The budget is established and implemented in compliance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency.⁹ The expenditure authorised by the present budget totals 145 321 531 152 euro in commitment appropriations and 141 214 040 563 euro in payment appropriations, representing a variation rate of + 1,84 % and of + 1,57 % respectively by comparison with the 2014 budget.¹⁰ Budgetary revenue totals 141 214 040 563 euro. The uniform rate of call for the Value Added Tax (VAT) resource is 0,30 % whilst that for the Gross National Income (GNI) resource is 0,7481 %. Traditional own resources (customs duties and sugar levies) account for 11,92 % of the financing of

⁵ Preamble of the Treaty establishing a Constitution for Europe. Gaining the first steps in the 50ies, the aim of the Community was to eliminate internal borders and bring about a Common Market.

⁶ The Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), OJ 2010, C 83/1.

⁷ General Report on the Activities of the European Union, 2014, available on <http://bookshop.europa.eu/en/general-report-on-the-activities-of-the-european-union-2014-pbNAAD15001/>, 23 October 2015.

⁸ *Idem*.

⁹ Definitive adoption (EU, Euratom) 2015/339 of the European Union's general budget for the financial year 2015, OJ L 69, 13 March 2015.

¹⁰ *Idem*. P. 12.

the budget for 2015. The VAT resource accounts for 12,93 % and the GNI resource for 74,04 %. Other revenue for this financial year is estimated at 1 575 497 557 euro.¹¹

The multiannual financial framework (MFF) lays down the maximum annual amounts or ceilings which the EU may spend in different political fields or headings over a period of at least 5 years. The current MFF covers seven years: from 2014 to 2020. This planning policy provides the EU to carry out common policies over a period that is long enough to make them effective. The annual budget is adopted within this framework and usually remains below the MFF expenditure ceilings in order to retain some flexibility to cope with unforeseen needs. For the period 2014-2020, the MFF sets a maximum amount of 960 billion euro for commitment appropriations and 908 billion euro for payment appropriations.¹² The MFF 2014-20 is divided into six categories of expense or headings corresponding to different areas of EU activities: smart and inclusive growth that includes competitiveness for growth and jobs (125.614 million euro) and economic, social and territorial cohesion (325.149 million euro), sustainable growth: natural resources (373.179 million euro), security and citizenship (15.686 million euro), global Europe (58.704 million euro), administration (61.629 million euro) and compensations (27 million euro).¹³ A strong emphasis is put on expenditure aimed at boosting growth and creating jobs, in line with the political priorities of the EU: the expenditure ceiling for sub-heading „competitiveness” is increased by more than 37% compared to the previous MFF.¹⁴

2.1. Lessons from the past

The origins of legal protection of the financial interests of the European Community date back to the sixties of the last century and they were from the beginning two-sided; in the legal systems of the Member States and in the legal order of the European Community.¹⁵ In 1962 a working group of representatives of governments of the Member States was set up with the task of harmonization of criminal law in certain areas with a focus on preventing fraud caused by gaps in legislation of the European Community, in particular fraud at the detriment of the budget of European Community.¹⁶ Studies conducted in nineties (one conducted by the Commission on its own initiative, the other known in public as the Delmas-Marty Report) confirmed the allegations about the activities of transnational and organized crime in this area bypassing the law and misusing not only the legal gaps in EU legislation, but also those caused by differences between national legislations.¹⁷ The protection of the financial interests for the first time entered the primary Community law with the Treaty on

¹¹ *Idem.*

¹² The functioning of the MFF 2014-2020 will be reviewed by the Commission in 2016 taking full account of the economic situation at the time as well as the latest macroeconomic projections.

¹³ Council adopts the multiannual financial framework 2014-2020, Brussels, 2 December 2013, 15259/1/13 REV 1 (OR.en) PRESSE 439, available on http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/139831.pdf, 19 October 2015.

¹⁴ *Idem.*

¹⁵ Đurđević, Z., Criminal protection of the financial interests of European Union, dissertation, Faculty of Law, Zagreb, 2003, p. 377.

¹⁶ *Ibid.*

¹⁷ Đurđević, Z., Convention on the protection of the European Communities' financial interests – drafting, contents and implementation, Croatian Annual of Criminal law and practice, vol. 14, N. 2 (2007), p 927.

European Union in Maastricht in 1992 when the Art. 209a standardized principle of assimilation which was postulated by the European Court of Justice in the case *Commission v. Greece*. Namely, in the judgment of 21 September 1989, the Court first established the obligation of Member States to protect the financial interests of the Community in the same way and under the same conditions as their own financial interests. In that way, the Member States were obliged to extend their internal criminal law towards the protection of the financial interests of the European Community and thus implement the principle of assimilation and set the legal standard within the sanctions that protect Community finance must be effective, proportionate and dissuasive, and the prosecution has to be just as effective as for crimes against national interests.¹⁸ In December 1994, the Council adopted a decision on drafting a legal instrument for the protection of EU financial interests through national criminal law on the basis of the joint action of the United Kingdom from March 1994 and the Draft Convention prepared by the Commission in June 1994. Convention on the protection of the European Communities' financial interests (*PIF Convention*)¹⁹ as international contract was signed 27 June 1995 by all Member States. Convention represents together with additional protocols *PIF instruments*: Protocol on corruption of national or Community officials,²⁰ Second Protocol of the Convention on the protection of the European Communities' financial interests,²¹ Third additional Protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests.²²

2.2. Current issues

In the TFEU chapter six titled "Combating Fraud" prescribes in the provisions of Art. 325 the duty of the Union and the Member States to counter fraud and any other illegal activities affecting the financial interests of the Union through measures from the same Article that act as a deterrent and afford effective protection in the Member States and in all institutions, bodies, offices and agencies of the Union. In order to counter fraud affecting the financial interests of the Union, Member States should take the same measures taken to counter fraud affecting their own financial interests. Without prejudice to other provisions of the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. Therefore, they shall organise, together with the Commission close and regular cooperation between the competent authorities. In order to achieve effective and equivalent protection in the Member States and in all Union's institutions, bodies, offices and agencies, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Court of Auditors, shall adopt the

¹⁸ Case 68/88 *Commission of the European Communities v. Hellenic Republic* [1989] ECR I-2965. See Ligeti, K. (ed.), *Toward a Prosecutor for the European Union*, Volume 1, A Comparative Analysis, Hart Publishing, Oxford and Portland, Oregon, 2013, p. 1004.

¹⁹ OJ C 316, 27 November 1995.

²⁰ Protocol drawn up on the basis of Article K.3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests or First Protocol, Anticorruption Protocol, OJ C 313, 23 October 1996.

²¹ Second Protocol on *criminal liability of legal persons, confiscation and money – laundering*, OJ C 221, 19 July 1997.

²² OJ C 151, 20 May 1997.

necessary measures in the fields of the prevention and the fight against fraud affecting the financial interests of the Union. The Commission, in cooperation with the Member States shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation the combating fraud.²³ After entry into force the Lisbon Treaty, the harmonization of substantive criminal law, including criminal offenses against the financial interests of the Union should be based on Art. 83 TFEU.²⁴

The Commission has submitted to the European Parliament and Council in 2012 Proposal for a Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law.²⁵ The Proposal includes initiatives for further harmonization of criminal offences and the level of sanctions in the context of substantive criminal law for the protection of the financial interests of the EU. According to the Proposal (Art. 2), the Union's financial interests means all revenues and expenditures covered by, acquired through, or due to: the Union budget and the budgets of institutions, bodies, offices and agencies established under the Treaties or budgets managed and monitored by them.²⁶ The absence of consensus in relation to the basic concept of the term Union's financial interests suggests the European Parliament legislative resolution of 16 April 2014 on the Proposal.²⁷ Namely, within the Amendment 12, this term is extended to all the assets and liabilities managed by or on behalf of the Union and its institutions, bodies and agencies; and all its financial operations, including borrowing and lending activities, as well as, in particular, all revenues and expenditures covered by, acquired through, or due to: the Union budget, the budgets of institutions, bodies, offices and agencies established pursuant to the Treaties or budgets directly or indirectly managed and monitored by them.

The Proposal divides criminal offences in the fields of prevention of and fight against fraud affecting the Union's financial interests and fraud related criminal offences affecting the Union's financial interests that is in line with the incriminatory elements of

²³ The latest is Report from the Commission to the European Parliament and the Council: Protection of the European Union's financial interests – Fight against fraud 2014, Annual Report, Brussels, 31 July 2015 COM(2015) 386 final

²⁴ Namely, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension.

²⁵ Proposal for a Directive of the European Parliament and of the Council on the Fight against Fraud to the Union's financial interests by means of criminal law /* COM/2012/0363 final - 2012/0193 (COD) */ available on <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012PC0363> (9.11.2015.) See Kuhl, L., The Initiative for a Directive on the Protection of the EU Financial Interests by Substantive Criminal Law, *Eucrim* 2/2012, p. 63-66.

²⁶ The European Court of Justice has confirmed in Judgement of 15 November 2011 in Case C-539/09, *Commission v. Germany* (OJ 2012, C 25, p. 5) existence of a direct link between, on the one hand, the collection of the Value Added Tax revenue in compliance with the applicable Union law, and on the other, the availability to the Union budget of the corresponding Value Added Tax resources, since any lacuna in collection of the first potentially causes a reduction in the second. Value Added Tax fraud therefore has to be considered as affecting the EU's financial interests. See Proposal, p. 8.

²⁷ European Parliament legislative resolution of 16 April 2014 on the proposal for a directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law (COM(2012)0363 – C7-0192/2012 – 2012/0193(COD)) (Ordinary legislative procedure: first reading), available on:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0427+0+DOC+XML+V0//EN> (9.11.2015)

the Convention.²⁸ Fraud affecting the Union's financial interests when committed intentionally is punishable as a criminal offence (a) in respect of expenditure, any act or omission relating to: (1) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the Union budget or budgets managed by the Union, or on its behalf; (2) non-disclosure of information in violation of a specific obligation, with the same effect, or (3) the misapplication of liabilities or expenditure for purposes other than those for which they were granted; (b) in respect of revenue, any act or omission relating to: (1) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf, (2) non-disclosure of information in violation of a specific obligation, with the same effect, or (3) misapplication of a legally obtained benefit, with the same effect.²⁹ Fraud related criminal offences affecting the Union's financial interests according to Art. 4 of the Proposal are dishonest conduct of tenderers in public procurement, passive and active corruption, misappropriation of funds and money-laundering.³⁰ Criminalising dishonest conduct of tenderers is definitely common in a number of Member States but within variable level of sanctions, so placing it in the Directive was needed and justifiably. The definition of corruption is largely based on the PIF Convention and the protocols, but now it is no more required that the conduct is "in breach of official duties" to be covered by the provision. The definition of misappropriation includes conduct of public official that does not constitute fraud in a stricter sense and consists in the misappropriation of funds or assets contrary to the purpose foreseen, with the intention to damage the Union's financial interests.

2.3. Current issues in material scope of the Eurojust and European Public Prosecutor's Office

European Union Agency for Cooperation in the field of criminal justice or Eurojust is a body established by Council Decision of 28 February 2002 with a view to reinforcing the fight against serious crime.³¹ The Decision was twice amended³² and on the 17th of July 2013, the Commission presented a proposal for a Regulation on the Eurojust, based on Art. 85 TFEU.³³ The tasks of the Eurojust are support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States, or requiring a prosecution on common basis, on the basis of operations conducted and information supplied by the

²⁸ That is why some authors as Kuhl suggest that the Proposal contains under its Title II certain provision which may to some extent be qualified as mere *Lisbonisation* of criminal law concepts. Kuhl, L., *op. cit.* (24), p. 65.

²⁹ Art. 3. The offence remained within the framework of the crime from Convention.

³⁰ See Amendments 14-19 of the European Parliament legislative resolution.

³¹ Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 63, 6 March 2002.

³² Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 245, 29 September 2003, and Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 138, 4 June 2009.

³³ Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) /* COM/2013/0535 final - 2013/0256 (COD) */

Member States and by Europol.³⁴ But the competence of Eurojust covers the forms of crime listed in Annex 1 and related criminal offences excluding the crimes for which the European Public Prosecutor's Office will be competent.³⁵

The legal basis to establishment of the European Public Prosecutor's Office is Art 86 TFEU.³⁶ This Article provides a clear basis to elaborate the regulatory specificities when it comes to the investigation, prosecution and adjudication of crimes affecting the financial interest of the EU, but it remains silent on the precise scope of the competence *ratione materiae* of the EPPO, as it contains a limited reference to a basic mandate to combat crime affecting the financial interest of the EU or, after a unanimous decision in the Council, to an extended mandate to combat serious crimes having a cross-border dimension.³⁷ In July 2013 European Commission has submitted Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office limiting the material scope of the competence of the EPPO to criminal offences affecting the financial interests of the Union and again, possible extension to serious crimes with cross-border dimension after unanimous decision of the European Council.³⁸ But, ancillary competence provided by Art. 13 of the Proposal covers offences which are not technically defined under national law as offences affecting the Union's financial interests where their constituent facts are identical and inextricably linked with those of the offences affecting the financial interests of the Union. In such mixed cases, where the offence affecting the Union's financial interests is preponderant, the competence of the EPPO should be exercised after consultation with the competent authorities of the Member State concerned.³⁹ Preponderance should be established on the basis of criteria as the offences' financial impact for the Union, for national budgets, the number of victims or other circumstances related to the offence' gravity, or the applicable penalties.⁴⁰ The reasoning for such extended material scope of the EPPO is in the Recital 22 of the

³⁴ Art. 2, para 1. For the critical review of the Proposal, see Weyembergh, A., An Overall Analysis of the Proposal for a Regulation on Eurojust, eucrim 4/2014, p. 127-131.

³⁵ Forms of crime from Annex 1 are for example: organised crime, terrorism, drug trafficking, money-laundering, corruption. Related criminal offences are those committed in order to procure the means of perpetrating acts listed in Annex 1, in order to facilitate or carry out acts listed and to ensure the impunity of acts listed in Annex 1. Eurojust and Europol have a general mandate to facilitate exchange of information and coordinate national criminal investigations and prosecutions, but lack the power to carry out acts of investigations or prosecution themselves. OLAF has a mandate to investigate fraud and illegal activities affecting the EU, but its powers are limited to administrative investigations. See Explanatory Memorandum of the Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, p. 2.

³⁶ First provisions regarding future EPPO were in *Corpus Juris* in 2000, afterwards in the Green Paper on criminal-law protection of the financial interests of the Community in 2001, unratified Treaty establishing a Constitution for Europe in 2004, the Lisbon Treaty in 2009 and Commission's communication on the protection of the EU's financial interests by criminal law and by administrative investigations in 2011. Recent efforts regarding the work of EPPO represent The European Model Rules for the Procedure of the future European Public Prosecutor's Office (latest version from 26 September 2013) as a result of projects conducted at the University of Luxembourg with the financial support of the EU Commission under the responsibility of Professor Katalin Ligeti. See Sokanović, L., *Frauds in Criminal Law*, doctoral thesis, Faculty of Law, University of Zagreb, p. 188.

³⁷ Vervaele, J.A.E., The material scope of competence of the European Public Prosecutor's Office: *Lex incerta* and *unpraevia*? ERA Forum (2014) 15:85-99, p. 87.

³⁸ Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office COM(2013) 534 final 2013/0255 (APP), Brussels, 17 July 2013

³⁹ *Ibid.* P. 11.

⁴⁰ *Idem.*

Proposal supported by the interest of procedural efficiency and the need to avoid a possible breach of the principle *ne bis in idem*. So, the great repercussion of such material competence is different scope of criminal offences affecting the Union's financial interests compared to Directive that suggests legal uncertainty.⁴¹ This legal uncertainty is moreover enlarged by the fact that Directive has to be implemented in the legal systems of the Member States. Namely, Vervaele has heretofore admonished that some of them "will consider that their existing law does already provide for the criminal law protection and does not need any amendments, others will cherry pick, others will go beyond the minimum level of harmonisation required."⁴²

3. Croatia

The protection of financial interests of European Union by means of criminal law had in Croatia an unusual path. Namely, firstly the subsidies of EU were protected, and afterwards, within the great changes in criminal legislation in 2011,⁴³ national subsidies in the same way.⁴⁴

Within the Law on Amendments to the Criminal Code in 2007,⁴⁵ the protection of the European Union's financial interests was set up for the first time in the Republic of Croatia. Two new provisions Art. 224b: *Special cases of fraud to the detriment of the European Union's financial interests* and Art. 292a: *Abuse of Authority relating the resources of the European Union* were very soon object of a legislative changes. Within the Law on Amendments to the Criminal Code of 15 December 2008,⁴⁶ Art. 292a was deleted, while Art. 224b, as well as the heading above it completely changed into *Fraud affecting the European Communities*. The "new" Criminal Code or CC11 placed the *Subsidy fraud* (Art. 258) in crimes against the economy. Because of frequent criticism that preference is given to the criminal protection of the financial interests of the European Union over national financial interests, and that the Criminal Code is more protective over the budget of the European Union than the national budget,⁴⁷ the perpetrator of this crime in the provision of Art. 258 par. 1 and 2 is determined as the one who with the aim to realize for himself or another person state aid present false or incomplete information about the facts on which the decision concerning the state aid depends on, or fails to inform the provider of the state aid about the changes important

⁴¹ Ref. 25.

⁴² Vervaele, J.A.E., *op. cit.* (37), p. 97. The author further indicates the results of this harmonisation: „First, the existing fragmentation of the design of the PIF-offences in the legal orders of the Member States will not be ended; apart from there being a legislative patchwork, there will also be gaps in implementation. Secondly, the implementation of the directive will not lead to a clear and precise body of law of PIF-offences and penalties and the differences between the Member States will remain substantial.“

⁴³ In the last two decades Croatian criminal law was dominated by the two criminal codes. Criminal Code from 1997 (Official journal or „NN“ 110/97, 27/98, 50/00, 129/00, 51/01, 111/03, 190/03, 105/04, 84/05, 71/06, 110/07, 152/08, 57/11, 143/12) and Criminal Code from 2011 („NN“ 125/11, 144/12, 56/15, 61/15). In the further text the abbreviations CC97 and CC11 will be used for these codes.

⁴⁴ National subsidies were protected to some extent within other offences, primarily fraud from Art. 224 CC97.

⁴⁵ NN 110/07. See Novoselec, P., *Der EU-Betrug und das kroatische Strafrecht* in Đurđević, Z. (ed.), *Current Issues in European Criminal Law and the Protection of EU Financial Interests*, Zagreb, 2006, Sveučilišna tiskara, p. 20.

⁴⁶ NN 152/08.

⁴⁷ Turković, K. *et al.*, *Komentar Kaznenog zakona*, Narodne Novine, Zagreb, 2013, p. 331.

for making a decision on state aid and who uses funds from an approved state aid contrary to their purpose.⁴⁸ By the provision of par. 5 the subsidies and assistance granted by the European Union are equal to the state aid. Qualified form of the offence, prescribed by par. 3 is committed if the perpetrator acted with the aim of obtaining or abuse the state aid of large-scale. The provision of par. 4, modelled on the German § 264 par. 5, prescribes the case of voluntary abandonment with facultative exemption from penalties. Within the fast and ambitious legislative reaction on the challenge of a new incrimination and the need to protect the Union's financial interests, Croatia has presented the strong willingness to be an equal partner in EU.⁴⁹ But, does an appropriate legislative solution really offer genuine protection of the Union's financial interests? The last published data show that in 2014 only 10 adult persons were reported for subsidy fraud in Croatia, 4 were accused and 3 were convicted for imprisonment of 6-12 months (one suspended).⁵⁰ Comparing with the data from 2013, this is a *significant* increase. Namely, in 2013, only 6 adult persons were reported, one accused and none convicted.⁵¹ It would be rather unfair to conclude that the crime has not yet "come to life" in Croatian jurisprudence, better approach would suggest detail research including the number and rates of subsidies granted, administrative investigations, reported perpetrators, reasons for rejected crime reports or termination of the investigation, amounts of money returned after finalisation of the criminal proceedings.

4. Conclusion

Each year the Commission, in cooperation with the Member States, submits to the European Parliament and the Council a report on measures taken to counter fraud and any other illegal activities affecting the EU's financial interests. This obligation is regulated under Art. 325 para. 5 of the TFEU. In 2014, 1649 irregularities were reported by the Member States as fraudulent (both suspected and established fraud), involving

⁴⁸ For analyze and critique of the provisions, see Sokanović, L., *op. cit.* (36), p. 150-175. By the Regulation on the Internal organization of the Ministry of Finance in 2012, the Independent Department for combating Irregularities and Fraud is established with responsibility for coordination of legislative, administrative and operational activities between the bodies in the AFCOS system, in order to protect the financial interests of the EU and for direct cooperation with the OLAF. AFCOS is a system through which the coordination of legislative, administrative and operational activities in order to protect the financial interests of the European Union and direct cooperation with the OLAF. AFCOS network was established by the Decision of the Croatian Government and is assembled of representatives of the Ministry of Justice, Ministry of Home Affairs, Ministry of Economy, Ministry of Labour - Directorate for Public Procurement, Ministry of Finance - Tax Administration, Custom Administration, the Department for Budgetary Control, the Central State Office for administration, the State Audit Office, the State Attorney's Office. Elements of the AFCOS system in Croatia are: the system of reporting on irregularities, the AFCOS network (network of bodies dealing with combating fraud, corruption and any other type of irregularities in the system) and Independent Department for combating Irregularities and Fraud.

⁴⁹ Other offences concerning the same issue are: Abuse in public-procurement (Art. 254), Embezzlement of taxes or custom (Art. 256), Money laundering (Art. 265), Offering and Accepting a bribe (Art. 294 and 293), Misappropriation (Art. 233) CC11.

⁵⁰ Croatian Bureau of Statistics, Statistical Reports 1551/2015 „Adult Perpetrators of Criminal Offences, Reports, Accusations and Convictions, 2014“, Zagreb, 2015, p. 28, 29, 66, 128, 129.

⁵¹ Croatian Bureau of Statistics, Statistical Reports 1528/2014 „Adult Perpetrators of Criminal Offences, Reports, Accusations and Convictions, 2013“, Zagreb, 2014, p. 28, 65, 186.

538 million euro in EU funds.⁵² The number of reported fraudulent irregularities has been increased on the revenue side, on the expenditure side, the number decreased slightly in 2014 compared with 2013, while the related amounts have increased. Differences still exist among Member States in detection and reporting, although to a lesser extent than in previous years. Some trends have grown stronger in the past two years: the involvement of administrative bodies in detecting fraudulent irregularities has continued, while the most commonly detected *modus operandi* is the use of falsified documentation. Irregularities not reported as fraudulent have increased, both in terms of amounts and in number, that largely reflects the progressive implementation of the various spending programmes and the fact that the control systems of the European institutions and national audit services have been strengthened.⁵³

The continuous and dedicated aspiration towards guarding the financial interests of the European Union and in this way, the European Union itself, is testified by permanent legislative proposals in this area. But the good will and hard work do not guarantee best results at once. Namely, the choice of the European Commission to regulate the material scope of competence of the EPPO by harmonising national substantive criminal law through a directive and differences in definition of criminal offences affecting the Union's financial interests between draft Directive and draft Regulation on EPPO indicate possible legal uncertainty. The Croatian example shows that strong effort has to be invested to upgrade an appropriate legislative solution to best practice. So, once again, a plea for advance in searching consensus, best legislative solutions, cooperation and coordination between all national or EU anti-fraud bodies, finding out the best practices has to be made.

1. Council adopts the multiannual financial framework 2014-2020, Brussels, 2 December 2013, 15259/1/13 REV 1 (OR.en) PRESSE 439, available on http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/139831.pdf;

2. Croatian Bureau of Statistics, Statistical Reports 1551/2015 „Adult Perpetrators of Criminal Offences, Reports, Accusations and Convictions, 2014”, Zagreb, 2015;

3. Croatian Bureau of Statistics, Statistical Reports 1528/2014 „Adult Perpetrators of Criminal Offences, Reports, Accusations and Convictions, 2013”, Zagreb, 2014;

4. Definitive adoption (EU, Euratom) 2015/339 of the European Union's general budget for the financial year 2015, OJ L 69, 13 March 2015;

5. Đurđević, Z: *Criminal protection of the financial interests of European Union*, dissertation, Faculty of Law, Zagreb, 2003;

6. Đurđević, Z: *Convention on the protection of the European Communities' financial interests – drafting, contents and implementation*, Croatian Annual of Criminal law and practice, vol. 14, N. 2 (2007), p. 921-966;

7. General Report on the Activities of the European Union, 2014, available on <http://bookshop.europa.eu/en/general-report-on-the-activities-of-the-european-union-2014-pbNAAD15001/>;

⁵² Report from the Commission to the European Parliament and the Council, Protection of the European Union's financial interests – Fight against fraud 2014, Annual Report, Brussels, 31 July 2015 COM(2015) 386 final, p. 5.

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