

EU Funding – a Lesson (not) To Be Taught from Slovakia

Hana Kováčiková*

Summary: The EU Funds are measure provided by the Union, whose purpose is to, in effective, fair and sustainable manner, intervene in businesses in long-lasting and sustainable way which don't introduce undue advantage and distort the competition on relevant market. The article provides an analysis on particular problematic aspects of EU structural at the EU level and on national level, as defined by the case-law of the Court of Justice of the EU. A case study is provided on example of Slovakia, whose performance in last two programming periods (2006–2013 and 2014–2020) was compared with those of its neighbours from V4 – Czechia, Hungary, and Poland.

Keywords: Competing Jurisdiction, the CJEU, Arbitration, International Economic Agreements, Israel.

Citation: KOVÁČIKOVÁ, H. EU Funding – a Lesson (not) To Be Taught from Slovakia. *European Studies – the Review of European law, Economics and Politics*. 2023, vol. 10, no. 1, pp. 87–108, DOI: 10.2478/eustu-2023-0004.

1. Introduction

The idea of removing the disparities between well developed and less or least developed regions has been present in *acquis communautaire* from the very early moments of the European integration. To reach this objective, a supporting mechanism of structural funds was progressively built. The main task of these funds was (and still is) to promote economic, social, and territorial cohesion between regions within Communities and later Union. At the beginning, funds were financed through the contributions of the Member States, which

* Associate Professor at Comenius University in Bratislava, Faculty of Law, Institute of European Law. ORCID ID: <https://orcid.org/0000-0002-4158-0924>. This article is prepared within the projects Jean Monnet Centre of Excellence No 620758-EPP-1-2020-1-SK-EPPJMO-CoE: *Rule of Law in the European Union*, and VEGA No 2/0167/19 (2019–2022): *The Real Convergence in the European Union: Empirical Evidence and Implications*.

were defined by rates laid down in regulations implementing particular funds. It was therefore necessary to establish the powers and responsibilities relating to the management of the funds. As the European Court of Justice in *Belgium and Luxembourg v Mertens and Other*¹ explained: “*The power of obtaining its own resources and of financing by means of these its own expenditure is one of the oldest prerogatives of a sovereign state. The act of renouncing this power in favour of the Community, albeit within certain limits, amounts to a real and important transfer of sovereign powers.*” Community by adopting an implementing regulation on supporting fond got power to decide on what will be supported and how. Member States remained responsible for implementation of the support on the basis of programs approved by the Commission and, in the case of wrong payments, for recollecting the money back. At fulfilling this task, Member States acted on behalf of the Communities. This principle is still valid. However, over decades, fragmented regulation was successively substituted by more centralised one, based on common codex for all funds and specific implementing regulations for every particular fund. A mechanism of structural funds become more transparent, more comprehensible, and more simply to access. More than 60 years of existence of the structural funds should be the proof, that they really are an accessible and effective tool of cohesion.

Is it really true when it comes to the performance of the particular Member States? One might have some doubts, if we look at the overview on ESIF implementation in just ending programming period provided by the Commission (Figure 1).

We can see that the effectivity of the Member States in spending of EU Funds varies from far below (47%) average (64%) to very good (80%), whilst any of the Member States was able to provide 100% spending of decided financial assistance.

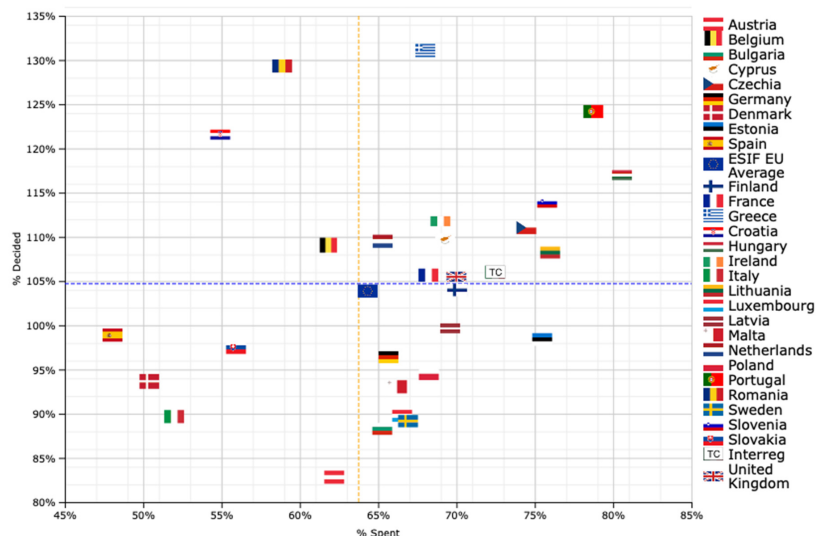
Surprisingly, new Member States (i.e., those who entered the EU in 2004 and later) performed much better than the old ones, as they took up to eight places in the top 10. Last three places were taken by Spain (47%), Denmark (50%), and Italy (51%). However, their GDPs per capita exceeds that of EU's, which might be the one of the reasons of little need of cohesion through the structural funds. Slovakia's performance of spending met the 55% of decided amount, which is also far from the EU Average (64%). Why did Slovakia not succeed in this process?

To find out an answer, an analysis and the comparison of the performances of Slovakia, Czechia, Hungary, and Poland in implementing of structural funds

¹ Judgement of 4 April 1974, *Belgian State and Grand-Duché de Luxembourg v Mertens and Others*, Joined cases 178, 179 and 180/73, EU:C:1974:36, page 392.

was realised. The selection of the countries was made with regard to the fact, that all V4 countries entered the EU together in 2004 and they had a similar starting position – they were countries with the transitional economies and their GDPs per capita were lower than the GDP's average of that-time EU, as well as they are neighbouring countries located in the same region of Central Europe.

ESIF 2014-2020: EU overview of implementation by country – total cost of selection and spending as % of planned (scatter plot)



Period Covered: up to 30/06/2022

Refresh Date: 11/11/2022

Source: <https://cohesiondata.ec.europa.eu/overview/14-20>

Period chosen for examination counts second (2007–2013) and third (2014–2020) structural fund programming period after Slovakia's accession to the EU. First programming period (2000–2006) was not taken into the consideration, as examined countries – Slovakia, Czechia, Hungary, and Poland did not participate in programs for whole programming period.

Methods used during the preparation of this article comprise the doctrinal analysis, comparison, deduction, and synthesis.

Article starts with the general chapter, which deals with the brief introduction of structural funds. Second chapter deals then with specific research relating to above mentioned selected countries. Third chapter is a specific case study of Slovakia's most problematic issues. Conclusion then provides final recommendations of the author.

2. From Rome to Lisbon

This part does not have the ambition to bring an exhaustive enumeration and analysis of all legislation applicable to the Structural Fund, but rather give a brief insight to this area. Therefore, author limits herself just to provision of basic legal context relevant for the research realised in next chapter.

Looking back at the *Rome Treaty Establishing the European Economic Community* of 1957 (hereinafter only TEEC), already its Preamble refers to the wish of founders to pursue the improvement of the living and working conditions of their citizens as well as decrease of the disparities between well developed and less developed territories of the Member States. To achieve these goals, Treaty in Article 123 established the European Social Fund (hereinafter only ESF), whose main task was to promote within the Community employment facilities and the geographical and occupational mobility of workers.

It also introduced the legal basis (Art. 40(4) TEEC) for the future creation of a fund for financing projects in agricultural area. This presumption materialized in 1962 upon the Council's *Regulation No 25*,² which established the European Agricultural Guidance and Guarantee Fund (hereinafter only EAGGF). Its main task was to finance refunds on exports to third countries, intervention aimed at stabilizing markets, and common measures adopted in order to attain the objectives such as the increase of agricultural productivity, establishment of fair standard of living for the agricultural population, stabilisation of markets; guarancy of regular supplies; and establishment of reasonable prices in supplies to consumers.

About a decade later, upon the flexibility clause set in Article 235 TEEC³ Council by its *Regulation No 724/75* established the European Regional Development Fund (hereinafter only ERDF), whose intervention in conjunction with national aids, should permit the correction of the main regional imbalances in the Community and particularly those resulting from the preponderance of agriculture and from industrial change and structural underemployment [as explained in Preamble].

However, the real breakthrough relating to the operation of European Structural Funds came with the *Single European Act* (1986). It added a new Title V – Economic and Social Cohesion (articles 130a-130e) to the Part Three of the TEEC where it formally integrated already existing funds to the body of

² Council Regulation (EEC) No 25 of 4 April 1962 on the financing of the common agricultural policy, OJ 30, 20. 4. 1962, p. 991–993.

³ "If any action by the Community appears necessary to achieve, in the functioning of the Common Market, one of the aims of the Community in cases where this Treaty has not provided for the requisite powers of action, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the Assembly has been consulted, shall enact the appropriate provisions."

the Treaty and named them 'structural funds'.⁴ Provisions on existing structural funds were from 1 January 1989 reformed by the newly adopted structural funds Common Provisions Regulation I⁵ (No 2052/88), which clarified the main tasks of the Structural Funds⁶ as well as identified priority objectives⁷ of the Community's action in its attempt to achieve harmonious development and even out disparities between its Member States. Beside principles of their functioning, it also laid down 5-years programming period and stipulated that programs financed by the Structural Funds must comply with the competition rules as well as with rules on public procurement and environmental protection (Art. 7). Programs were planned on local, regional, or state level. Specific procedures for providing funds, conditions of eligibility, assessment, financial management and monitoring were to be set in specific implementing decisions adopted by the Council. Regulation No 2052/88 was re-examined by the Council at the end of 1993 and amended by Regulation No 2081/93, which covered the next 5-years programming period. Whereas the Structural Funds Regulation I was rather brief then exhaustive, coordination between existing Structural Funds relating to funding frameworks, multiannual budget forecasts, financial management, monitoring, and control were specified in its implementing Regulation No 4253/88.⁸

⁴ Only Guidance Section of the European Agricultural Guidance and Guarantee Fund falls to this definition.

⁵ Council Regulation (EEC) No 2052/1988 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments, OJ L 185, 15.07.1988, p. 9–20.

⁶ The Preamble of the implementing Regulation No 2052/88 explains that ERDF is the main instrument for achieving the objective of ensuring the development and structural adjustment of regions whose development is lagging behind; whereas it plays a central role in the conversion of regions, frontier regions and parts of regions (including employment areas and urban communities) seriously affected by industrial decline; essential tasks of the ESF are combating long-term unemployment and the occupational integration of young people; whereas it helps to support economic and social cohesion; whereas it is also an instrument of decisive importance in the promotion of consistent employment policies in the Member States and in the Community; and the Guidance Section of the EAGGF is, within the context of support for economic and social cohesion, the main instrument for financing the adjustment of agricultural structures and the development of rural areas with a view to reform of the common agricultural policy.

⁷ "(1) promoting the development and structural adjustment of the regions whose development is lagging behind, (2) converting the regions, frontier regions or parts of regions (including employment areas and urban communities) seriously affected by industrial decline, (3) combating long-term unemployment, (4) facilitating the occupational integration of young people, and (5) with a view to reform the common agricultural policy speeding up the adjustment of agricultural structures, and promoting the development of rural area" (Art. 1).

⁸ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different

This funding regime applied for two programming periods – from 1989 to 1993 and from 1994 to 1999. During this time, system was decentralised, and regulation fragmented. European Court of Justice in its decision-making practice dealt mostly with the responsibility of the Member States for the sound financial management (*“Member States receiving Community financial assistance are required to provide all the guarantees necessary to verify the exact compliance between the expenditure actually incurred in the context of co-financed projects and the application for Community financial assistance relating hereto⁹, the exercise of any discretion, by the Member State in question, to decide whether or not it would be expedient to demand repayment of European Union funds unduly or irregularly granted would be inconsistent with the duty imposed on its authorities by the first subparagraph of Article 23(1) of Regulation No 4253/88 to recover any amounts unduly or irregularly paid¹⁰), with the reduction of the payments (“The argument that the transfers did not compromise the general objective of the programmes or of the Community assistance, it must be pointed out that, showing that a project was implemented is not sufficient to justify the payment of financial assistance. The system of subsidies provided for under Community rules is based, in particular, on the performance by the beneficiary of a series of obligations to which payment of the intended financial assistance is made subject. If the beneficiary does not perform all its obligations, such as those concerning compliance with the legal and financial framework, Article 24 of the regulation 4253/88 permits the Commission to reconsider the extent of its obligations under the decision granting assistance. It is also clear that the infringement of obligations whose observance is of fundamental importance to the proper functioning of a Community system may be penalised by forfeiture of a right conferred by Community legislation without there being thereby any infringement of the principle of proportionality”¹¹), corrections (“Although the Commission has margin of appreciation as to the policy of fixing the rate of correction, it is not allowed to change its policy in the course of a judicial review in order to fill a gap or to a remedy an error in the exercise of that margin in one of its decisions”¹²), and irregularities (“Only the possibility that an irregularity may be penalised not by reduction of the aid by an amount corresponding to that irregularity but by complete cancellation of the aid can produce the deterrent effect required to*

Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments, OJ L 374, 31.12.1988, p. 1–14.

⁹ Judgment of 13 July 2011, *Greece v Commission*, T-81/09, EU:T:2011:366, para. 96.

¹⁰ Judgement of 21.12.2011, *Chambre de commerce et d’industrie de l’Indre*, C-465/10, EU:C:2011:867, para. 34.

¹¹ Judgement of 9 September 2008, *Germany v Commission*, T-349/06, EU:T:2008:318, para. 77.

¹² Judgment of 13 July 2011, *Greece v Commission*, T-81/09, EU:T:2011:366, para. 142.

*ensure the proper management of the resources of the EAGGF.*¹³) as well as with interpretation of particular terms or conditions. However, in those times the case law was relatively modest, and its number increased substantially in later time of the functioning of the Union.

Maastricht *Treaty Establishing the European Community* (1992) in Title XIV (Arts. 130a-130e) of the Part Three followed up on the wording of EEC Treaty as amended by the Single European Act. However, it introduced a new – Cohesion Fund for financing projects in the field of environment and trans-European networks in the area of transport infrastructure (Art. 139d). Also, the procedure of adopting the implementation decisions by the Council had slightly changed (initiative from the Commission, co-decisive role of the EP, consultations of Economic and Social Committee and Committee of Regions). *Amsterdam Treaty* (1997) except re-numbering the relevant provisions on Economic and Social Cohesion (now Arts. 158-162) did not amend these provisions substantially. Nor did the *Treaty of Nice* (2002).

However, new implementing structural funds *Common Provisions Regulation II*¹⁴ (No 1260/1999) which repealed the Structural Funds Regulation I substantially reformed the management of structural funds. It redefined and narrowed priority objectives just to three: (1) promoting the development and structural adjustment of regions whose development is lagging behind, (2) supporting the economic and social conversion of areas facing structural difficulties, and (3) adapting and modernising policies and systems of education, training and employment. It also establishes a new structural fund – Financial Instrument for Fisheries Guidance (hereinafter only FIFG). By its content, it is a modern codex for programming, operating, and managing grants provided by the Union. It counted with prolonged 7-years program period (2000–2006) for supporting operational programs contained in single programming documents prepared individually by each Member States and approved by the Commission reflecting to the defined objectives and priorities, as well as eligible geographical areas. It also provides a common vocabulary for Structural Funds instruments (*such are measure, final beneficiaries, managing authority, paying authority, etc.*) which brought a higher transparency to EU funding. Following the previous regulation, it also requires the compatibility with EU policies and rules on competition, public procurement, and environmental protection, but it also add a new requirement on the elimination of inequalities and the promotion of gender equality. The basic principle for the use of Structural Funds is the effectiveness, towards

¹³ Judgement of 24 January 2002, *Conserve Italia/Commission*, C-500/99 P, EU:C:2002:45, para. 101.

¹⁴ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, OJ L 161, 26.06.1999, p. 1–42.

which managing authorities must adjust both – substantial and financial management. For check-ups, it stipulated various forms of monitoring including on-spots control and divide the responsibility for financial control between the Commission and Member States. Irregularities were to be sanctioned by financial corrections. Finally, it obliged Member States to ensure a publicity for their development plans and implementations supported by EU Structural Funds. This regulation brought a substantial simplification to the funding scheme which it made more accessible to the final beneficiaries. For the purpose of improvement of the performance of the funding support, as well as for better allocation of the financial assistance, an accurate statistics were crucial. For many years European regional statistics have been collected, compiled and disseminated on the basis of a common regional classification. Regulation No 1059/2003¹⁵ formally established “Nomenclature of territorial units for statistics” (hereinafter only NUTS). As explained in the Preamble (12) of this regulation, the NUTS classification is restricted to the economic territory of the Member States and does not provide complete coverage of the territory to which the Treaty applies. It counted with 3 levels classified according to the population thresholds.¹⁶ NUTS classification is then used for defining the eligible territories for EU’s financial assistance.

Structural funds *Common Provisions Regulation III*¹⁷ (No 1083/2006) reacted on the challenges brought by the enlarged EU and disparities that occurred at both regional and national level. It excluded agricultural¹⁸ and fisheries¹⁹ funds from the scheme of structural funds and redefined ERDF, ESF and Cohesion Fund as Cohesion Policy Funds, whose main objective for the period 2007-2013 was to seek

¹⁵ Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS), OJ L 154, 21.06.2003, p. 1–41.

¹⁶ Pursuant to the Art. 3 (2) of the Regulation 1059/2003 in order to establish the relevant NUTS level in which a given class of administrative units in a Member State is to be classified, the average size of this class of administrative units in the Member State shall lie within the following population thresholds: NUTS 1 from 3 mil. to 7 mil., NUTS 2 from 800 000 to 3 mil., NUTS 3 from 150 000 to 800 000. If the population of a whole Member State is below the minimum threshold for a given NUTS level, the whole Member State shall be one NUTS territorial unit for this level.

¹⁷ Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, Official Journal of European Committee, L 210, 31. 7. 2006, p. 25–78.

¹⁸ Former EAGGF was by the Art. 92 of the Regulation No 1698/2005 integrated to the scheme of European Agricultural Fund for Rural Development (EAFRD).

¹⁹ Former FIFG was through the Regulation No 1198/2006 replaced by the European Fisheries Fund and later through the Regulation No 50/2014 by the European Maritime and Fisheries Fund (EMFF).

the convergence of the Member States and the regions, regional competitiveness and employment and European territorial cooperation. It worked on the similar principles as the Structural Funds Regulation II (7-years period, programming, management and control system, *etc.*). However, it introduced the obligation of Member States and Commission not only to ensure equality based on gender, but also to take steps to prevent “*any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementation of the Funds and, in particular, in the access to them*” (Art. 16) as well as *preserve the sustainable development and protection and improving of the environment* (Art. 17). Other changes reflected mostly to the necessity to accurate the responsibilities of the Member States in the process of implementation of project support and enforcing the corrections of irregularities.

Finally, the *Treaty on the Functioning of the European Union* in Articles 174–178 formally extends (in secondary law already existing) commitment to promote (except economic and social) also territorial cohesion. After completion of programming period 2006–2013, a new *Common Provisions Regulation IV*²⁰ (No 1303/2013) was adopted. This regulation presents *lex generalis* for the newly defined European Structural and Investment Funds (hereinafter only ESIF) comprised of EFRD, ESF, Cohesion Fund, EAFRD, and EMFF and regulated the programming period 2014–2020. Again, it is a complex codex, which laid down the provisions necessary to ensure the effectiveness of the ESI Funds and their coordination with one another and with other Union instruments. Fund-specific Regulations were replaced by new ones, which were defined in Article 1.²¹ Beside traditional cohesion objectives, this regulation defined tasks of ESIF also as providing support to deliver the Union the strategy for smart, sustainable and inclusive growth. It put emphasis on simplifying the process and improving the management and control systems. Towards optimisation of the usage of funds, it introduced *ex ante* conditionalities to ensure institutional, legislative and administrative capacities for effective and efficient use of ESIF, mandatory performance reserve, which could be flexibly used to unpredicted priority objectives within approved programs and performance-based funding models, which should direct funding support to pre-defined outputs or results.

²⁰ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, Official Journal of European Committee, L 347, 20.12.2013, p. 320–469.

²¹ ERDF Regulation No 1301/2013, ESF Regulation No 1304/2013, CF Regulation No 1300/2013, ETC Regulation No 1299/2013, EAFRD Regulation No 1305/2013, EMFF Regulation No 508/2014.

New programming period 2021–2027 falls under rules laid down by *Common Provision Regulation V* (No 2021/1060)²². It substantially reforms the framework of Union's funding policy by extending their objectives, requiring to consider the EU values,²³ introducing the new funds and laying down more elaborated financial and other rules of their operating the funds. Moreover, Union has robustly strengthened control mechanism by adopting the Regulation (No 2020/2092) on a general regime of conditionality for the protection of the Union budget, and by launching the operations by the European Public Prosecutor Office. However, Common Provision Regulation V and new programming period are not subjects of analysis in this article, as the new period is just at the beginning and there are not available any data relating to the performance of the Member States within this period.

To sum up this part, Union's funding introduced a gradual institutionalism and robust capacity building. Union gradually centralised fragmented legislation to the Common Provision Regulation, whose content robustly grew since its first version in 1999. Common Provision Regulation lays down principles and rules on implementation, management, monitoring and control of operations receiving financial assistance applicable to all funds, which creates a more homogenous framework for their operation. Despite the fact, that every fund preserves own specific regulation, content of such regulation is limited just to issues not covered by the Common Provision Regulation. Moreover, even CJEU contributes to that homogeneity by uniform interpretation of terms included in both – general or specific regulations while remaining, that in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part.²⁴

Funds are implemented under a system of shared management between Commission and Member States respecting the principles of subsidiarity and proportionality. Member States takes on primary responsibility for the efficient use of Union's funds, which, without prejudice to powers vested in the Commission, contributes to proper implementation of the general budget of the European Union.²⁵

²² Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.06.2021, p. 159–706.

²³ See more to this regard in FISICARO, M. Beyond the Rule of Law Conditionality: Exploiting the EU Spending Power to Foster the Union's Values. *European Papers*. 2022, Vol. 7, No 2, pp. 697–719, DOI: <https://doi.org/10.15166/2499-8249/594>

²⁴ Judgement of 26 May 2016, Județul Neamț, Joined cases C-260/14 and C-261/14, EU:C:2016:360, para. 35

²⁵ Judgment of 3 September 2014, Baltlanta, C-410/13, EU:C:2014:2134, para. 44.

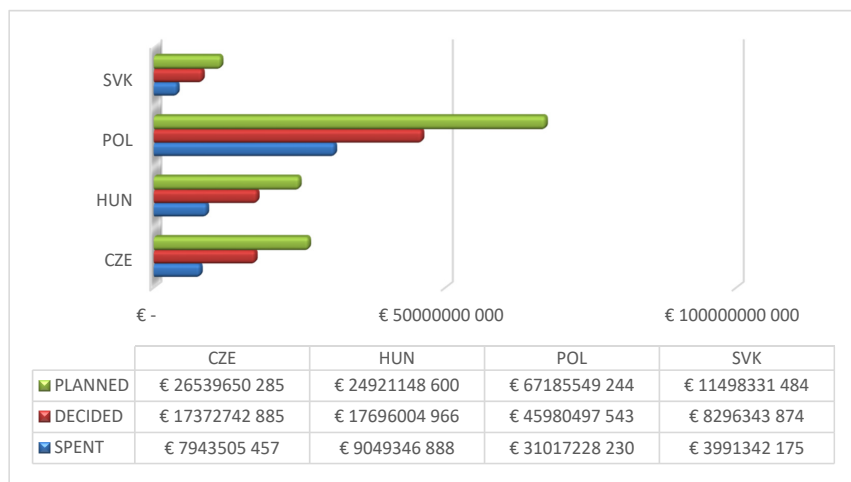
That means, that Member States are, in particular, responsible for the management and control of operational programmes and for the detection of irregularities.²⁶

Next part will analyse, how V4 countries manage to deal with such responsibilities and whether Union's funds helped them to catch up more developed Member States.

3. V4's success story(?)

At the time of their accession, GDP per capita of Czechia (11 749,9 USD), Hungary (10 303,7 USD), Poland (6 681,4 USD) and Slovakia (10 691,40 USD) were far below of the Union's average (26 308,7 USD).²⁷ A cohesion policy and their instruments in the form of structural funds belonged therefore amongst important tools how to catch up more developed Member States. In this regard, Union allocated for them in period 2007-2013 more than 130 billion EUR. However, states were able to spend barely 40% of this amount (see Figure 2).

Figure 2: Financial implementation of structural funds in 2007-2013 programming period in V4 countries



Data retrieved from: https://ec.europa.eu/regional_policy/sources/how/policy/doc/strategic_report/2013/01_csr_swd_sec129_stats.xls

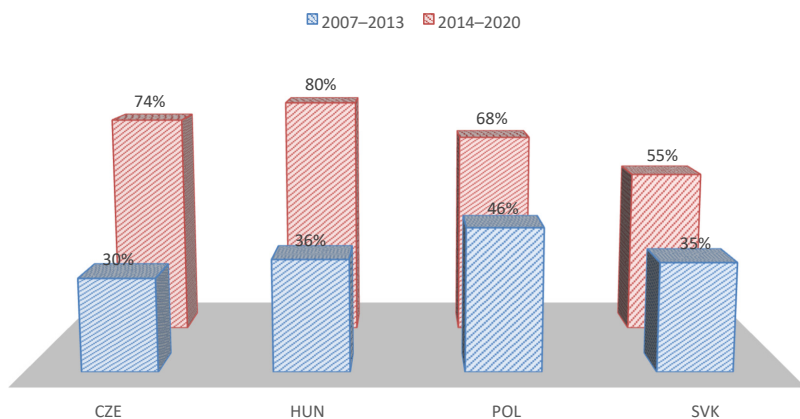
²⁶ Judgement of 1 October 2020, Elme Messer Metalurgs, C-743/18, EU:C:2020:767, para. 49.

²⁷ Data retrieved from <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2021&locations=EU-SK-HU-CZ-PL&start=2004&view=chart>

As regards the GDP, all V4 countries in 2007 showed better indicators of GDP per capita (Czechia: 18 466,5 USD, Hungary: 13 945 USD, Poland: 11 254,5 USD, Slovakia: 16 106,1 USD) compared to their 2004 ones. Surprisingly, improvement of economy indicators was not the case of all countries (2013 GDP per capita Czechia: 20 133,2 USD, Hungary: 13 720 USD, Poland: 13 696,5 USD, Slovakia: 18 208,4 USD) at the end of program period, as Hungary's 2013 GDP was lower than that of 2007. Union's average GDP in 2013 (34 578,1 USD) remained an unreachable goal.

However, V4 countries strongly rely on ESIF, as they represented 2,4%–4,1% of the V4 countries' GDP in 2013. This reliance was therefore a strong motivator for introducing best practices, which can improve the administration of the Member State as a whole.²⁸ This factor, complemented by gained funding experience and simplification of processes obtained in reforming legislation mentioned above helped to substantially improve rather questionable performance of the countries from 2007–2013 programming period (Figure 3).

Figure 3: Dynamics in ESIF spending o V4 countries in 2007–2013 and 2014–2020 programming period

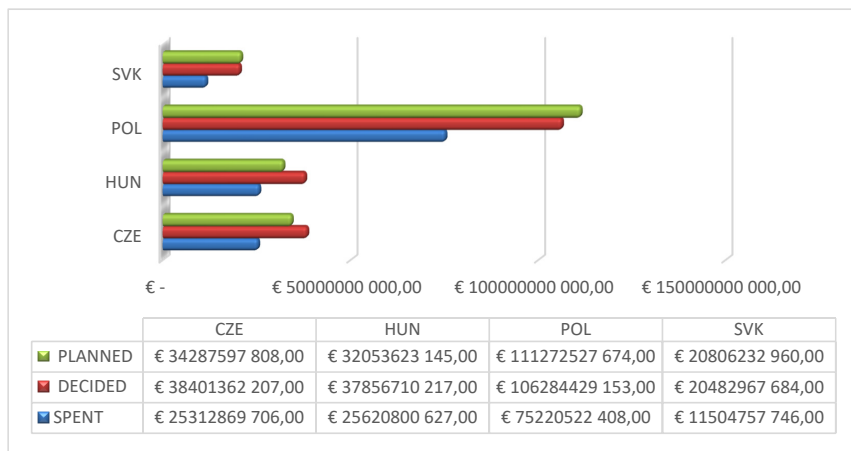


Source: processed by author. Data retrieved from <https://cohesiondata.ec.europa.eu/overview/14-20> and https://ec.europa.eu/regional_policy/sources/how/policy/doc/strategic_report/2013/01_csr_swd_sec129_stats.xls

²⁸ European Commission. *Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment (ESI) Funds*, p. 18, DOI. 10.2776/753195.

In total numbers, V4 countries spent 137 658 950 487 EUR out of planned 198 419 981 587 EUR (Figure 4) which presents 69,9%.

Figure 4: Financial implementation of structural funds in 2014–2020 programming period in V4 countries

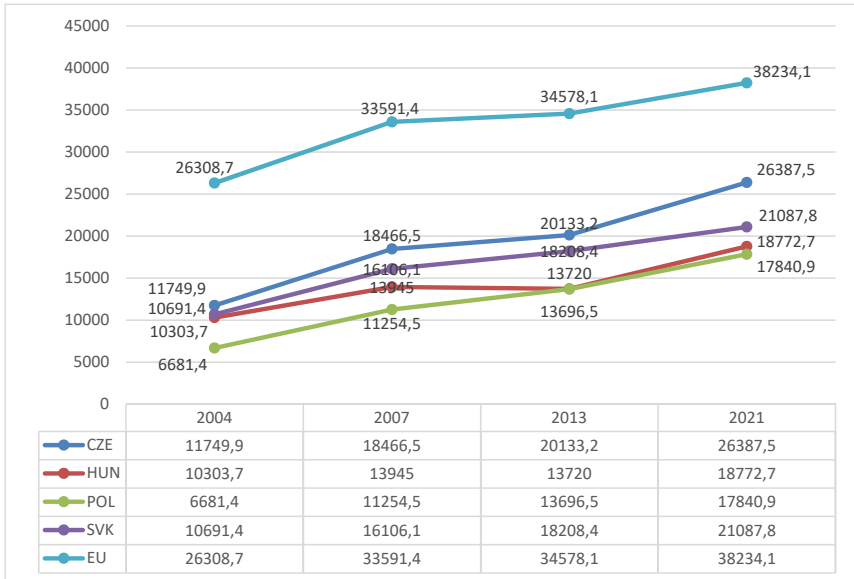


Data retrieved from <https://cohesiondata.ec.europa.eu/overview/14-20>

Improvement in funding spendings (Figure 4) positively affected also the growth of the GDP per capita as can be illustrated in Figure 5.

Convert these results to percentage, Czechia moves from 2004's 45% of Union's average to 69% in 2021, Hungary from 39% to 49%, Poland from 25% to 47% and Slovakia from 2004's 41% to 2021's 55% of Union's average. By analysis of all this data, some partial conclusions could be made:

1. Removal of economic, social and territorial disparities between developed and less developed Member States are not easy to be achieved. After almost 20 years of membership in the EU, only Czechia managed to meet Union's average GDP per capita, however only that from 16 years ago. All other three countries are still far from reaching even the bottom of the assessed Union's levels.
2. ESIF in 2014–2020 programming period become more accessible to Member States and they improved their implementation.
3. Countries still have reserves in their capacities to spend Union's financial assistance.
4. Performance of Slovakia is worst from all V4 countries as regards the improvement in funding spending in programming period 2014–2020.

Figure 5: Dynamics in GDP per capita growth in V4 countries in 2004, 2007, 2013 and 2021 in comparison with the EU (in USD)

Data retrieved from: <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2021&locations=EU-SK-HU-CZ-PL&start=2007&view=chart>

Why it is so? As the Commission pointed out in one of its 2016 reports²⁹ major source of deficiencies in ESIF implementation could be seen in public procurement as breaches in public procurement remain one of the main sources of irregularities in project co-finances by the EU Funds. Whereas ESIF are implemented in the environment of the Internal Market and compliance with public procurement is at the same time essential for the sound functioning of the Internal Market, Member States always have to ensure that all Union's spending complies with public procurement rules.³⁰ To this regard, all Member States face challenges in consistently complying with EU and national rules and regulations, preventing conflicts of interest and other risk factor for fraud and corruption, and properly integrating EU policy goals into their tender documents. Irregularities in public

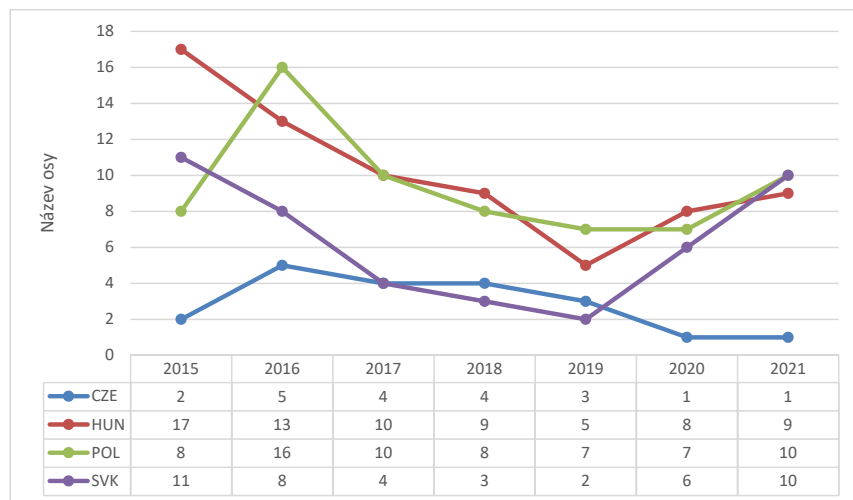
²⁹ Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment (ESI) Funds, DOI: 10.2776/753195, p. 17.

³⁰ EUROPEAN COURT OF AUDITORS. *Performance-based Financing in Cohesion Policy: worthy ambitions, but obstacles remained in 2014–2020 period*, DOI: 10.2865/963687, p. 58.

procurement can be the result of a lack of administrative capacity on the part of contracting authorities and oversight bodies, inadequate systems and tools in place, and ineffective governance structures. Especially these weaknesses were subject of ex ante conditionalities introduced by Common Provision Regulation IV. Member States were obliged to adopt relevant measures providing the accurate application of EU rules, transparent procedures, training in ESIF and improvement of administrative capacities, before start reimbursing financial support from ESIF or at least to prove a relevant Action Plan to this regard. The European Court of Auditors in its report³¹ pointed out, that only one-stop control of fulfilment ex ante conditionalities by Member States proved to be insufficient, as Member States indeed had troubles with their compliance in later time of programming period.

Even OLAF confirmed, that issues with which it deals the most, relates to Structural Funds sector. During 2015–2021³² OLAF concluded 850 investigations into the use of ESIF out of which 169 (20%) relates the V4 countries (Figure 6). Figure 7 then presents the percentage rate of found irregularities.

Figure 6: Overview of the OLAF's concluded investigations into the use of ESIF in 2015–2021

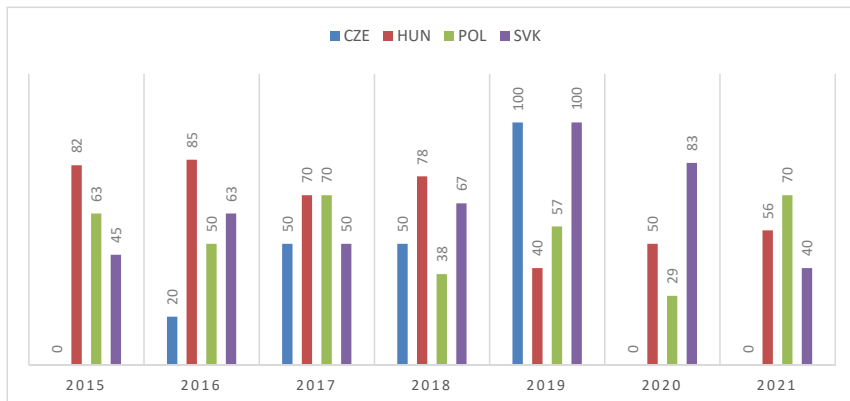


Source: data retrieved from OLAF's annual reports 2015–2021

³¹ EUROPEAN COURT OF AUDITORS. *Performance-based Financing in Cohesion Policy: worthy ambitions, but obstacles remained in 2014–2020 period*, DOI: 10.2865/963687, p.

³² OLAF's Annual report from 2014 was prepared in a way, that does not able to retrieve data relevant for this graph.

Figure 7: Irregularities rates in % found by OLAF in its 2015–2021 investigations (closed cases)



Source: data retrieved from OLAF's annual reports 2015–2021

Except Czechia, all other three V4 countries still presents high rates of present irregularities. As pointed out by the OLAF, they often have character of corruption in public procurement procedures or cross-border procurement fraud.³³

In case study of Slovakia, author tries to find why it is so.

4. Case study of Slovakia – public procurement

From the statistics presented above, one can say that Slovakia's performance in ESIF spending is rather poor than satisfying. As Commission, European Court of Auditors and OLAF suggested, weak performance of Member States might be caused by deficiencies in public procurement, an analysis will focus on this aspect. Public procurement belongs to those EU policies, which are highly harmonised. In 2014, a brand-new package of directives³⁴ were adopted (hereinafter only PP

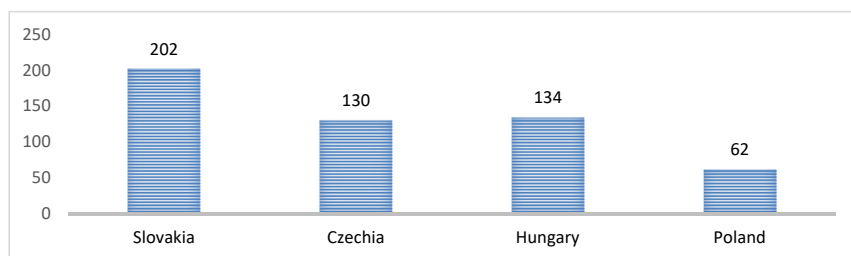
³³ See to that regard for example The OLAF Report 2015, p. 10, The OLAF Report 2016, p. 15, or The OLAF Report 2021, p. 14.

³⁴ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.03.2014, p. 65–242, Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94, 28.03.2014, p. 243–374, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.03.2014, p. 1–64.

directives) with the aim to promote competition within the Internal Market as much as possible. This included digitalisation and simplification of processes, usage of Common Procurement Vocabulary and other measures ensuring the greater transparency and integrity of tenders. Member States were obliged to transpose these directives into their national legal orders by 18 April 2016 (provisions on mandatory usage of electronic means by 18 October 2018). Slovakia transposed all directives in time (by Act No 343/2015 Coll. on Public Procurement).

So did other countries of V4. Question therefore may arise, how it is possible, that even if we have very similar procurement environment, performance of the procuring authorities so much differs. It is apparent especially when comparing the average length of procuring processes (Figure 8).

Figure 8: Average decision-making speed in public procurement (in days) – time between the deadline for receiving offers and the date the contract is awarded



Source: https://single-market-scoreboard.ec.europa.eu/policy_areas/public-procurement_en

Such performance points out to insufficient capacities of procuring authorities. As Slovak Vice-premier Remišová reminded towards public procurement: “Slovakia lost more than 691 million EUR due to fraud and errors in public procurement in the 2007–2013 EU funding period alone. In this current programming period [2013–2020], corrections amount to 250 million EUR.”³⁵ With aim to verify, whether this assumption is true, author analysed annual reports 2015–2021³⁶ of the Slovak National Office for Olaf (Národný úrad pre OLAF), which is a part of the Government Office of the Slovak Republic, responsible for protection of financial interests of the Union in Slovakia and reporting irregularities to OLAF.

³⁵ REMIŠOVÁ, V. <https://www.mirri.gov.sk/aktuality/cko/vicepremierka-remisova-s-nku-a-uvo-sme-podpisali-prelomovu-dohodu-o-spolupraci-pri-kontrolach-novych-eurofondov/>

³⁶ Available at: <https://www.olaf.vlada.gov.sk/vyrocne-spravy-olaf/>

Findings of the National Office for OLAF confirmed, that public procurement indeed presents a substantial part, if not a majority, of all irregularities detected in ESIF implementation. The most recurrent deficiencies for which financial correction were imposed were conflict of interest, overpricing, awarding contracts to (un-competitive) pre-selected tenderers, insufficient first-instance control by procuring authorities (they failed to define fair and accurate conditions of tender), breaches of public procurement principles of non-discrimination (requiring the submission of a specific document in accordance with the legislation of the Slovak Republic without the possibility of submitting its equivalent), equality (failure to send an explanation of the tender documents to all tenderers), transparency (failure to send an explanation of the tender documents to all tenderers, setting different conditions in the contract notice and the tender documents), proportionality (too overcoming requirement for economic, or technical capacities of the tenderers, failure to take the opportunity to ask the tenderer or tenderer to clarify or supplement the documents submitted; and the exclusion of tenderers on the basis of formal deficiencies), dividing of tenders with the purpose to avoid regular processes, delays in informing with the results of administrative controls, the conclusion of an amendment to the works contract without a call for tenders and corruption (the typical scenario, as described in Reports from 2015 and 2016, often included situations when so called “consultant” provided eligible beneficiary “full service” meaning that it prepared application for grant, organised public procurement for the overpriced services or supplies financed from ESIF with the “right” winner to be selected. After chosen tenderer receives project money, consultant through the invoices for fictive services, transfer project money (for nothing) to its disposal and share them with the people responsible for approving the beneficiary’s application).³⁷

However, it is clear, that Slovakia understands errors which occur in system and fight them. To this regard, Slovakia has adopted various measures, which include professionalisation in public procurement, establishment of responsibility for sound procurement, strengthening the independent position of the Public Procurement Office, exclusion of particular civil servants from possibility to gain a public contract.

5. Conclusions

Research provided in this article showed, that ESIF indeed are valuable tool for less developed countries in their path to catch up with the more developed

³⁷ Similar irregularities were described also by the OECD in *Tackling Fraud and Corruption Risks in the Slovak Republic*, p. 14, <https://doi.org/10.1787/6b8da11a-en>

Member States. However, it also showed, that system is not easy to comprehend, as the best performance of spending is at the level of 80% (Hungary). Moreover, almost 30% of the Member States are not even able to reach the Union's average (64%) rate of spending.

Annual reports or evaluation reports of the Commission, Court of Auditors, OLAF or national authorities proved, that problem could be found in the obligation of Member States to comply with the applicable Union law. That, amongst other, require to purchase goods, services and construction works financed from EU funds though the public procurement procedures.

Despite having harmonising directives on public procurement, Member States still show differences in the performance in this area. Slovakia's case study showed, that many of irregularities, whose consequence were at least delays in processes of procurement or worst, financial corrections in ESIF spending, were caused by improperly prepared or realised tenders. This may be done intentionally by purpose (with the aim to gain unfair advantage) or by negligence due to the maladministration of the contracting authorities.

It is clear, that the Union is trying gradually improving the system of financial management and control. However, this must be supplemented by effective sanctioning system. To this regard, new instruments (EPPO, Rule of Law Conditionality Regulation) seem to be promising. Also, Slovakia did well by adopted mandatory professionalisation in public procurement. As system is ready, we need to wait and see in programming period 2020-2027, whether good system will not occur errors due to personal factor.

List of references

- Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments, Official Journal of European Committee, L 185, 15.07.1988, p. 9–20.
- Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments, OJ L 374, 31.12.1988, p. 1–14.
- Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, OJ L 161, 26.06.1999, p. 1–42.
- Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L 210, 31.07.2006, p. 25–78.

- Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund, OJ L 223, 15.08.2006, p. 1–46.
- Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), OJ L 277, 21.10.2005, p. 1–40.
- EUROPEAN COMMISSION. *Stock-taking of administrative capacity, systems and practices across the EU to ensure the compliance and quality of public procurement involving European Structural and Investment (ESI) Funds* [online]. DOI: 10.2776/753195.
- EUROPEAN COURT OF AUDITORS. *Performance-based Financing in Cohesion Policy: worthy ambitions, but obstacles remained in 2014–2020 period* [online]. DOI: 10.2865/963687.
- EUROPEAN ANTI-FRAUD OFFICE. *The OLAF report 2015* [online]. DOI: 10.2784/86009.
- EUROPEAN ANTI-FRAUD OFFICE. *The OLAF report 2016* [online]. DOI: 10.2784/701686.
- EUROPEAN ANTI-FRAUD OFFICE. *The OLAF report 2017* [online]. DOI: 10.2784/93062.
- EUROPEAN ANTI-FRAUD OFFICE. *The OLAF report 2018* [online]. DOI: 10.2784/695669.
- EUROPEAN ANTI-FRAUD OFFICE. *The OLAF report 2019* [online]. DOI: 10.2784/8525.
- EUROPEAN ANTI-FRAUD OFFICE. *The OLAF report 2020* [online]. DOI: 10.2784/251671.
- EUROPEAN ANTI-FRAUD OFFICE. *The OLAF report 2021* [online]. DOI: 10.2784/87080.
- FISICARO, Marco. Beyond the Rule of Law Conditionality: Exploiting the EU Spending Power to Foster the Union's Values. *European Papers*, 2022, Vol. 7, No 2, pp. 697–719, DOI: <https://doi.org/10.15166/2499-8249/594>
- Judgement of 4 April 1974, Belgian State and Grand-Duché de Luxembourg v Mertens and Others, Joined cases 178, 179 and 180/73, EU:C:1974:36.
- Judgement of 21.12.2011, Chambre de commerce et d'industrie de l'Indre, C-465/10, EU:C:2011:867.
- Judgment of 13 July 2011, Greece/Commission, T-81/09, EU:T:2011:366.
- Judgement of 24 January 2002, Conserve Italia/Commission, C-500/99 P, EU:C:2002:45.
- Judgement of 9 September 2008, Germany/Commission, Joined Cases T-349/06, EU:T:2008:318.
- Judgment of 3 September 2014, Baltlanta, C-410/13, EU:C:2014:2134.
- Judgement of 1 October 2020, Elme Messer Metalurrgs, C-743/18, EU:C:2020:767.
- Judgement of 26 May 2016, Județul Neamț, Joined cases C-260/14 and C-261/14, EU:C:2016:360.
- NÁRODNÝ ÚRAD PRE OLAF. *Ročná správa o nezrovnalostiach za rok 2015* [online]. Available at: https://www.olaf.vlada.gov.sk/data/files/7612_rson-r-2015.zip?csrc=1603480511503764407
- NÁRODNÝ ÚRAD PRE OLAF. *Ročná správa o nezrovnalostiach za rok 2016* [online]. Available at: https://www.olaf.vlada.gov.sk/data/files/7611_2016.zip?csrc=1603480511503764407
- NÁRODNÝ ÚRAD PRE OLAF. *Ročná správa o nezrovnalostiach za rok 2017* [online]. Available at: https://www.olaf.vlada.gov.sk/data/files/7613_2017.zip?csrc=1603480511503764407

- NÁRODNÝ ÚRAD PRE OLAF. *Ročná správa o nezrovnalostiach za rok 2018* [online]. Available at: https://www.olaf.vlada.gov.sk/data/files/7600_rson-2018_final.pdf?csrt=1603480511503764407
- NÁRODNÝ ÚRAD PRE OLAF. *Ročná správa o nezrovnalostiach za rok 2019* [online]. Available at: https://www.olaf.vlada.gov.sk/data/files/7957_rocna-sprava-o-nezrovnalostiach-za-rok-2019.pdf?csrt=1603480511503764407
- NÁRODNÝ ÚRAD PRE OLAF. *Ročná správa o nezrovnalostiach za rok 2020* [online]. Available at: https://www.olaf.vlada.gov.sk/share/olaf/rson_za_rok_2020.pdf?csrt=1603480511503764407
- NÁRODNÝ ÚRAD PRE OLAF. *Ročná správa o nezrovnalostiach za rok 2021* [online]. Available at: https://www.olaf.vlada.gov.sk/share/olaf/rson_2021.pdf?csrt=1603480511503764407
- OECD. *Tackling Fraud and Corruption Risks in the Slovak Republic: A Strategy with Key Actions for the European Structural and Investment Funds* [online]. <https://doi.org/10.1787/6b8da11a-en>
- Regulation (EEC) No 25 of the Council of 4 April 1962 on the financing of the common agricultural policy, OJ 30, 20.04.1962, p. 991–993 Regulation (EEC) No 724/75 of the Council of 18 March 1975 establishing a European Regional Development Fund, *Official Journal of European Committee*, L 73, 21.03.1975, p.1–7. Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013, p. 320–469.
- Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council, *Official Journal of European Committee*, L 149, 20.05.2014, p. 1–66.
- Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS), *Official Journal of European Committee*, L 154, 21.06.2003, p. 1–41.
- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, *Official Journal of European Committee*, L 347, 20.12.2013, p. 320–469.
- Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund,

the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.06.2021, p. 159–706.

Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, *Official Journal of European Communities*, L 4331, 22.12.2020, p. 1–10.

Single European Act (1986), OJ L 169, 29.06.1987, p. 1–29.

Treaty Establishing the European Community (Codified version 1992), OJ C 224, 31.08.1992, p. 6–79.

Treaty Establishing the European Community (Consolidated version 1997), OJ C 340, 10.11.1997, p. 173–306.

Treaty Establishing the European Community (Consolidated version 2002), OJ C 325, 24.12.2002, p. 33–184.

Treaty Establishing the European Economic Community (1957), [ELI: <http://data.europa.eu/eli/treaty/teec/sign>].

Treaty on the Functioning of the European Union (Consolidated version 2012), OJ C 326, 26.10.2012, p. 47–390.