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## **PROCEDURE FOR REIMBURSEMENT OF CO-FINANCING FROM THE STRUCTURAL AND COHESION FUNDS**

### **Summary**

The main objective of the dissertation is to analyse whether national administrative and judicial-administrative procedures for the recovery of EU funds are effective, ensure the effective achievement of public objectives and comply with the general principles of EU law, in particular the principles of sound financial management or legal certainty, while respecting the fundamental rights of individuals.

Chapter I of the 'Legal nature of EU funds' discusses the basic provisions of EU law covering cohesion policy, its objectives, as well as the provisions of the Financial Regulation as regards the EU budget and its protection. This chapter also discusses the Regulation on conditionality and its impact on proceedings aimed at recovering irregular spending. In addition, the basic principles of EU law applicable to recovery procedures as well as proceedings related to the implementation of co-financing agreements were discussed. Particular attention was paid to the application of the KPP to recovery procedures. Chapter I discusses the relationship between these principles, as well as the possibility of their application in the case of return proceedings.

Chapter II, entitled 'Procedure for reimbursement of funding under EU law', discusses EU rules governing recovery in the event of irregularities and fraud. In this chapter, the author discusses the key legal problems related to the definition of irregularities, as well as, not previously discussed, possible criteria and methods for determining the amount of financial corrections, taking into account their impact on the EU internal market. This chapter discusses the relationship between proceedings for the correction of irregular expenditure and fraud and the role of national courts in the possibility of finding fraud. The current position of the Court's case-law on the above-mentioned issues was also analysed.

Chapter III entitled "Administrative proceedings for the reimbursement of co-financing on the basis of national law" discusses the legal basis for correcting irregularities in Polish law.

A historical outline of proceedings aimed at the recovery of funds wrongly spent is presented, the relationship between the provisions of national law and the provisions of EU law on irregularities and financial corrections was determined. This chapter also analyses current case law on the most problematic issues, such as the application of general principles in decisions of administrative courts, the calculation of limitation periods, the manner in which restitution proceedings are conducted by administrative authorities, including issues related to the detection of irregularities and the so-called administrative or judicial preliminary determination. The author also analyzed the current case law of administrative courts in terms of the occurrence of issues of interpretation of EU law requiring a reference for a preliminary ruling to the CJEU, as well as the practice of asking such questions.

Chapter IV "Mutual claims of the parties resulting from the grant agreement" discusses the legal nature of the grant agreement, as well as the consequences of adopting a specific classification of this agreement. In addition, possible court proceedings under the grant agreement and their relation to administrative proceedings regarding the reimbursement of funds were analyzed, including preliminary ruling and *res judicata*. In addition to court proceedings aimed at recovering incorrectly spent funds, the author also discussed proceedings to determine the legal relationship resulting from the co-financing agreement. The possibility of determining in civil proceedings whether irregularities occurred as part of the implementation of the project was analyzed. In Chapter IV, the author also analyzed issues related to the application of general principles to proceedings related to the implementation of co-financing agreements, including the principles of equity, contractual loyalty or principles of social coexistence. He also identified the consequences of unclear provisions of the grant agreement.

The conducted studies allowed to conclude that the current administrative and judicial-administrative procedure for recovery is not an effective procedure. Its effectiveness must be strengthened at several levels, firstly by clarifying the meaning of EU rules relating to irregularities, in particular by interpreting them more comprehensively, and secondly, by precisely defining the subjective rights of individuals to whom such procedures are addressed. Thirdly, strengthening the efficiency of recovery procedures should include adapting the recovery procedure in national law to Union law, including through direct references to Union legislation governing the conditions for detecting and correcting irregularities, clearly defining the conditions for determining the amount to be recovered. Fourthly, the possibility of raising various types of claims arising from the co-financing agreement before different courts argues

in favour of the need to determine a single judicial route aimed at legal protection of claims arising from the legal relationship with funds. As the institutional, legal and factual analysis shows, there are more arguments in favor of legal regulation of all claims arising from the co-financing agreement, including claims for reimbursement of incorrectly spent funds as part of civil court proceedings. Due to the complexity of the subject, it is recommended to establish special divisions of these courts within the structure of common courts, similar to the divisions for loan agreements denominated in foreign currency or intellectual property divisions, which will deal exclusively with cases related to EU funds. Such a solution can significantly increase the efficiency of recovery procedures.

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