

Hochschule der Sächsischen Polizei [FH]
University of Applied Sciences

**Subsidy Fraud with Special
Regard to Corporate Crime
in the EU-25 and the Candidate
Countries of Bulgaria and
Romania**

A Pan-European Synopsis

Project Application

Project Management

Prof. Dr. Eberhard Kühne

Prof. Dr. Eberhard Kühne

Rothenburg/OL 2006

Table of Contents

0	<i>Subsidy Fraud and Its Control in Europe</i>	2
1	<i>Contents of the Research Project – an Overview</i>	5
	<i>Module I “Legal Situation”</i>	5
	<i>Module II “Situation Regarding Control”</i>	5
	<i>Module III “Legal Facts”</i>	6
	<i>Module III “Comparison of Phenomenology”</i>	6
2	<i>State of Research as Starting Point</i>	8
2.1	Subsidy Fraud: On the European State of Research	8
2.2	Insolvency Crime as Corporate Crime: A Digression	15
3	<i>Details of Project Planning</i>	19
	<i>Module I “Legal Situation”</i>	19
	<i>Module II “Situation Regarding Control”</i>	21
	<i>Module III “Legal Facts”</i>	21
	<i>Module III “Comparison of Phenomenology”</i>	23
4	<i>Carrying Out the Research</i>	25
4.1	On the Method.....	25
4.2	Time Schedule and Cost Planning	30
5	<i>Bibliography</i>	31

0 *Subsidy Fraud and Its Control in Europe*

The budget of the European Union is one of redistribution, in which the means are used to a large extent for subsidies. Therefore control of this use and fighting its abuse is in the broadest sense of vital importance for the EU. Out of this situation a special office was established on the EU level, the “European Anti-Fraud Office” (OLAF), whose mission it is to protect the interests of the European Union and, inter alia, especially to fight subsidy fraud. Resulting from the fact mentioned and due to the amount of subsidies fraud connected with the granting of subsidies has always been in the limelight of public interest. Whether the media reported about cases detected like the one in Germany relating to a Dresden training firm, which is said to have caused a damage of about 21 million euros (cf. FAZ 5.5.2004: 4) or about cases in Italy (Europe OLAF 2004), Spain (European Voice 2001) or in Great Britain (cf. e.g. BBC News Online 2001; Department of Agriculture and Rural Development 2001) or in other countries. Single cases have always been subject of interpellations like for instance the issue concerning a subsidy fraud in olive production in Spain (cf. Haigermoser 2004). Further cases could be derived on a large scale from magazines of EU member states. The reports and annual reports by the EU organisations also disclose comprehensive material on such cases, which, however, is not always clearly utilisable (cf. e.g. European Parliament 2002; OLAF (ed.) 2003; Commission of the European Community 2003¹).

The criminological literature in the field of researching white-collar crime and organised crime and the comments by national investigating authorities time and again refer to the aspect mentioned in the beginning. The most comprehensive part of this literature so far deals with an “overall assessment” rather than with specific analyses of structures and details ². However, the situation in general is summed up with the words: “Evidence on crime in Europe is rare” (Entorf/Spengler 2002: 1). Therefore it is no wonder that the investigating authorities report about these issues only in connexion with reports on the degree of white-collar crime or organised crime, even if the problem of subsidy fraud in connexion with EU subsidies can be derived clearly from single reports (cf. e.g. Schürholz 1994).

One focus in the publications is on the damage caused by these offences. A larger study on European subsidy fraud by Sieber may be referred to as an example. He states that the reports about disclosed and recorded prosecutions in

¹ This does only emphasise the 2002 annual report but there are other annual reports, too.

² These often use generalisations, which do unfortunately not exceed forms of scandalisation when not specified in detail even if they have a very realistic background of information like e.g. information on the exploitation of EU subsidies by Mafia-like structures of organised crime (cf. with further evidence Porteous 2000 or also Eliakim 1996).

the EU member states differ severely and therefore largely different amounts of loss were proven in the member states. Sieber could determine a total amount of loss of approximately 120 million ECU for the Federal Republic of Germany in 1995 (Sieber 1998: 20).

Other reports on the extent of damage even state in this respect that “about 10% of the budgetary means (roughly DEM 12 billion) and about 7% of the monetary funds (about DEM 9 billion) the West transferred to the East fell prey to subsidy fraud” (Wassermann 1995: 1) and got lost for the community. In the end some authors arrive at the conclusion that “a market for fraud” was founded by the EU (cf. Warner 2003) and pay particular attention to the existing connexion between organised crime and the latter’s collaboration with the administrative and controlling levels.

This is the direction Albrecht (Albrecht 2003) follows when recently assessing organised white-collar crime including his special reference to organised subsidy fraud when stating that “the particular issue at hand among others... is EU subsidy fraud” (Albrecht 2003: 49).

Literature about EU subsidy fraud keeps on remonstrating that controls to prevent subsidy fraud in the member states were insufficient. Even the EC Auditor-General’s Office reproached similarly stating damages by subsidy fraud on EU level amounting to 5 billion euros and indicating the need for the Commission of the European Communities to improve its control efforts (cf. Hausmann 2003).

The problems often to be solved in this connexion become obvious by the short reports of the Commission and the reader may therefore refer to them (cf. e.g. Commission of the European Communities 2003).

It is another interesting aspect that in connexion with the problem of subsidy fraud criminological literature does not only refer to the fact that fraud is at a large scale committed together with an enterprise but also special relations exist to insolvency offences as recently stated on the basis of a report by a Land audit office in the Federal Republic of Germany. An increasing number of companies are said to try to avoid or at least to essentially impede investigations and criminal prosecution in case of obtaining subsidies by false pretences through insolvency of the company. Particularly claims for the recovery of granted subsidies are tried to be impeded if not rendered impossible (cf. White-Collar Crime 2004: 6).

It is in the field last mentioned where most different principles of law are applied whose effectiveness has not turned out yet. Whereas the Federal Republic of Germany for instance still applies a fairly strict control under the law of obligations in case of a company’s insolvency, these controls and penal

provisions are rather reduced in other EU member states (e.g. in the Netherlands and in Austria, too) under the aspect of a “fresh start” or a “second chance” (cf. with regard to these different approaches, inter alia, Claessen/Klapper 2002; World Bank 2004; European Commission/Enterprise Directorate-General 2003). Other member states have in fact no criminal prosecution at all in this field as e.g. in the Slovak Republic (cf. in detail Liebl 2004). There is need to refer to the reform of the insolvency law and its contents in Austria in 1999 in this connexion (cf. Brandstetter 2002: 77 et seq.).

All these short explanations point to the explosive nature of the issue and the necessity to research this type of crime, a research that must not be limited to determining the number of cases but also has to show troubles in investigation based on phenomenological findings, whether they may be due to tactical reasons of investigation or legal principles, and should be of a supporting nature in order e.g. to overcome shortcomings in investigation. At the same the aspect of a harmonisation of law, i.e. first reviewing the national bases of the facts relevant here, and the chances for preventive measures have to be dealt with.

1 Contents of the Research Project – an Overview

The objectives of the survey may be broken down to different modules, which are all strongly linked together on the one hand, yet on the other hand each module on its own generates usable results for the prosecuting and/or controlling authorities. This overview depicts the main contents of the planned project in a way that the explanations below and the state of research in particular with all inherent limitations become clear. A special note on the measures and projects by the Commission of the European Communities that have become known so far will be left for a later chapter.

Please note for the explanations to come that the scope of the survey always refers to all 25 EU member states. Hence this is no survey of single cases nor is it certain selected countries that would be criticised. The research project is meant to be a synopsis of selected issues for all EU member states and the candidate countries mentioned.

Module I “Legal Situation”

The survey aims at writing a pan-European synopsis of the existing state law provisions in the field of “subsidy fraud/insolvency/corporate law” on the levels of

- Penal law
- Civil law and
- Commercial law

Module II “Situation Regarding Control”

This part is meant to describe and analyse

- Procedures
- Control facilities and
- Structures of controlling bodies

Module III “Legal Facts”

This module is meant to determine the probably quite different

- Legal facts (i.e. the real procedure of controls, the scope of controls, the further way of handling control results etc) and
- Bright field findings (i.e. assessing the existing general and internal statistics available) as well as
- Situations of adjudication in the research report

that are to be expected for the EU region and to evaluate the present documents in order to generate a synoptic picture of the EU area.

The summarised objective of these parts of the synopsis is to improve the methods of investigative activities based on the findings made with special regard to a common “culture of investigation”. These findings could also form a basis for establishing “early warning mechanisms” and contribute to improving the possibilities of service for specialised facilities at EU level and at the level of the member states. Finally they could be especially helpful in connexion with the further development of offices at EU level (cf. OLAF [ed.] 2003: 8 et seq.).

And they could provide a basis for the legal conditions in the EU region and assist in harmonising laws.

Module III “Comparison of Phenomenology”

Though not comprehensively and to a major extent towards the background of bright-field data only, the survey is meant to inform about

- Forms of appearance of subsidy fraud and
- Insolvency crime and where
- Problems of investigating and controlling

lie.

Furthermore this module will answer the question of how to evaluate the

- Assessment of the scope and
- Assessment of the link between corporate crime and subsidy fraud in the dark field as well as
- Conceivable future key issues of this field of offences.

This is supposed to be done on the basis of expert opinions and the Delphi method (cf., inter alia, Häder 2002 with further evidence).

Thus this survey is going to enable an exchange of experience, which will bring about an exchange of investigative findings and may be a reasonable support for the future preventive work of the controlling and investigating bodies. Beyond that weaknesses in previous control measures and the entire legal provisions may be detected.

2 *State of Research as Starting Point*

2.1 **Subsidy Fraud: On the European State of Research**

Mere sporadic findings are known so far about subsidy fraud within the EU region. Therefore it is necessary to refer to research reports available for a few member states only when analysing subsidy fraud at EU level.

Shortly after introducing section 264 StGB (*German Penal Code*) into the Penal Code of the Federal Republic of Germany an all-German survey was done finding out that fraudulent behaviour with regard to subsidies was far more widespread than expected by experts in the standard-setting procedure (cf. Bundesministerium der Justiz 1984: 105 et seq.). These were by far not only large-scale spectacular proceedings but a multitude of proceedings involving relatively minor amounts of loss, which, however, when added together had brought about a considerable damage to the state and thus to the general public. And the research report had to qualify and state that those investigations finished by the fiscal authorities in independent investigation activities could not be involved in the survey due to the tax secrecy. The report reads laconically that “these prosecutions were a large part of all prosecutions for subsidy fraud” (Bundesministerium der Justiz 1984: 106). Moreover it had to be stated that for a considerable ratio of prosecuted cases the wording of the laws and provisions granting subsidies had abetted the fraud of subsidies and specific cases, usually major ones like cases of tax allowance fraud or export subsidies fraud could not be cleared up any more or not sufficiently because of the insolvency of the companies. The survey arrived at an overall statement of facts of loss amounting to DEM 50 million during the period under review (Bundesministerium der Justiz 1984: 83). Taking into account that a larger number of prosecuted cases could not be included into the survey, the amount of loss is likely to have been substantially higher.

Similar assessments were made by a survey on subsidy fraud to the disadvantage of the EU by Sieber (Sieber 1998) 14 years later, too. He found out that the basic forms of committing the offences related to

- Non-paying or evading import duties
- Obtaining export subsidies
- Applying for allowances or intervention measures and

- Granting means from the structural fund.

According to Sieber false data, falsifications or concealments occurred and loopholes in the law and grey areas were exploited (Sieber 1998: 16). “A large

part of the cheatings” is done today “in the name of companies” (Sieber 1998: 19).

As far as the losses are concerned Sieber realised that most varying reports on detected and reported cases of prosecution are to be found in the EU member states and thus most different amounts of loss in the single member states. He could determine a total amount of loss of approximately 120 million ECU for the Federal Republic of Germany in 1995 (Sieber 1998: 20).

Sieber concluded in his final assessment that at the EU level

- “often weak control systems” (Sieber 1998: 24)
- “and most frequently poorly formulated standards” (Sieber 1998: 27)

have a share in responsibility for committing offences.

Considering the volume of the total budget of the European Union and the fact that more than 2/3 of the expenditure go to allowances supporting structural measures, market organisation or guarantee funds³, the explosive nature of the offence of subsidy fraud becomes evident. Unfortunately there has not been any specific research so far except for some statistical analyses or surveys on the basis of expert interviews (like the survey by Sieber quoted here) leaving a large grey zone for assumptions and hypotheses regarding loss estimates. This results in preventive measures and control strategies merely being based on the day-to-day knowledge of individuals due to the lack of bright-field material, and this fact has to be emphasised in particular.

Under the said conditions special attention should be paid to the information that as found out by the experts interviewed in Sieber’s survey a large number of such subsidy fraud offences were committed in connexion with enterprises and that the chances to clear up and especially to recover do often no longer exist due to insolvencies of these applicants for subsidies.

The recent assessment by Albrecht (Albrecht 2003) of organised white-collar crime including his special reference to organised subsidy fraud when stating that “the particular issue at hand among others... is EU subsidy fraud” (Albrecht 2003: 49) confirms previous statements. He continues stating that this is no wonder when considering out of the 74.9 billion euros of the 1999 budget about 83% were allotted to agricultural and structural subsidies (cf. Albrecht 2003: 49 et seq.).

³ Figures vary in different publications.

Beyond that there are manifold references to both different EU member states and single aspects or cross-section analyses based on national criminal data collections (cf. e.g. with further evidence Albrecht/Kilchling/Braun 2002 or the essay collection by Dannecker 1993 dating farther back). Additional information can be derived in particular from the descriptions of the situation of organised crime (cf. e.g. Council of the European Union 2000).

Reference is made here to publications like the ones by van der Vijver (2000) or de Groot (1993) relating to the Netherlands, Leigh (1993) or the reports on cleared up cases of fraud (Report 2003) relating to Great Britain and Spain (Duran 2003) or Finland (Alvesalo/Tombs 2001; Alvesalo/Tombs 2001a; Alvesalo/Tombs 2004; Prosecutor General 2001). Some reports by various EU commissions and EU conferences and country reports on this topic (cf. Conference on Accession 2000; Ministerstvo 2000) may be added.

However, these are too different either with regard to the time dimensions of their data situation or due to the data sources used for analysis and therefore often neither fit for comparative analysis nor for being used as comprehensive collection of source material.

The activity reports by the “European Anti-Fraud Office” show an increase in recorded new cases almost every year, e.g. for 2003 (period from 1.7.2002 to 30.6.2003) from 539 to 563 cases. All in all the latest activity report mentions investigations in 1,184 cases (OLAF [ed.] 2003: p. 12 et seq.), of which a very large share is likely to relate to the field of subsidy fraud.⁴

Concerning the bright field of fraud at the EU level interesting data material is available with the reports by the Commission of the European Communities and the reports by the European Anti-Fraud Office (OLAF) (cf. the last annual reports).

Table 1: Number of cases per member state (EU-15)

Member state	1998	1999	2000	2001	2002*
Belgium	345	294	306	296	484
Denmark	127	102	106	67	94
Germany	332	496	491	364	372
Greece	12	14	0	11	26
Spain	73	119	116	134	121

⁴ Reference shall be made here to the other annual reports and the figures mentioned there.

France	221	268	253	217	199
Ireland	64	40	37	34	36
Italy	174	293	227	206	306
Luxembourg	5	5	2	0	0
The Netherlands	303	205	264	205	173
Austria	159	116	93	101	119
Portugal	17	14	19	11	15
Finland	42	36	36	20	18
Sweden	97	65	17	18	34
Great Britain	499	534	496	189	122

* Last update 6.6.2003; source: Commission 2004: 73

Table 1 provides an overview of the bright field of fraud cases for the years 1998 to 2002. However, when comparing the %-share in the total number of prosecutions and the average subsidy fraud these prosecutions base on or the %-share of the amounts that could be recovered (cf. table 2, figures 1 and 2), it turns out that there must be fairly different control mechanisms if not different or rather “country-related” “cultures of enrichment” in different countries should be made the bases.

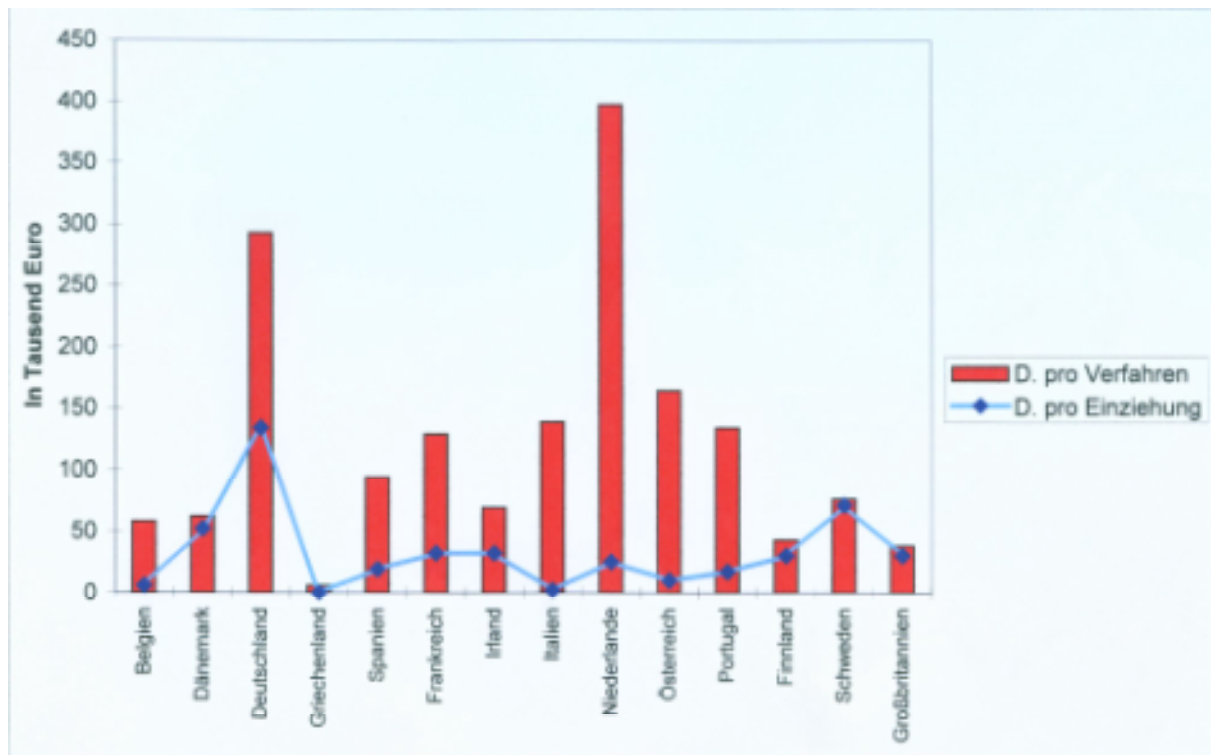
Table 2: Percentage share of cases per member state and subsidy amount affected on average in 2002 (EU-15)

Member state	% Share of cases	% Share related to the subsidies affected	Average amount per case/prosecution of subsidies affected*	Average amount of recoveries per case*	% share of recoveries related to the average amount of subsidies affected
Belgium	22.8	8.8	58,910	5,661	9.6
Denmark	4.4	1.8	62,446	52,340	83.8
Germany	17.6	33.7	293,744	134,498	45.8
Greece	1.2	0.1	6,446	0	0
Spain	5.7	3.5	93,954	19,403	20.7

France	9.4	7.9	128,977	31,618	24.5
Ireland	1.7	0.8	68,861	32,028	46.5
Italy	14.4	13.2	139,608	2,186	1.6
Luxembourg	0	0	0	0	-
The Netherlands	8.2	21.2	398,483	24,857	6.2
Austria	5.6	6.0	164,317	10,306	6.3
Portugal	0.7	0.6	133,614	16,757	12.5
Finland	0.8	0.2	43,488	30,055	69.1
Sweden	1.6	0.8	76,448	71,194	93.1
Great Britain	5.8	1,4	37,791	30.065	79.6

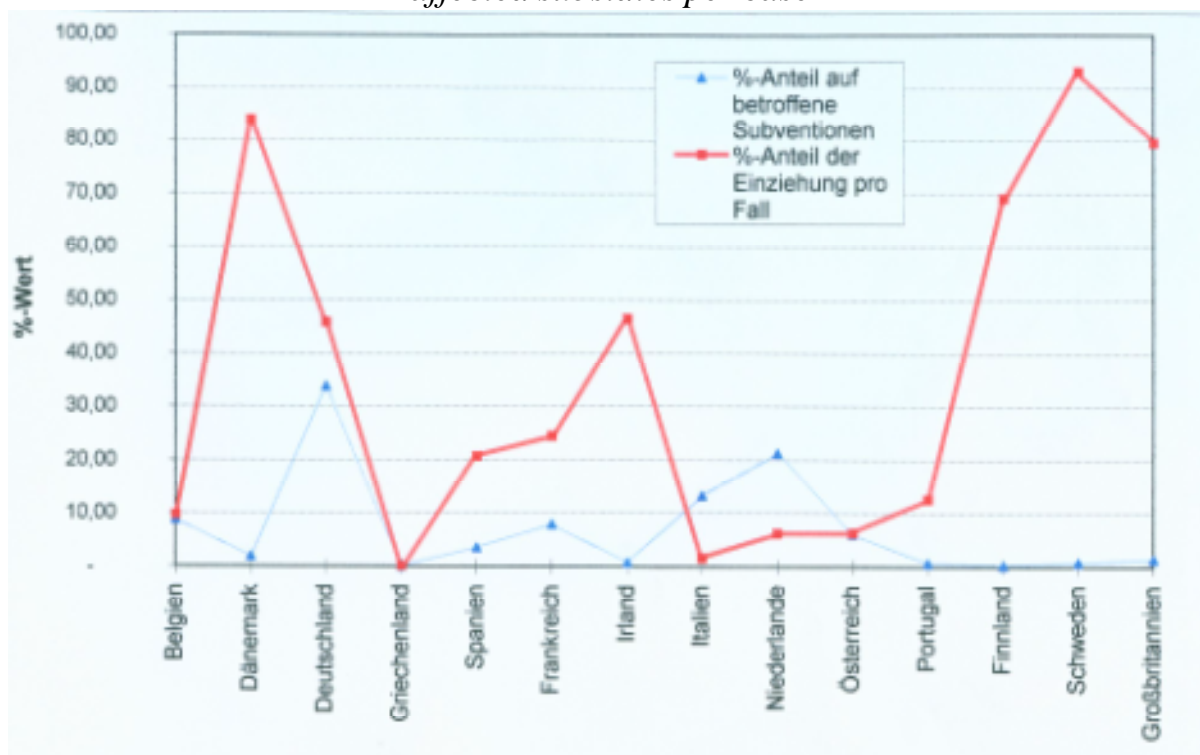
* Last update 6.6.2003; source: Commission 2004: 73; 79

Figure 1: Comparing average amount per case/prosecution with average amount recovered per case



Abbreviation: D. = average amount

Figure 2: Comparing % shares of affected subsidies and average amount of affected subsidies per case



Of course it is not being considered whether at all these cases have a share in the unjustified obtainment of subsidies and whether there had not been a principally different procedural reality from the very beginning of disclosing the cases.

It has to be stated in this connexion that more light could be shed on the topic by a comparative analysis of statistics of the intrinsic value of the recovery claims related to the amount of subsidies granted and in order to gain even more specific results comparing the types of single subsidies would be profitable. It would also be reasonable to relate the cases disclosed with regard to the kind of obtaining subsidies illegally to the total amount of subsidy cases of this kind in order to receive information on specific deficits of controlling and investigating. Unfortunately it is impossible to derive this from the material published so far, which does neither offer a chance of chronological assignment.

The explosive nature due to the amount of loss and the very large differences per country with regard to the disclosed amounts of unjustified subsidies mentioned in all literature are underlined further by the very brief statistical analysis made here (cf. table 2 and figures 1 and 2). This specific problem will be discussed increasingly under the conditions of the enlargement the EU has undergone and the lack of concrete surveys will boost this effect. The dispute about the “net payers” has already indicated this.

All in all it needs to be stated that hardly any (accessible) research is available, neither at EU member-state level nor at the EU level, which could inform on the basis of empirical data. Single aspects have mainly been dealt with so far or based on them and some findings that had become known generalising statements were made whose weaknesses usually lied in the lack of a proper data basis. Eventually it should be stated that larger surveys like Sieber’s or e.g. the conferences on this issue (cf. Dannecker 1994⁵) mostly date back several years (between 7 and 10) and the EU has changed essentially during this period and has now expanded. Of course a lot of conferences take place at the EU level but their working results have either not been published or they are difficult to use for research purposes. Thus the level of knowledge on the EU of “25” and on this aspect tends towards zero.

2.2 Insolvency Crime as Corporate Crime: A Digression

⁵ You may for instance try to find out what conference results were published and where to receive them relying on the “subsidy reports” of EU conferences concerning the meetings and workshops mentioned there. If at all, you would mostly receive the “results” only by request in writing to the conference organisers, yet mainly getting routine material like conference programmes (assessment based on the report of the Council of the European Union [2003]).

2.2.1 General Problem

With regard to the objectives of the project the question arises why the two forms of offence, subsidy fraud and corporate crime should be researched together particularly in the form of insolvency crime. It has become clear from the introducing notes that point to a connexion between subsidy fraud and insolvency crime and the preceding explanations concerning subsidy fraud that the latter is mainly committed under the cover of an enterprise. And an analysis of insolvency crime in the Federal Republic of Germany shows that in case of company insolvencies these companies had very often been established for the mere purpose of exploiting certain subsidies and applying them contrary to the award conditions (cf. Liebl 2004). Subsidy fraud often occurs in connexion with insolvency offences (like fictitious foundations, absent accounting, falsification of the balance sheet etc.), i.e. they are closely linked. This makes it reasonable to study subsidy fraud together with other white-collar crime related to enterprises, and the link to insolvency crime is striking the eye immediately.

Due to intensive economic relations between the EU member states there is no lack of initiatives to shape the law in a uniform way, however, the countries concerned have, apart from a few exceptions that will be viewed in greater detail below, so far stuck to the legal provisions of their nation-states, which in connexion with considerations to harmonise the law makes problems caused by provisions of nation-states become especially clear. There is a completely chaotic “playground” with most different regulations, duties and requirements to register with regard to shaping an enterprise, i.e. possible legal forms and the legal shape they adopt concerning liability. All in all it has to be stated that despite the known criminal exploitation of these options there are still as many different legal provisions as there are member states in the EU. Some specific aspects, which are meant to further a uniform application of law within the EU in future, will be briefly dealt with in the chapters to follow.

2.2.1.1 *Uniform Insolvency Regulation of the EU*

The harmonisation of law in the EU region seen here from the point of view of the EU extension to 25 member states tried at least to take account of such a uniform law with uniform insolvency proceedings. Since May 2002 a uniform insolvency regulation has been in effect in the EU (Number 1346/2000, published in the Official Journal of the EC, number L160 of 30 June 2000). However, with one exemption because Denmark did not take over the regulation. Apart from the aspect that a uniform order is in effect with exemptions, a lot of issues can be derived from it clearly showing the problem of insolvency relevant in terms of penal law or such insolvency behaviour.

The insolvency regulation of the EU should create clarity inasmuch as it regulates the mutual recognition in insolvency proceedings and provides rules on conflict of laws replacing the international” insolvency laws of the member states. But it is restricted by the fact that it is not applicable in cases of insolvency of insurance undertakings, credit institutions and investment undertakings. Neither is it applicable to group insolvencies or insolvencies affecting third countries.

It needs to be criticised that the regulation does not establish uniform insolvency proceedings but instead there may and will be main insolvency proceedings and as many secondary insolvency proceedings as you like. The main insolvency proceedings shall be opened in the state in which the affected undertaking has its registered office and the proceedings will encompass all the debtor’s domestic and foreign assets. Since secondary insolvency proceedings are possible in all those countries where the undertaking has establishments, in which case the relevant “foreign assets” are out of reach of the main liquidator, the chaos that might arise concerning proceedings becomes quickly evident. And it has to be taken into account that national law shall be applicable for secondary insolvency proceedings, which may involve inadequate administrative expenses for such proceedings. The regulation contains extraordinary provisions that may bring about additional complications for unified proceedings.

Special attention should be paid to the aspect that the liquidator in the main proceedings may exert his powers in other member states, too, as long as no secondary proceedings have been opened there meaning he has got the right to remove items belonging to the estate from the countries involved. This reveals that conflicts of interests are likely to arise fast due to national penal provisions, e.g. in the Federal Republic of Germany through the provisions referring to unlawful preference of a creditor or debtor.

2.2.1.2 Legal Forms and Legal Capacity of Business Undertakings in the Countries of the EU

According to a decision passed by the European Court of Justice (decision of 5.11.2002–C-208/00) a company registered abroad (EU area) and having its material headquarters in Germany must not be denied the recognition by this state in the legal sphere.

Having brief a look at the issue from the German point of view, which could be transferred to all other EU countries, this means that “the English, Dutch or Luxembourgian private limited company registered in Germany” have turned into a genuine alternative when taking a decision on the legal form of an undertaking (cf. Hirte, Heribert, Der Anfang vom Ende der GmbH droht, in: FAZ 22.1.03: 19). For the Federal Republic of Germany decisions exist taken by

the Federal Supreme Court of Justice on a company established in The Netherlands ⁶, but having its administrative headquarters and business operations in Germany, which had been denied its capacity to be a party in a law-suit since the Dutch corporation did not meet German requirements of incorporation. Another decision of principle in the Federal Republic of Germany is for instance the decision by the Bavarian Supreme Court that an English “Ltd.” (“Private Limited Company”) having its registered office in Germany may be allowed to be entered in the Land Register (decision of 19.12.2002–2 Z BR 7/02).

And the question partly in dispute whether a non-German legal form of association, in the case under dispute an English legal form, which merely operates within the country may be entered in the German commercial register is still pending to be solved. Frankenthal Regional Court has so far denied this in its decision (decision of 6. 12. 2002, 1 HK. T 9/02) not yet final following a decision passed by the European Court of Justice (cf. a report in FAZ of 30.4.2003: 21).

According to a decision made at the end of September 2003 the provisions on minimum capital, liability and protection of creditors for any legal form of an undertaking in each member state have to be recognised by all member states within the EU. This ECJ decision (Re. C-167/01) confirms and upgrades the previously stated.

The creation of a “Europe corporation” (date of decision 8.10.2001) by the EU Commission should here be pointed to (cf. RWS-Internet-Redaktion 10/2001 of 11.10.2001). It is supposed to bring about a harmonisation of legal forms of undertakings for the EU countries because problems are being assumed as far as their largely different shapes are concerned. Without going into details of this civil-law issue some focal points should be emphasised. Addressing the German point of view, accounting might no longer be done exclusively on the basis of the German HGB (Commercial Code) but also according to international rules, the “International Accounting Standards”. There is the free choice under the structure of a “Europe corporation” (also called “Societas Europaea ‘SE’”) to establish the organisational constitution of the undertaking either on the basis of the dualistic system (Board of Directors/Supervisory Board) or on that of the monistic system (Board or Board of Managers). Hommelhoff describes the problem in brief that then “the Germans would have to provide the uniform system of the French and British example for the SE having its registered office in Ludwigshafen or Hamburg (Hommelhoff 2003: 5).

⁶ The “Überseering BV case”

3 Details of Project Planning

The main analysis aspects have already been determined on the basis of the mission of the research project. The specific, detailed contents if required and sensible with regard to single parts of the project included further in the individual research modules are the subjects of the explanations below.

Module I “Legal Situation”

This module is supposed to collect all legal provisions at Land level relevant for the project. The legal contents of the provisions are to be compared on the basis of a uniform wording focussing on aspects of civil law and commercial law. Yet it is not dogmatic work that will be in the centre of research but the destination to follow is creating a common level of knowledge and promoting a basis for harmonising law at EU-25 level plus the named candidate countries ("harmonisation of law") due to the synopsis. This will be linked to an improved protection, in the sense of options for prevention, against fraud by knowing the legal provisions and the chance to detect weaknesses.

The following catalogue of requirements for the field of civil law listing questions to be cleared can be derived from the mentioned aspects:

- Which specific provisions regulate the award of subsidies?
- What are the control provisions of civil law?
- What are the options to recover subsidies?
- What are the inner-state differences?
- What options are there to collect debts?
- Do commercial undertakings have the option of
 - settlement
 - debt waiver
 - bankruptcy/insolvency?
- Are these options provided by civil law or special laws?
- What do these options look like for recovery claims of subsidies?
- Are there options for a delay or other provisions of delaying effect in recovering subsidies?
- What do the above mentioned provisions look like in detail
 1. with regard to deadlines
 2. with regard to options of registering (undertakings, creditors, tax authorities etc.)
 3. with regard to the registration office (court or similar ones)?
- Who is responsible for the handling (in the field of subsidies and insolvencies) and what are the legal provisions for it?

- Are there any restrictions with regard to running a business after a subsidy fraud or insolvency?

Provisions of commercial law focus on the part of the undertaking and can be broken down as follows:

- What are the options to shape the undertaking (legal form)?
- What does the realisation of this legal form look like?
 1. Provisions for establishing
 2. Basic capital
 3. Prerequisites for shareholders and investors
 4. Number of founding members
 5. Liability provisions
 6. Provisions for registering (register etc.)
 7. Provisions for balancing
 8. Provisions for reporting to the registers
 9. Provisions for announcing (balance sheet etc.)
 10. Other important specific provisions
- Rights and duties of liability and representation
- Business evidence (e.g. bookkeeping documents)
- Rights of liquidators and chances to co-operate
- Do any particular specific provisions apply to awarding subsidies?
- Liability of company, managing directors or reasons excluding liability and the possibility of direct liability of controlling shareholders.

The analysis part for the penal code will relate to the standards demanding compliance with effective provisions of civil and commercial laws by sanctions. These are the research questions:

- What is subsidy fraud in the penal code?
- Are there any specific provisions, also in extra laws, restricting prosecution or reducing the threat of punishment?
- What are the provisions of penal law with regard to insolvency?
- Where are the regulations to be found (penal law or special laws)?
- What are the provisions for determining penalties, and differentiation between general and specific ones.
- Are there specific provisions for criminal proceedings relating specifically to the field of investigation?

Module II “Situation Regarding Control”

This module focuses on a synoptic description of

- The course of procedures
- The structure of controlling bodies
- Classification of controlling bodies
- The shaping of controlling bodies
- Chances of collaboration with other bodies
- The situation of information and exchange of the latter within these controlling bodies.

In this connexion not only the national but in particular the regional structures of these control options are to be investigated.

Module III “Legal Facts”

The knowledge of legal facts, i.e. the implementation of standardised legal principles is of decisive importance for the situation of the law beyond standardised provisions. Depending on this is also whether demands with regard to a reshaping or improvement of the controlling bodies may be substantiated profoundly. This means a better involvement of the new EU member states and a chance to quickly detect deficits in controlling in these countries and to suggest efficient ways of improvement.

The following aspects need to be clarified due to the problematic issues determined in this field.

- Are official or internal statistical findings available, particularly on the following aspects:
 1. Scope of award
 2. “lost” subsidies
 3. Prosecution of these offences?
- Organisational analysis with regard to controls and prosecution on a statistical basis
- Critical evaluation of the preparation of national data material.

Based on interviews the following knowledge of the situation should be taken down for subsidy fraud:

- Subsidy fraud and its structure in the bright field taking into consideration the insolvency situation
- Situation of information or structures of revealing
- Procedures and duration of investigation and closing with reference to prosecution forces that might be different

- Analysis of the scope of work of the controlling bodies
- Procedures of awarding subsidies and control

These questions are to be analysed further using expert interviews with control and prosecution authorities, with special regard to

- Moments of suspicion, which let investigation commence and
- The shape of organisational procedures for investigations.

This should also consider issues like:

- Problems in investigating become more than obvious when for reasons of disguising different country-specific forms of undertakings are involved in affiliated companies in order to create opportunities for organised white-collar crime.
- What does national prosecution look like with regard to real facts and what are the chances to collaborate? Are documents fit for evidencing saved or are investigations led on a completely different basis? How are national provisions of penal codes applied in the investigations?

The plan is not only to stick to a planned evaluation scheme but to include new aspects immediately after they have come up.

Finally the aspect should be taken into account whether

- there are plans for amendments to laws and to procedural changes

and if so, what are the changes that are expected?

Module III “Comparison of Phenomenology”

The steps of analyses described show the field of problems for an EU-wide control of these actions or offences and thus provide hints for a uniform legal basis to prevent financial loss and enable preparing a foundation for requirements towards controlling this behaviour throughout the EU. To be able to find ideas for possible additional measures of control and prevention and to prevent such offences from being committed beforehand, an analysis of the modes of committing these offences has to be included. This does not refer to an analysis or better collection of procedural data of the perpetrators or the offences committed but to the analysis of problems directed at determining the weak spots facilitating the avoidance of controlling applications or implementation or

enabling to disguise the use of means granted. In short this is a structural analysis of

- Phenomena of modi of operation based on bright field data of subsidy fraud.

This includes questions like:

- Who is responsible for starting investigation?
- Who assists and is there a formal procedure?
- Who leads the investigations?
- Are there special forces for investigations? If yes, which ones?
- What are the biggest problems in investigating?
- Could a recovery claim be won?
- Are there indications for connexions to organised crime or in particular to organised white-collar crime?

These aspects of analysis are especially directed at preparing a synopsis of the problems of and the structures in investigation of these offences in the EU countries. It has to be taken into account that this module should provide ideas for improving subsequent measures for recovery and create the opportunity to review the previous situation of sanctions in the EU-25 and develop alternative means and initiate their utilisation. The results may finally supply ideas for the basis or improvement of training in the field of controlling these facts.

The findings of modules III and IV may also provide clues for developing an EU-wide control of subsidy fraud, as for instance support for the proposal to create a "European public prosecution" or a "European financial police". All modules together offer the opportunity to support the improvement and optimisation of vertical collaboration of the European Anti-Fraud office with the investigating bodies in the single member states.

4 Carrying Out the Research

4.1. On the Method

Research has to find out in a first step whether country analyses or special indications concerning single member states are already available. Furthermore the published knowledge has to be reviewed, i.e. an analysis is to be made of

- Sources
- Literature analyses
- Statistical analyses and
- Interviews of the institutions involved.

This methodological approach is the basis for the modules I “Legal Situation” and II “Situation Regarding Control” and to an extent for module III “Legal Facts”.

For single analyses the research team will introduce collaboration of

- Experts in these countries and their findings and
- People of the research team having special knowledge about countries by assigning country analyses to them.

A uniform basis of research for the synopsis and the overall coordination of the project must be created by the

- project management

itself.

Based on these 27 country analyses differences in legislation and organisation, probably existing gaps in the law and special legal facts have to be worked out by comparative research.

4.2. Time Schedule and Cost Planning

Time scheduling and cost planning are done on the basis of forms provided by the AGIS project and are not shown in detail here.

5 *Bibliography*

- Albrecht, Hans-Jörg (2003): Forschungen zur Wirtschaftskriminalität in Europa: Konzepte und empirische Befunde, in: Albrecht, Hans-Jörg/Entorf, Horst (Hg.), *Kriminalität, Ökonomie und Europäischer Sozialstaat*, Heidelberg, p. 37 - 69
- Albrecht, Hans-Jörg/Kilchling, Michael/Braun, Elisabeth (2002): *Criminal preventive risk assessment in the law-making procedure*, Freiburg
- Alvesalo, Anne/Tombs, Steve (2001): The Emergence of a „War“ on Economic Crime: The Case of Finland, in: *Business and Politics*, 3. Jahrgang, Heft 3, p. 239 – 267
- Alvesalo, Anne/Tombs, Steve (2001a): *Regulation Business: The Emergence of an Economic Crime Control Programme in Finland*, Paper presented from the British Society of Criminology, Conference Leicester
- Alvesalo, Anne/Tombs, Steve (2004): *Economic Crime Control in Finland*, in: *Sociology*, 38. Jahrgang, Heft 1, p. 165 - 174
- BBC News Online (2001): UK: Northern Ireland, Inquiry into sheep subsidy fraud, unter: www.news.bbc.co.uk/1/low/northern_ireland/1530487.stm (7.5.04)
- Bora, Alfons/Liebl, Karlhans/Poerting, Peter/Risch, Hedwig (1992): *Polizeiliche Bearbeitung von Insolvenzstrafverbrechen*, Wiesbaden
- Brandstetter, Wolfgang (2002): Aktuelle Fragen des Insolvenzstrafrechts, in: Bundesministerium der Justiz (Hg.), *Strafrechtliche Probleme der Gegenwart*, Referate des 29. v. d. Vereinigung Österreichischer Richter veranstalt. Forschungsseminars aus Strafrecht und Kriminologie, Wien, p. 77 – 107
- Bundesministerium der Justiz (1984): *Anschluß- und Vertiefungsuntersuchungen zur Bundesweiten Erfassung von Wirtschaftsstraftaten nach einheitlichen Gesichtspunkten, Band II: Subventions- und Kreditbetrug*, Bonn
- Claessens, Stijn/Klapper, Leora F. (2002): *Bankruptcy around the world: Explanations of its relative use*, World Bank Research Working Paper No. 2865, New York
- Conference on Accession (2000): *Conference on Accession to the European Union, Poland, European Union common position*, Brussels
- Council of the European Union (2003): *Commission of the European Communities: Commission Staff Working Paper, Sixth Report, On the implementation of the title VI Programmes (Grotius II-Criminal, Oisin II, Stop II, Hippocrate and Falcone Programmes)*, Year 2002, Brussels

- Council of the European Union (2000): 1998 – EU Organised Crime Situation Report, Brussels/The Hague
- Dannecker, Gerhard (1993): Combatting subsidy fraud in the EC area, Köln
- de Groot, Rolf (1993): Erfahrungsbericht aus den Niederlanden unter Berücksichtigung der organisierten Kriminalität, in: Dannecker, Gerhard (1993): Combatting subsidy fraud in the EC area, Köln, p. 88 - 102
- Department of Agriculture and Rural Development (2001): Rodgers releases data on subsidy claims by farmers in cull areas, London
- Durán, Ignacio (2003): The „Ensenad@ Project“, Modernising the Spanish Cadastre, in: FIG Working Week, Paris, April 13-17
- Entorf, Horst/Spengler, Hannes (2002): Crime in Europa, Heidelberg
- Europa-Olaf (2004): Die Bühne der Partner, Carabinieri, unter: europa.eu-int/comm/anti_fraud/partners/tribune/eu/italie/c/de.html vom 1.4.04
- European Commission/Enterprise Directorate-General (2003): Best project on restructuring, bankruptcy and a fresh start, Final report of the Expert Group, Brussels
- European Parliament (2002): Working Document, Committee on Budgetary Control, o.O. (Strasbourg)
- European Voice (2001): Pressure on De Palacio over subsidy fraud probe, unter: www.european-voice.com (7.5.04)
- Häder, Michael (2002): Delphi-Befragungen, Wiesbaden
- Haigermoser, Hofmann (2004): Anfrage des Abgeordneten Haigermoser und Kollegen an den Bundesminister für Land- und Forstwirtschaft betreffend des spanischen Olivenöl-Subventionsbetruges an der EU, in: Parlamentarische Materialien: Nationalrat (XXII. GP) sowie Dokumente, unter: www1.parlinkom.gv.at/pd/pm/XXII/pmnr_m.html vom 5.5.04
- Hausmann, Hartmut (2003): Ein Verlust von fünf Milliarden Euros, in: Internetausgabe „Das Parlament“ vom 1.8.2003 unter: www.bundestag.de/cgi-bin/durck.pl?N=parlament
- Hommelhoff, Peter (2003): Der Wettbewerb der Rechtsordnungen im Europäischen Unternehmensrecht, unter: www.uni-heidelberg.de (20.11.03)
- Kommission der Europäischen Gemeinschaften (2003): Bericht der Kommission: Schutz der finanziellen Interessen der Gemeinschaft und Betrugsbekämpfung, Jahresbericht 2002, Brüssel
- Leigh, Leonard H. (1993): Subvention frauds: The British experience, in: Dannecker, Gerhard (1993): Combatting subsidy fraud in the EC area, Köln, p. 103 - 126

- Liebl, Karlhans (1984): Geplante Konkurse?, Pfaffenweiler
- Liebl, Karlhans (1988): Geplante Konkurse?, 2. erweiterte Auflage, Pfaffenweiler
- Liebl, Karlhans (2004): Polizeiliche Bekämpfung von Insolvenzkriminalität, Machbarkeitsstudie, Pfaffenweiler
- Ministerstvo (2000): Negotiatin position ot the Slovak Repbulic, Ministerstvo zahranicnych vecí Slovenskey republiky, Bratislava
- Olaf (Hg.) (2003): Bericht des Europäischen Amtes für Betrugsbekämpfung, Vierter Tätigkeitsbericht für das im Juni 2003 endende Jahr, Brüssel
- Porteous, Samuel D. (2000): Le menace découlant du crime transnational dans le contexte du renseignement encadré, Sercie canadien du renseignement de sécurité, Commentaire No. 70, Ottawa
- Prosecutor General (2001): Annual Report of the Prosecutor General, Helsinki
- Report by the Benefit Fraud Inspectorate (2003): Findings, London
- Schürholz, Franz-Hellmut (1994): Erscheinungsformen und Lagebild der Wirtschaftskriminalität, Stuttgart, unter:
www.lpd.bwue.de/publikat/grenzlos/erschein.htm vom 5.5.04
- Sieber, Ulrich (1998): Eurofraud, Subventionsbetrug und Steuerhinterziehung zum Nachteil der Europäischen Gemeinschaft, in: Streinz, Rudolf/Dannecker, Gerhard/Sieber, Ulrich/Ritter, Markus (Hg.), Die Kontrolle der Anwendung des Europäischen Wirtschaftsrechts in den Mitgliedstaaten, Bayreuth, p. 75 – 141, hier nach der Online-Ausgabe zitiert: www.jura.uni-muenchen.de/sieber (of 12.1.04)
- Teufel, Manfred (1981): Insolvenzkriminalität, Lübeck
- van der Vijver, Kees (2000): Policy development in the police organisation: The role of the citizen surveys, Amsterdam
- Warner, Carolyn M. (2003): Creating a Common Market for Fraud in the European Union, in: The Independent Review, 8 Jg., No. 2, p. 249-257
- White-collar crime (2004): Subventionsbetrug, unter: www.white-collar-crime.de/html/subventionsbetrug.html (of 5.5.04)
- World Bank (2004): Reports for a fresh start, unter: extsearch.worldbank.org (5.5.2004)