

STRUCTURAL FUNDS OF THE EUROPEAN UNION FOR REGIONAL DEVELOPMENT AS A PART OF THE POLISH ADMINISTRATIVE LAW SYSTEM

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ABSTRACT

Regional policy is based on the implementation of objectives that aim to develop competitiveness. Activities related to Regional Operational Programs are part of the implementation of the National Strategic Reference Framework 2007-2013. Each member state of the European Union presents a national strategic reference framework to make certain that the assistance of the funds is coherent with the Community Strategic Guidelines. In Poland, individual voivodeship boards, in cooperation with the Ministry of Regional Development, prepare projects for the Regional Operational Programs that plan on financial subsidies from the state budget or sources from abroad that are procured through the government.

ÖZ

Bölgesel politika, rekabeti geliştirmeyi amaçlayan hedeflerin yürütülmesine dayanmaktadır. Bölgesel İşlevsel Programlar'a ilişkin faaliyetler Ulusal Stratejik Referans Çerçevesi 2007-2013'ün bir kısmını oluşturmaktadır. Avrupa Birliği'ne üye her bir devlet, hibe yardımının Topluluk Strateji Rehberi'yle uyumlu olduğunu temin etmek için ulusal stratejik referans çerçevesi sunmaktadır. Polonyada bağımsız Voivodeship kurulları Bölgesel Kalkınma Bakanlığı'nun işbirliğiyle devlet bütçesi veya kaynaklarından yurt dışından hükümet aracılığıyla tedarik edilen mali devlet sübvansiyonunu planlayan Bölgesel İşlevsel Programlar için projeler hazırlamaktadır.

Keywords: *Structural funds, regional development, administrative law, National Strategic Reference Framework, regional operational program*

Anahtar Kelimeler: Yapısal fonlar, bölgesel gelişme, idare hukuku, Milli Stratejik Referans Çerçevesi, bölgesel işletmesel program

I. INTRODUCTION

One of the main goals of the European Community is to support sustainable development in the Community. The aim of such activities is to decrease economic, social and territorial inequalities that occur in states and regions whose development is slowed down due to economic and social restructuring as well as the aging of society. The final results will be gained after a thorough absorption of financial means that will influence the implementation of three objectives. These objectives include the convergence that is directed at the increase of convergence of the least developed member states and regions; the objective of regional and employment competitiveness that is directed at the promotion of the knowledge-based society, entrepreneurship and social integration; and European territorial cooperation.¹

The regional policy of the European Union is directed at the ethnographic, spatial, cultural and economic development of individual regions. Each region consists of numerous elements that create its space and resources that are connected through a network of dependencies.² Regional policy is based on the implementation of the corresponding objectives that aim at the development of competitiveness.

This article first discusses Polish administrative law in Section II, then Polish regional development in Section III. The fourth section discusses the integration with the Regional Operational Program with Section V concluding.

II. POLISH ADMINISTRATIVE LAW

According to Polish administrative law, administration is characterized by the following features:

- it has a political character (which means that activities of administration are subject to political judgment);
- it functions on the basis of constitutive law and within its area of concern;

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¹ European Council Regulation (EC) No 1083/2006, OJ L 210/25, art. 3.

² Bolesław Winiarski, *Przesłanki, podmioty i instrumenty polityki regionalnej w gospodarce rynkowej* [Premises, Subjects, and Instruments of Regional Policy in Market Economy] in *POLITYKA REGIONALNA W WARUNKACH GOSPODARKI RYNKOWEJ* [REGIONAL POLICY UNDER THE CONDITIONS OF MARKET ECONOMY] 9 (Warsaw 1992).

- it operates in the name of and for the state or the entity of public authority that has such authority;
- it has an authoritative character in the sense that it may use measures of coercion;
- it is legitimized by a monopolistic character (which is illustrated by the fact that it operates within authority assigned to it by the law);
- its activities are oriented towards public good; and
- it works in a continuous and consistent way and it is usually based on professional staff.³

The fact that there is a wide range of administration activities sometimes leads to a conclusion that it is impossible to find a finite and conclusive definition of public administration or that it can only be described and defined in specific contexts.⁴ There are also opinions that public administration in its current shape is characterized by organizational pluralism⁵ and it is not a uniform organization.⁶

The tasks of public administration are performed through bodies that implement particular tasks ascribed to them and through other entities that fulfill administration functions.⁷ They include public administration bodies (understood as the bodies of state administration) and additional entities that perform functions assigned to them by the public administration. These entities are defined as administering entities⁸ or entities of administrative activity.⁹

³ Stanisław Wrzosek, *ZARZĄDZANIE ŚRODOWISKIEM PRZEZ ADMINISTRACJĘ PUBLICZNĄ, [MANAGING THE ENVIRONMENT THROUGH PUBLIC ADMINISTRATION]* (Białystok 1999); Jan Boć, *PRAWO ADMINISTRACYJNE [ADMINISTRATIVE LAW]* 12-17 (Kolonia Limited 2005).

⁴ Ernst Forsthoff, *LEHRBUCH DES VERWALTUNGSRECHT [TEXTBOOK OF ADMINISTRATIVE LAW]* (München 1966).

⁵ Michał Kulesza, *BANKOWY FUNDUSZ GWARANCYJNY JAKO PODMIOT PRAWA PUBLICZNEGO-RECYDYWA ZAPOMNIANEGO POJĘCIA, [BANK GUARANTEE FUND AS A SUBJECT OF PUBLIC LAW – RECURRENCE OF A FORGOTTEN CONCEPT]* 10 (Glosa 2002).

⁶ Zbigniew Leoński, *Przekształcenia terenowego aparatu administracji państwowej [Transformations of the Local Apparatus of State Administration]*, in *SYSTEM PRAWA ADMINISTRACYJNEGO [THE SYSTEM OF ADMINISTRATIVE LAW]* 83 (J. Jendrośka, ed., Wrocław 1977).

⁷ Ryszard Herbut, *Administracja publiczna-modele, funkcje i struktura [Public Administration]*, in *ADMINISTRACJA I POLITYKA. WPROWADZENIE [ADMINISTRATION AND POLITICS. AN INTRODUCTION]* 29 (A. Ferens, I. Macek, eds., Wrocław 1999); Jolanta Blicharz, *UDZIAŁ POLSKICH ORGANIZACJI POZARZĄDOWYCH W WYKONYWANIU ZADAŃ ADMINISTRACJI PUBLICZNEJ [PARTICIPATION OF POLISH NON-GOVERNMENTAL ORGANIZATIONS IN THE TASKS OF PUBLIC ADMINISTRATION]* 31 (Wrocław 2005).

⁸ Z. Luniewska, B. Jaworska-Dębska, R. Michalska-Badziak, E. Olejniczak-Szałowska, M. Stahl, *PRAWO ADMINISTRACYJNE. POJĘCIA, INSTYTUCJE, ZASADY W TEORII I ORZECZNICTWIE [ADMINISTRATIVE LAW: CONCEPTS, INSTITUTIONS, PRINCIPLES IN THEORY AND*

Before proceeding to the subsequent part, it is necessary to define an administrative entity. An administrative entity should be characterized by two most important features: it should perform activities within the range of broadly understood public administration and it should have administrative authority determining the field in which it can operate as specifically assigned to this entity by law.¹⁰ These entities perform tasks and have the authority resulting from different authorizations surrounding the implementation of the functions assigned to administration.¹¹

III. REGIONAL DEVELOPMENT IN POLAND

According to the Act of Regional Development of 6 December 2006 laying down the principles of policy for development, this concept comprises a set of interconnected activities undertaken and implemented to ensure permanent and balanced development of the state, as well as social-economic and territorial cohesion at the national, regional, or local levels, especially concerning:

- environment and health protection;
- employment promotion;
- culture and human resources development, sports, tourism;
- cities, metropolitan areas, and rural areas development;
- development of science and increase of economic innovativeness;
- development of pro-social attitudes,
- stimulating the creation of new workplaces;
- creation and modernization of social and technological infrastructure;
- support and modernization of the state;

JURISDICTION](Warsaw 2002); Marek Stefaniuk, *Centralne organy administracji rządowej po reformie ustrojowej państwa (wybrane zagadnienia prawno-ustrojowe)* [Central Agencies of Governmental Administration After the Constitutional Reform (Selected Constitutional and Legal Issues)] in ADMINISTRACJA I PRAWO ADMINISTRACYJNE U PROGU TRZECIEGO TYSIĄCLECIA [ADMINISTRATION AND ADMINISTRATIVE LAW AT THE BEGINNING OF THE THIRD MILLENNIUM] 421 (Łódź 2000).

⁹ Karol Kiczka, ADMINISTRACYJNE AKTY KWALIFIKACYJNE W DZIAŁALNOŚCI GOSPODARCZEJ [ADMINISTRATIVE QUALIFYING ACTS IN BUSINESS] 170 (Kolonia Limited 2006).

¹⁰ *Id.* at 100.

¹¹ Jacek Jagielski, *Status prawny agencji i ich miejsce w systemie administracji publicznej* [Legal Status of Agencies and Their Place in the Public Administration System] in GRANICE WOLNOŚCI GOSPODARCZEJ W SYSTEMIE SPOŁECZNEJ GOSPODARKI RYNKOWEJ. KSIĘGA JUBILEUSZOWA Z OKAZJI 40-LECIA PRACY NAUKOWEJ PROF. DR HAB. J. GRABOWSKIEGO [LIMITS OF ECONOMIC FREEDOM IN THE SYSTEM OF SOCIAL MARKET ECONOMY. A BOOK COMMEMORATING THE 40TH ANNIVERSARY OF PROF. DR HAB. J. GRABOWSKI'S SCIENTIFIC WORK] 64 (Katowice 2004).

- support of entrepreneurship development and economic growth; and
- improvement of economic competitiveness.¹²

This article analyzes only the area of the region where the policy of development is conducted by the local government of a *voivodeship* (province).¹³ Referring to the strategy of *voivodeship* development and regional operational program, a proper *voivode* (governor) appoints by decree a standing conference of cooperation called the “Conference.” The Conference includes a *voivode*, a marshal,¹⁴ representatives of organizations that take part in the Commission for Joint Central Government and Local Government, representatives of municipalities and *poviats*¹⁵ of a particular *voivodeship*, representatives of ministers who deal with the issues discussed by the Conference as well as representatives of social and economic partner organizations.¹⁶ The Conference is a place to exchange information and work out common stances regarding the issues mentioned above. The common stance on a particular issue is adopted by way of a resolution passed by a majority vote at least half of the members of the Conference. If the votes are distributed evenly, the chairperson has the deciding vote. Resolutions made by the Conference are passed on to the Minister of Regional Development within 21 days of their enactment.¹⁷

The catalogue of tasks of an institution managing the Conference is quite broad and it includes in particular:

- preparing a detailed description of priorities of an operational program with regard to the guidelines of the Minister of Regional Development;
- preparing and transmitting of the proposals for criteria to select projects to recommend to the monitoring committee for approval;
- selecting (based on the aforementioned criteria) of the projects that are going to be financed within the operational program;
- signing contracts concerning subsidizing of the project with beneficiaries (people receiving EU money for development);
- determining whether expenditures subsidized by the operational program are eligible for subsidies;

¹² Dz. U. (*Journal of Laws*), art 2 No. 227, item 1658.

¹³ *Id.*, Art. 3.

¹⁴ Voivode is an appointed member of the government whereas a marshal is elected as a president of the local people.

¹⁵ In Poland, there are three levels of government: municipalities, *poviats* – a small region, and *voivodeship* – big region.

¹⁶ Dz. U., art. 7.

¹⁷ *Id.*, art. 8.

- determining the extent of subsidy as a percentage of expenditures subsidized, where the extent of subsidy can differ according to the type of the project or properties of the beneficiary or amount to 100% of the value of the project;
- determining the system of implementation for the operational program;
- determining the types of projects whose selection require the opinions of experts,
- managing financial resources for the implementation of the program from the state budget, budget of a *voivodeship* or from resources from abroad;
- making payments from the resources of the operational program to beneficiaries,
- monitoring the progress of implementation, evaluation of the operational program and the degree to which the goals have been achieved,
- introducing changes in the operational program, if necessary,
- supervising the implementation of the operational program, including supervision of subsequent subsidized projects,
- recovering overpayments made to beneficiaries,
- ensuring the proper information and promotion of an operational program.¹⁸

The managing institution by agreement assigns some tasks related to the implementation of an operational program to an intermediary institution.¹⁹

In order to select projects, either a managing institution or an intermediary institution posts a call for proposals on its website. This notice has to contain the following information:

- types of projects that can be subsidized,
- kinds of entities that can apply for subsidy,
- amount of money for subsidizing the project (if this amount has been determined),
- criteria for selection of projects,
- the deadline for the final selection of proposals,

¹⁸ *Id.*, art. 26.

¹⁹ *Id.*, art. 27.

an example application form for subsidy of the project, the deadline for application for subsidies and the information how to apply, and

- an example contract for specifying the terms of the project subsidy.²⁰

After the competition, each applicant is informed whether their applications have been accepted or not. According to new regulations, when the evaluation of a project is negative, an applicant, upon receiving this information, has the right to make an appeal in the way included in the system for the implementation of the operational program, within the deadline, in the course and on the conditions determined by the program. The system for the implementation of the operational program has to include at least one means of mandatory appeal for an applicant who applies for subsidies. An appeal cannot be examined by people who have taken part in any stage of that project. An appeal will not be considered when it has been brought after the deadline, it has been made contrary to the regulations or is has been made to the wrong body.²¹

After exhausting all the means of appeal included in the system for the implementation of the operational program and upon receiving the information about negative outcome of the appeal included in the system of implementation of the operational program, an applicant has the right to make a complaint to the *Voivodeship* (provincial) Administrative Court.²² This complaint can be registered by an applicant within 14 days from the day on which an applicant receives the information about the rejection of the protest in the course of appeal. The complaint is to be made directly to the *Voivodeship* Administrative Court. An applicant should enclose with the complaint the complete documentation that should include a formal application together with its evaluation and copies of means of appeal brought by an applicant. After examining the case, the court can:

- allow the complaint, stating that the evaluation of the project has been conducted contrary to the law and transfer the case for rehearing by the proper managing or intermediary body,
- dismiss an action when the complaint has not been allowed, or
- discontinue the proceedings if for any reasons the proceedings no longer serve any purpose.²³

In addition, an applicant or the proper managing or intermediary body can appeal the decision to the Supreme Administrative Court of the Republic of

²⁰ *Id.*, art. 29.

²¹ *Id.*, art. 30b.

²² Law on Proceedings Before Administrative Courts, Dz. U. (*Journal of Laws*), art. 3(3), No. 153, item 1270 as amended (2002).

²³ *Id.*, art. 30c.

Poland within 14 days from the delivery of the decision of the *Voivodeship* Administrative Court. This appeal must be examined within 30 days from the date it is filed.²⁴

IV. INTEGRATION WITH THE REGIONAL OPERATIONAL PROGRAM

Activities related to Regional Operational Programs are part of the implementation of the National Strategic Reference Framework 2007-2013. Each member state of the European Union presents national strategic reference frameworks to make certain that the use of the funds is in accordance with Community Strategic Guidelines for cohesion.²⁵ The main objectives of the frameworks include:

- improving the quality of public institutions operations and development of mechanisms of partnership;
- improving the quality of human capital and enhancement of social cohesion;
- creating and modernizing technical and social infrastructure crucial to the improvement of Poland's competitiveness;
- improving competitiveness and innovativeness of enterprises;
- increasing the competitiveness of Polish regions to prevent their social, economic and territorial marginalization;
- balancing growth opportunities and
- supporting structural transformations in rural areas.

Individual *voivodeship* boards, in cooperation with the Ministry of Regional Development, prepare projects of Regional Operational Programs that plan financial subsidies from the state budget or resources from abroad procured through the government. The board of a *voivodeship* passes the Regional Operational Program as an act. Then the board posts an announcement in the *voivodeship* journal. The announcement specifies: 1) that the board of the *voivodeship* has passed an act accepting the program, 2) an address of a website where the managing authority will post the text of the program, a detailed description of its priorities, 3) the dates in which the program will be implemented, 4) the range of changes introduced to the project and 5) the

²⁴ *Id.*, art. 30d.

²⁵ European Council Regulation 1083/2006, art. 27(1) (2006).

decision of the European Community approving the Regional Operational Program.²⁶

The Council of Ministers, at the request of the Minister of Regional Development, determines through an act the range and conditions of financing the Regional Operational Program with state budget resources or funds from abroad. The *voivodeship* program should determine 1) the amount of money for the Regional Operational Program from the state budget and from funds from abroad, divided into priorities, 2) the method by which the resources will be transferred, 3) the method by which the Ministry of Regional Development will supervise the manner the funds are used, 4) the range of and the course in which reports on implementation of the contract are to be submitted, 5) the method by which the Ministry of Regional Development will control and monitor the implementation of the project, 6) the amount of money for actions to be accomplished by the *voivodeship* local government within the framework of the National Operational Program and the 7) financial contribution of local government units for the implementation of the Regional Operational Program.²⁷

Analyzing the system of implementation of a Regional Operational Program, it is necessary to focus on the functions of the managing institution (also known as the Managing Authority), intermediary institutions (also known as Intermediate Bodies), Certifying Authorities and an Audit Authority.²⁸

The Ministry of Regional Development is the Coordinating Authority that coordinates all the sixteen operational programs. This institution is responsible for monitoring Regional Operational Programs for their compliance with National Strategic Reference Frameworks; negotiating Regional Operational Programs with the European Commission; ensuring the cohesion of applied guidelines; and monitoring the effects of Regional Operational Programs implementation in regions.

The function of the Managing Authority is performed by the boards of individual *voivodeships*.²⁹ Under Article 60 of Council Regulation 1083/2006, the Managing Authority shall be responsible for:

- 1) ensuring that operations are selected for funding in accordance with the criteria applicable to the operational program and that they comply with applicable Community and national rules for the entire implementation period;

²⁶ Act Laying Down Principles of Policy of Development, Dz. U. (*Journal of Laws*), art. 20, No 140, item 984 (2006).

²⁷ *Id.*

²⁸ European Council Regulation 1083/2006, art. 59(1).

²⁹ Act on Regional Development, art. 25(2)2.

2) verifying that the co-financed products and services are delivered and that the expenditures declared by the beneficiaries for operations have actually been incurred and comply with Community and national rules;

3) ensuring that there is a system for recording and storing in computerized form accounting records for each operation under the Regional Operational Program and that the data on implementation necessary for financial management, monitoring, verifications, audits and evaluation are collected;

4) ensuring that beneficiaries and other bodies involved in the implementation of operations maintain either a separate accounting system or an adequate accounting code for all transactions relating to the operation, without prejudice to national accounting rules;

5) setting up procedures to ensure that all documents regarding expenditure and audits required to ensure an adequate audit trail are held in accordance with the requirements of the Council regulations;

6) ensuring that the certifying authority receives all necessary information on the procedures and verifications carried out relative to expenditures for the purpose of certification;

7) guiding the work of the monitoring committee and providing it with the documents required to permit the quality of the implementation of the operational program to be monitored in light of its specific goals;

8) drawing up and, after approval by the monitoring committee, submitting to the European Commission the annual and final reports on implementation;

9) ensuring compliance with the information and publicity requirements; and

10) providing the European Commission with information to allow it to appraise major projects.³⁰

Apart from the tasks assigned to it by the Council regulation, the Managing Authority performs the following tasks on the basis of delegating legislation:

1) preparing a detailed description of priorities of the operational program;

2) preparing proposals for criteria to select projects and sending them to the Monitoring Committee for approval;

³⁰ European Council Regulation 1083/2006, OJ L 210/25.

- 3) selecting projects to be financed within the operational program;
- 4) signing contracts with beneficiaries;
- 5) determining the criteria for qualification for refurbishment of expenditures subsidized in the operational program;
- 6) determining the extent of funding for the project;
- 7) determining the system of implementation for the project;
- 8) managing financial resources for the implementation of the program from the state budget, budget of a *voivodeship* or from resources from abroad;
- 9) making payments from resources of the operational program to beneficiaries;
- 10) monitoring progress of implementation, evaluating the operational program and the degree to which its goals have been achieved;
- 11) if necessary, introducing changes to the operational program;
- 12) supervising the implementation of the operational program;
- 13) recovering unused money paid to beneficiaries, and
- 14) ensuring the proper information and promotion of an operational program.³¹

The Managing Authority may commission the implementation of a part of its management or operational tasks to third party entities, but remains fully responsible for the whole implementation of the program. The tasks that may be delegated to third party entities include all but tasks 5, 6 and 8 above dealing with funding of the program.³²

The Intermediate Body has to be selected in accordance with the Act on Public Procurement,³³ except for the situation when the Intermediate Body is the unit of the sector of public finances or a foundation founded solely by the State Treasury. The Intermediate Body is responsible for the implementation of the tasks commissioned to it directly by the Managing Authority. The Intermediate Body is also required to guarantee its competencies concerning administrative and financial management. In agreement with the Managing Authority, the Intermediate Body may delegate the performance of its tasks to another third party entity that has appropriate competencies, experience and

³¹ Act on Regional Development, art. 26.

³² *Id.*, art. 27 (1).

³³ Law on Public Procurement, Dz. U. (*Journal of Laws*) No 164, item. 1163 and No. 170, item 1217 (2004).

human resources. This delegation of functions is conducted under an agreement of the Intermediate Body with the chosen body.

The Certifying Authority is yet another institution that plays a significant role in the implementation of the tasks required by the Regional Operational Programs. The function of the Certifying Authority is performed by the Certifying Authority Department that operates within the framework of the Ministry of Regional Development. The Certifying Authority shall be responsible in particular for:

- 1) drawing up and submitting to the Commission certified statements of expenditure and applications for payment,
- 2) certifying that the statement of expenditure is accurate, results from reliable accounting systems and is based on verifiable supporting documents,
- 3) certifying that the expenditure declared complies with applicable Community and national rules and has been incurred with respect to operations selected for funding in accordance with the criteria applicable to the programme and complying with Community and national rules,
- 4) ensuring (for the purposes of certification) that it has received adequate information from the managing authority on the procedures and verifications carried out in relation to expenditure included in statements of expenditure,
- 5) taking account (for certification purposes) of the results of all audits carried out by or under the responsibility of the audit authority,
- 6) maintaining accounting records (in computerized form) of expenditure declared to the Commission,
- 7) keeping an account of amounts recoverable and of amounts withdrawn following cancellation of all or part of the contribution for an operation,
- 8) verifying and approving manuals of regional intermediate certifying bodies, and
- 9) delegating functions related to certifying procedures to *voivodeship* offices.³⁴

The functions of the Audit Authority for Regional Operational Programs belong to the General Fiscal Control Inspector through a separate organizational

³⁴ European Council Regulation 1083/2006, art. 61.

unit within the Ministry of Finance (at present it is the Department of Certification and EU Funds Confirmation) and individual Revenue Offices. The main tasks of the Audit Authority include:

- 1) ensuring that audits are carried out to verify the effective functioning of the management and control system of the operational program;
- 2) ensuring that audits are carried out on operations on the basis of an appropriate sample to verify expenditures declared;
- 3) presenting to the Commission, within nine months of the approval of the operational program, an audit strategy covering the bodies which will perform the audits, the method to be used, the sampling method for audits on operations and indicative planning of audits to ensure that the main bodies are audited and that audits are spread evenly throughout the programming period;
- 4) submitting to the Commission an annual control report presenting the findings of the audits carried out during the previous 12 month-period, ending on 30 June of the year concerned, in accordance with the audit strategy of the operational program and reporting any shortcomings found in the systems for the management and control of the program;
- 5) issuing an opinion, on the basis of the controls and audits that have been carried out under its responsibility, as to whether the management and control system functions effectively;
- 6) submitting a partial closure declaration with a formal opinion on the conformity to the law and correctness of the expenditure data;
- 7) submitting to the Commission by 31 March 2017 at the latest a closure declaration assessing the validity of the application for payment of the final balance and the legality and regularity of the underlying transactions covered by the final statement of expenditure, which shall be supported by a final control report.³⁵

Monitoring is an important issue for the analysis of operations related to the implementation of Regional Operational Programs. Monitoring is conducted by Managing Authorities and Monitoring Committees of individual Regional Operational Programs. The Monitoring Committees for each *voivodeship* will be appointed within three months from the date when the European Commission notifies Poland of the decision approving the operational program.

³⁵ European Council Regulation 1083/2006, art. 62.

The Committee will be composed of representatives of the managing authority, intermediate body, the Ministry of Regional Development, local governments, academic circles and social and economic partners. The main tasks of the Monitoring Committee include:

- 1) conducting analysis and approving the criteria for selecting the projects of Regional Operational Programs within six months of the approval of the operational program,
- 2) conducting periodical reviews of progress made towards achieving the specific targets of the operational programme on the basis of documents submitted by the Managing Authority,
- 3) examining the achievement of the targets set for each priority axis and its evaluation,
- 4) analyzing and approving the annual and final reports on implementation,
- 5) obtaining information about the annual control report, or of the part of the report referring to the Regional Operational Program, and about any relevant comments the Commission may make after examining that report or relating to that part of the report,
- 6) applying to the Managing Authority with any revisions or examination of the operational program that are likely to make possible the attainment of the Funds or to improve the program's management, and
- 7) analyzing and approving any proposals to amend the content of the Commission decision on the contribution from the Funds.

The projects that can be subsidized within an operational program include: 1) individual key projects of strategic importance for the implementation of the program,³⁶ 2) systemic projects financing the implementation of public tasks,³⁷ and 3) projects selected in separate contests.³⁸

In order to select projects, either a Managing Authority, an Intermediate Body or an Implementing Authority posts a call for proposals on its website. This notice has to contain the following information:

³⁶ These are indicated by the Managing Authority in accordance with the criteria approved by the Monitoring Committee. The list of such projects is published by the Minister of Regional Development as an announcement in the Official Journal of the Republic of Poland 'Monitor Polski.'

³⁷ The list of these projects is approved by an act of the *voivodeship* board and it is announced in the Voivodeship Journal.

³⁸ Act on Regional Development, art. 28.

- 1) types of projects that can be funded,
- 2) kinds of entities that can apply for subsidies,
- 3) the amount of money for funding the project,
- 4) the percentage of the total amount that will be subsidized,
- 5) maximum amount of money for funding (if it has been determined),
- 6) criteria for selection of projects,
- 7) the deadline for the final selection of proposals,
- 8) an example application form for subsidy of the project,
- 9) the deadline for application for subsidies and the information how to apply, and
- 10) a specimen contract for specifying the terms of the project funding.

Until all the contracts for funding the projects have been signed with beneficiaries selected in the contest or by allowing an appeal, the authority in charge cannot cause a worsening of the conditions of the implementation of the project or impose on the subjects applying for funds additional requirements. Neither can it introduce any changes to the regulations of the contest.³⁹

Discussing Regional Operational Programs, it is necessary to analyze the functions of the Minister of Regional Development. The Minister of Regional Development is responsible for the coordination of the expenditure of funds from abroad, including the EU budget, for subsidizing operational programs. The Minister is responsible in particular for:

- 1) drawing up and presenting to the Council of Ministers for approval, after acquiring the opinion of a respective minister or the voivodeship board, the proposals of division of the resources from the state budget and the EU funds,
- 2) ensuring the compliance of the operational programs with the EU regulations,
- 3) negotiating the text of the operational programs with the European Commission,
- 4) cooperating to prepare regional operational programs, monitoring and controlling their implementation and providing voivodeship

³⁹ Act on Regional Development, art. 29.

boards with proposals of modifications in the implementation of the program,

- 5) applying to the European Commission to reallocate resources between programs or priorities,
- 6) certifying to the European Commission that the expenditures within the operational programs are accurate.

The Minister of Regional Development, in order to ensure compliance of the implementation of the operational programme with the EU regulations, can issue regulations regarding operational programmes. These may include:

- 1) a detailed description of priorities of an operational program,
- 2) selection procedure,
- 3) qualifications of people participating in the selection process,
- 4) the procedure of making payments and providing expense statements,
- 5) the procedure of monitoring the progress of the implementation of regional operational programs,
- 6) the procedure and scope of reporting on the implementation of operational programs,
- 7) the procedure for evaluation of operational programs,
- 8) technical requirements for electronic data collection and transfer,
- 9) control over the implementation of operational programs,
- 10) procedures to use in case of the appearance of mistakes in operational program, and
- 11) other issues related to drawing up and implementation of operational program.⁴⁰

One of the major competencies of the Minister of Regional Development is the possibility to appoint experts in the field in the scope of an operational program.⁴¹ A person who is to become an expert has to meet the following requirements:

- 1) having higher education with at least an M.A. or an engineering degree in the field in the scope of operational programs,

⁴⁰ Act on Regional Development, art. 35.

⁴¹ *Id.*, Art. 31.

- 2) having at least 3 years professional experience in the field in the scope of operational programs,
- 3) having professional experience in financial and economic analysis and in the area of funding projects from the resources from the EU budget,
- 4) full public rights,
- 5) has capacity for legal actions,
- 6) has not been sentenced for intentional or fiscal crime, and
- 7) submits a declaration stating that person's readiness to evaluate projects in a reliable and impartial manner.⁴²

One more issue to be discussed here concerns expenditures for the implementation of operational programs. Beneficiaries that are not state budget units receive public resources for the implementation of operational programs as a developmental grant. A developmental grant for the voivodeship self-governments performing the function of the Managing Authority or an Intermediate Body is planned in the budget part of the Minister of Regional Development.⁴³ Beneficiaries that are state budget units finance all their expenses for operational programs from the budget resources planned in the budget parts of the respective decision-makers. The funds are provided by: 1) refund of a part of qualified expenses incurred earlier by a beneficiary, 2) pre-payment of part of a subsidy in one or several tranches, 3) pre-payment of part of a subsidy in one or several tranches when the remaining part of funds constitutes a refund of a part of qualified expenses incurred earlier by a beneficiary.⁴⁴

A developmental grant can be allocated to an entrepreneur or a business entity as a pre-payment on condition that the project meets one of the following requirements: 1) it involves research and scientific work, 2) it concerns an initial investment that makes use of new technologies and implements innovative solutions at least at the European level of innovativeness, 3) it supports capital funds, 4) it is implemented within the framework of a program co-financed with the sources from the European Social Fund, and 5) it is

⁴² Ministry of Regional Development, Regulation Laying Down the Principles of Appointing Experts to Conduct Reliable and Impartial Evaluation of Projects Implemented within the Framework of Operational Programs, Dz. U. (*Journal of Laws*) § 2, No 93, item 626 (2007).

⁴³ Ministry of Regional Development, Regulations on Expenditures for the Implementation of Regional Programs, Dz. U. (*Journal of Laws*), § 4, No. 175, item 1232 (2007).

⁴⁴ *Id.*, § 8.

implemented solely by one beneficiary and it is a State Treasury company or a national bank.⁴⁵

The aforementioned developmental grant is paid to a beneficiary after establishing security in order to secure due performance by the beneficiary of the obligations under the subsidy agreement. When the subsidy granted is less than PLN 1,000,000, the security has a form of a blank promissory note along with a promissory note declaration. If the subsidy amounts to over 1,000,000, the security is instituted in the following way: 1) in cash, 2) in suretyship issued by the bank or by savings and credit cooperative society, 3) in guarantees issued by the bank or insurance company, 4) in promissory notes with declaration of the bank or savings and credit cooperative society, 5) in pledge on securities issued by the State Treasury or a local government, 6) in registered pledge, 7) assignment of rights under an insurance policy of the beneficiary, 8) ownership transfer of the beneficiary's movable assets as collateral 9) mortgage and suretyship.⁴⁶ The settlement of the pre-payment can be conducted upon receiving paid invoices or accounting documents of equal probative value.

V. CONCLUSION

Summing up, it should be said that regional development in Poland is very important issue now. Structural Funds in Poland are part of the Polish administrative law system. Presently, it is hard to say if Poland will be successfully beneficiary of this kind of aid, but one thing can be said honestly – the administrative law system is organized and prepared for all things connected with regional development.

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⁴⁵ *Id.*, § 9.

⁴⁶ *Id.*, § 10.

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