



Are national institutions implementing European Union funds part of the EU institutional system *sensu largo*? Observations from the perspective of Poland

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Abstract. The measure of the efficiency of any international organization is its institutions equipped with appropriate powers and executive apparatus. The European Union, like other international organizations, has its own structures that form a kind of institutional system. Practice shows that the elements that make up this system *sensu stricto* are not self-sufficient, which means that their work for the implementation of EU policies often requires the involvement of the national institutions of member states. This kind of practice is characteristic of the implementation of EU cohesion policy. The questions therefore arise: whether and on what basis do national institutions implementing EU funds in member states become part of the institutional system of the European Union *sensu largo*? and what effects does this have on the system of implementation of European Union funds? The article analyzes the concept of the EU institutional system *sensu largo*. It also discusses the special significance of the principle of subsidiarity for the functioning of the EU institutional system. It concludes with a reconstruction of the "subsidiarity" of the institutional system of the European Union and points out its national consequences. The author's thesis is that national institutions implementing EU funds are part of the institutional system of the EU *sensu largo* through the implementation of the EU principle of subsidiarity, which in turn causes certain consequences for the Polish system of implementing EU funds. The article was written using a dogmatic and descriptive method.

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INTRODUCTION

The primary objective of the European Union is to promote economic, social and territorial cohesion and solidarity among member states¹. This goal is implemented through the cohesion policy, which has been carried out consistently for several decades. Within its framework, the European Union, through established funds, provides financial assistance to the least developed countries and regions. This action is to contribute to their economic growth, increase the competitiveness of the EU economy and employment, ensure harmonious, balanced and sustainable development of the EU.

Transferring EU funds to 27 member states is a major organizational challenge. It requires accurate identification of the needs of individual countries, their regional and local communities, preparation of a set of their own operational programs for the use of EU funds, and coordination of effective and efficient implementation of funds at the national level. The European Commission is responsible for the execution of the EU budget and the management of the programs², but it is neither competently nor organizationally capable of handling this task alone. In its activities it is supported by various institutions of the EU and national level, as exemplified by the organization of the system of implementation of EU funds in the member states.

The European Union has for years taken the position that the preparation and implementation of operational programs should be the responsibility of Member States at the appropriate territorial level, in accordance with the institutional, legal and financial framework specific to each Member State, and the entities they designate for this purpose. In this case, it practices "shared management," which is where the European Commission entrusts member states to implement EU funds at the national level. Member states then allocate these funds to final recipients (e.g., businesses, farmers, local governments, etc.). The member state bears the responsibility for creating a management and control system for the funds that complies with the requirements of EU regulations, by ensuring the effective functioning of this system and preventing, detecting and correcting irregularities. The process of implementing European Union funds in Poland is therefore based mainly on public administration, involving its bodies.

Since the European Commission in the process of implementing funds interacts with the institutions of the Member States, the question of whether and on what basis the national institutions implementing EU funds in the Member States become part of the institutional system of the European Union *sensu largo* needs to be determined, and what consequences does this have for the system of implementing EU funds? The author's thesis is that national institutions implementing EU funds are part of the institutional system of the EU *sensu largo* through the implementation of the EU principle of subsidiarity, which in turn causes certain consequences for the Polish system of implementing EU funds. The article was written using a dogmatic and descriptive method. The first one was used to identify and interpret the provisions of EU law on the organization of the EU institutional system and the principle of subsidiarity. The descriptive method was used to illustrate the organization of the system for implementing EU funds at the national level.

THE CONCEPT OF THE INSTITUTIONAL SYSTEM OF THE EUROPEAN UNION *SENSU LARGO*

According to the classic dictionary definition, the term system means: "a coordinated arrangement of elements forming a certain whole conditioned by a fixed logical ordering of its component parts" (Szymczak, 1993, p. 387) . In the doctrine, the concept of system is exemplarily defined as a set of elements (components), forming a certain whole, which interact with each other in a mutual and orderly manner according to the established rules that make

¹ See Article 3 (3) TEU. Official Journal of the EU 2012 C 326, p. 18.

² See Article 17 (1) TEU. Official Journal of the EU 2012 C 326, p. 25.

up its structure (Perkowski, 2003, p. 57). The second part of the problematic issue, namely the concept of institution (Latin: *institutio* - 'device'), among other things, is attributed by science to the meaning of a separate public organizational structure, i.e. a body dealing with a certain range of issues (Barcik, 2014, p.121). Thus, it seems that the EU organization corresponds to the concept of institutional system, which, according to many representatives of the doctrine, is an adequate and complete term in relation to it (Mik, 2000). The argument for the fact that the EU structures form a system is that they do not act independently, in isolation, but are functionally interconnected, and their cooperation is subject to specific rules and is carried out within certain limits.

The institutional structure of the European Union is not typical (Petersom & Shacklenton, 2002). Many authors admit that it differs significantly from the structures of other international organizations. It is also difficult in genere to compare it with the systemic solutions of member states (Wojtaszczyk, 2005). Several factors determine its uniqueness. One of the most important is the rich catalog of its constituent elements. The Treaty on European Union (TEU) indicates that the main elements of the EU's organizational structure are the institutions. This is evidenced by its Article 13(1), according to which: "The Union shall have an institutional framework for promoting its values, pursuing its objectives, serving its interests, the interests of its citizens and those of its Member States, and ensuring the consistency, effectiveness and continuity of its policies and actions (...)"³. The history of European integration shows numerous transformations of EU institutions. In the course of the EU's development, not only the names and competencies of the constituent institutions have changed, but also their number and legal standing. The latest reform was accomplished with the Treaty of Lisbon, signed on December 13, 2007, amending the Treaty on European Union and the Treaty establishing the European Community. With the entry into force of the TL, the European Union replaced the European Communities, with the consequence that their institutions became the institutions of the Union. Thus, a single catalog of EU institutions was created. It is highlighted by the aforementioned Article 13(1) of the TEU. According to it, the EU institutions are currently: European Parliament, European Council, Council of the European Union (Council), European Commission, Court of Justice of the European Union, European Central Bank, Court of Auditors (European Court of Auditors, ECA)⁴.

It follows from Article 13(1) of the TEU that the catalog of EU institutions is closed and includes only seven entities. However, this does not mean that the EU institutional system ends with them. Law and practice show that institutions cooperate with other structures of the system. For example, the Council of the European Union is supported by numerous committees, e.g.: Committee of Permanent Representatives (COREPER) Committee on Security, Committee on Trade Policy, and the European Commission is assisted by various Directorates General dealing with, for example: trade, regional policy, maritime affairs and fisheries, as well as services such as, among others: Publications Office or Legal Service (Barcik, 2014, pp. 81, 87-88. Łabędzka, 2008, pp. 82, 98-102). Entities of this type are often referred to as bodies (Rewizorski, 2012, p.19. Górka, 2006, p.142). In addition to institutions, they constitute another category of system elements that significantly expand the system.

To date, there has not been a detailed catalog of the European Union's bodies, modeled on the catalog of its institutions. The primary law of the EU only confirms the existence of bodies, but does not enumerate them. It distinguishes only advisory bodies, which include the Economic and Social Committee and the Committee of the Regions⁵. In other cases, it uses the general phrase authorities ⁶ or indicates specific names of entities without

³ Official Journal of the EU C 326 of 26.10. 2012.

⁴ Official Journal of the EU C 326 of 26.10. 2012.

⁵ See Article 13(4) TEU, Articles 300-307 TFEU, Official Journal of the EU 2012 C 326, p. 1.

⁶ See Article 9(1) TEU, Article 15(1) and (3), Article 20 TFEU, Official Journal of the EU 2012 C 326, p. 1..

assigning them to a particular group of system structures⁷. In addition, other categories of entities, such as EU organizational units⁸ and agencies⁹ also appear in EU law.

The views of the doctrine both on the structure of the EU institutional system and the naming of institutional structures are not homogeneous. Following the example of the TEU, the authors consider the entities indicated in its Article 13(1) as institutions. They also unanimously confirm the existence of bodies with the exception that they subject them to different classification procedures. In all views, however, the prevailing position is that advisory and auxiliary bodies are distinguished among them. Advisory bodies mainly include the Economic and Social Committee and the Committee of the Regions. In the case of auxiliary bodies, no single common catalog is found, which is confirmed by the provisions of European Union law. It can be presumed that its absence is due to the huge number of structures that are constantly changing. In the literature there is also a diverse nomenclature of EU institutional structures. For example, Maria M. Kenig-Witkowska referred to the EU's organizational structures as institutions. The author believed that since such terminology is used by the treaties, it is appropriate to use it, especially since the term is a legal one (Kenig-Witkowska, 2007, p. 96). A similar nomenclature was used by Jerzy Tyranowski, except that among the institutions the author distinguished main institutions, which he called bodies (Tyranowski 2005.). In turn, Cezary Mik, when considering the institutional structure of the EU, used the concept of organs (Mik, 2000). The doctrine also notes cases when the two names were used interchangeably (Wojtaszczyk, 2005). In addition, some authors make a clear distinction between institutions and bodies, calling the main structures institutions and the others bodies (Górka, 2006, pp.141-190. Michałowska-Gorywoda, 2007). This is the optics adopted by Marek Rewizorski, among others. The author, making reflections on the institutional system of the EU, assumes that the concepts of institutions and bodies should not be seen as identical categories. According to him, these structures differ in their operation, scope of powers and duties, and political power. The scope of the rights and obligations of other entities in relation to them is also different. In his opinion, the failure to distinguish the above elements in the context of the European Union's activities is an inappropriate and simplifying procedure that may raise objections and distort the picture of the functioning of the EU institutional system (Rewizorski, 2012, p.19). It is difficult to fully agree with the author's view. Of course, unreflective equating of institutions and bodies can be a mistake, but only from an intra-EU perspective. Then there is indeed a qualitative difference between the two. Indeed, the value of the action of the European Commission, for example, is different from that of any of the EU agencies. In addition, institutions are autonomous, decision-making structures and have a specific legal status defined by an act of primary legislation. EU bodies, on the other hand, are entities that, as a rule, perform specialized, advisory or auxiliary functions, which support the work of the institutions, for example: in solving many administrative and technical problems, obtaining data, collecting materials or preparing reports, opinions or analyses. They also often provide advice, implement resolutions passed by institutions or autonomous bodies and even participate in their preparation. The intra-system difference between the two is therefore evident. However, looking at the EU institutional system from an external perspective, it seems that the strict distinction between institutions, bodies and other organizational units loses its meaning and even becomes a kind of trap. This not only determines the dilemmas involved in categorizing the various elements of the system, but also, as a consequence, forces the creation of new artificial and ultimately unnecessary divisions. Remaining with the rigid division of institutions (i.e., entities indicated in Article 13(1) TEU) and bodies (i.e., other entities besides those indicated in Article 13(1) TEU) creates the problem of assigning, for example, EU agencies, services, committees, offices, bureaus. All of them are excluded from the group of institutions at the outset, and, on the other hand, it is not quite possible to attribute to them the status of a body

⁷ See Article 15, Article 20, Article 126(4) TFEU, Official Journal of the EU 2012 C 326, p. 1.

⁸ See, *inter alia*, Articles 9, 17(3) TEU and Articles 15(1) and (3), 16, 130, 228(1) and (3), 267, 282, 298 TFEU, Official Journal of the EU 2012 C 326, p. 1.

⁹ See Articles 42 and 45 of the TEU and 189 of the TFEU, Official Journal of the EU 2012 C 326, p. 1.

as held, for example, by the Economic and Social Committee, the Committee of the Regions, which are treaty bodies. In order to make a reliable classification, it would therefore be necessary to create further categories to which the indicated structures could be assigned.

Moreover, looking at this division from an external perspective, one might get the impression that it suggests a progressive weakness of successive elements of the system, because the farther they are from the strict core of the Union, the more it seems that their strength and importance are weaker, which cannot be agreed with. If the structures of the EU form a system, then each of its elements for the system as a whole is equally important. Even if there are inequalities between them, for example, in terms of potential or function, they should be presumed to be equal, and moreover, as the principle of institutional equilibrium implies - they are supposed to interact, balance and inhibit each other (Dubowski, 2010).

Besides, reality shows that the situation of individual structures within the system is constantly changing. An example of this is the European Central Bank, which by the Lisbon Treaty joined the ranks of EU institutions. Another case is the European Union Civil Service Tribunal, which was established by a secondary law decision¹⁰ and now its activities are regulated by Article 19 TEU and Article 257 TFEU. Therefore, should it be assumed that these structures were not previously an institution/body, respectively? After all, they are the same entities in relation to the state before the changes introduced by the TL. Thus, it seems that from an external perspective, nomenclature is a secondary issue. Accordingly, the functional approach supports the idea that, looking from the outside at the organization of the European Union, we should rather speak of an institutional system in which all elements are institutions that cooperate and are functionally related to each other. Among them, one can distinguish between the institutions *sensu stricto* indicated in Article 13(1) in the TEU and institutions *sensu largo*, which can be subjected to various classification treatments, specifying, for example, auxiliary, executive, decentralized institutions.

The analysis of doctrinal views leads to the important conclusion that the institutional system of the EU is extremely elaborate and is formed by a huge number of structures that are constantly changing. Anna Doliwa-Klepacka and Zbigniew M. Doliwa-Klepacki point out that at the beginning of 2008, the EU institutions had an apparatus of more than 1,600 auxiliary bodies, the vast majority of which supported the work of the European Commission and the Council of the European Union (Doliwa-Klepacka & Doliwa-Klepacki, 2009).

When analyzing the structure of the institutional system of the EU *sensu largo*, we cannot help but notice that the authors rarely point to one more element of it. Although EU law does not refer to it directly, it is not indifferent to the EU institutional system and its functioning. We are talking about national bodies carrying out EU tasks. It follows from Article 4(3) of the TEU that the Member States of the Union are obliged to take all appropriate measures to ensure fulfilment of the obligations arising out of the treaties or acts of the institutions of the Union¹¹. Fulfilling this obligation requires member states to have official structures dealing with European matters. One such issue is the implementation of cohesion policy under which the absorption of EU funds is carried out. This is an area in which the cooperation of the European Commission with the Polish Ministry of Funds and Regional Policy, which then delegates most of the implementation of this task to regional authorities, is extremely noticeable. This example shows that although the Union has an extensive system of institutions, it is not able to carry out all activities on its own, relying solely on its internal structures. Therefore, it "descends" to the national level and supports itself with the relevant national authorities. Therefore, their role and importance in the EU institutional system cannot be underestimated, as a growing number of scholars are pointing out.

This problem is recognized by Cezary Mik. The author stresses that, in general, the presentation of the EU's institutional system is limited to those bodies indicated by the founding treaties and the laws made on their basis. However, in his opinion, this is an erroneous approach, which actually "flattens" this system. By virtue of the fact

¹⁰ Council Decision 2004/752/EC, Official Journal of the EU 2004 L 333 p. 7.

¹¹ Official Journal of the EU 2012 C 326, p. 1.

that the Union is an inclusive organization, it seeks to link its members and their peoples as closely as possible. Using a variety of legal and political instruments, the Union explores the relationship of national bodies and entrusts them with a considerable range of functions in integration areas. Therefore, C. Mik believes that national bodies and the relationship between them and their counterparts in other member states, as well as between them and the bodies of the Union, cannot be excluded from the institutional system of the EU. He stresses that they are part of the institutional system to the extent that they perform the functions entrusted to them by the European Union (Mik, 2000). The same view is also presented by Maciej Perkowski (Perkowski, 2003, p.58), Janusz Heller, Marzena Andrzejkiwicz (Heller& Andrzejkiwicz, 2006) and Krystyna Kowalik-Bańczyk, who pointed out that: "(...) national authorities in a situation where they implement provisions of European Union law should be considered EU bodies" (Kowalik-Bańczyk, 2012). Robert Grzeszczak also includes national bodies in the EU institutional system. The author recalls that since Poland became a full-fledged member of the EU, our country's central and local government administration began to operate on a transnational level and cooperate with interstate entities. EU law influenced all areas of its operations, the organizational structure of the administration and the scope and forms of exercising its competencies vis-à-vis external entities. Its impact was so strong that an "administrative merger" took place in the EU. Officials of national administrations began to cooperate, advise, assist and participate in the decision-making process within the Union (for example, within COREPER). Thus, a natural merger of state and local administrations with the EU administration took place (Grzeszczak, 2009, pp. 108 and 110).

Wolfgang Wessels and Dietrich Rometsch also take the position that states and their institutional systems should be included in European structures. The authors speak of the phenomenon of greater involvement of national bodies in the work of EU institutions, which is referred to in the literature as "multi-level governance." It is characterized by an intense process of interacting and interplay between national and European institutions. The authors go on to write that: "(...) the institutional system of the European Union is not a closed club, but is open to national institutions and their participation in the decision-making process. Conversely, too, national institutions are not confined to their national spheres of action, but are hugely oriented towards Brussels and interested in the processes taking place there. Thus, we have a progressive Europeanization of national institutions (Wessels, & Rometsch, 1996).

The thesis that national bodies carrying out EU tasks are part of the EU institutional system *sensu largo*, although not reflected in EU law, has support in the scientific community. It should be emphasized that the institutional system of the European Union, in addition to its elements, which are the individual institutions (*sensu stricto* or *sensu largo*), is also formed by the principles shaping their mutual relations and functioning.

THE SPECIAL SIGNIFICANCE OF THE PRINCIPLE OF SUBSIDIARITY FOR THE INSTITUTIONAL SYSTEM OF THE EUROPEAN UNION *SENSU LARGO*

In the institutional system of the European Union, *subsidiarity* (French *subsidiarité*), also interchangeably referred to as auxiliaryity, plays a key role. Etymology shows that the word comes from the Latin word *subsidium*, which means 'help, showing support, reserve forces (Millon-Delsol, 1998.)

Subsidiarity is an extremely universal issue, as it can be applied to all levels and all areas of social life (Dobek, 2008, p. 156). It has also been incorporated into the process of integration of countries within the European Union and made a basic principle of its functioning.

The principle of subsidiarity, applicable in the EU legal system, was expressed in the Maastricht Treaty on European Union, which included it in the canon of constitutional principles of the European Union. It used for the first time the term subsidiarity, which had never before appeared in treaty language. The final content of the principle of subsidiarity was formulated in the Lisbon Treaty, which paid special attention to its implementation in the regional and local dimensions. The principle was exposed in Article 3b(3) (Article 5(3) in the consolidated version of the TEU) giving it the following content: "In accordance with the principle of subsidiarity, in areas which do not fall

within its exclusive competence, the Union shall take action only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at the central, regional or local level, and can therefore, by reason of the scale or effects of the proposed action, be better achieved at Union level"¹². The provisions on the application of and compliance with the principle of subsidiarity are further clarified in the Protocol on the Application of the Principles of Subsidiarity and Proportionality and the Protocol on the Role of EU National Parliaments. It follows that the obligation to apply the principle of subsidiarity rests with the EU institutions, while compliance with the principle is supervised by national parliaments (Miastkowska-Daszkiewicz, 2010, p. 204).

The principle of subsidiarity means that in matters that do not belong to the EU's exclusive competence, it must refrain from taking legislative and organizational action as long as a member state can independently achieve a given goal as well as if the Union had achieved it (Kowalski & Ślusarczyk, 2006). In other words - the EU institutions bail out member states and their subjects in planes free from their "monopoly" only if they have an objective qualitative advantage (M. Perkowski, 2003. Wojtaszczyk, 2006). The principle of subsidiarity sets the limits of Union action. It refers to the division of competencies between the European Union and the member states and their local governments, as well as to the scope of Union legislation in both substantive and procedural aspects (Sozanski, 2012. Miastkowska-Daszkiewicz, 2010). Since the entry into force of the Lisbon Treaty, new rules on the division of competencies between the European Union and the member states have been in effect (Saganek, 2010, pp. 83-106). Currently, EU law specifies three types of competences: exclusive competences, shared competences with member states, and competences to support, coordinate or complement the actions of member states (Kuś, 2014, p. 82).

The principle of subsidiarity applies to activities in areas belonging to both the member state and the Union, so-called shared competences (Sozanski, 2010). According to Article 2(2) TFEU, the concept of shared competences means that: "Where the Treaties confer on the Union in a specific area a competence shared with the Member States, the Union and the Member States may legislate and adopt legally binding acts in that area." With respect to them, the Member States shall exercise their competence to the extent that the Union has not exercised its competence or has decided to cease exercising it¹³. In practice, the Union decides to take action that is not within its exclusive competence when two criteria are met together. The first is expediency, which is related to determining whether the objectives of the planned action cannot be sufficiently achieved by the action of the member states themselves or local governments within the framework of their constitutional systems. The second is effectiveness, which involves assessing whether the objectives of the planned action can be better achieved by EU action. Whether the objective of the EU can be better achieved by the EU than by the Member States is determined on the basis of the justification of the legislative act of the institution, which should include evidence of the desirability and effectiveness of the planned action in the form of relevant qualitative and quantitative indicators showing its achievement, for example, time, financial, personnel, material resources (Miastkowska-Daszkiewicz, *Creating Law*, 2010, pp. 203-204. Dynia, 2006).

The principle of subsidiarity in the EU institutional system plays a special role primarily because it streamlines the work of EU institutions. This streamlining is done, first, at the level of the EU itself through the distribution of competencies or tasks among its institutions. This can be observed in the example of the Council of the European Union and the European Commission. Both institutions have the largest number of auxiliary structures to which they delegate numerous tasks. For example, the Council of the European Union uses, among other things, numerous preparatory bodies¹⁴ committees and working groups and a subsidiary body, the Committee of Permanent Representatives of the Governments of the Member States COREPER.

¹² Official Journal of the EU 2007 C 306, p. 1.

¹³ Article 2(2) TFEU.

¹⁴ The list of preparatory bodies of the Council of the European Union is published and regularly updated by the General Secretariat.

The streamlining of the work of the EU institutions is also being done by decentralizing tasks from the EU level to the national level. It follows from the Treaty on European Union that all law-making and executive decisions should be made at the lowest possible level, closest to the citizens of the Union. In practice, the transfer of power as close to the citizens as possible involves the EU redirecting powers "downwards" to the regional and local levels. As Zdzisław Brodecki notes, their movement then takes place bilaterally, following a certain pattern. This consists in the EU member states transferring a fragment of their competencies to the EU and it can, in accordance with the principle of subsidiarity, transfer them back to the national (regional or local) level. When it turns out that a given action exceeds the capabilities of the national level bodies then the European Union takes action (Brodecki, 2011. Kurzyński, 2006 Grzeszczak, 2011, p. 77). In areas of shared competence, there is no need for the Union to deal with issues that member states can handle. It intervenes only when necessary. The principle of subsidiarity significantly relieves the burden on the EU institutions by freeing it of the responsibility for carrying out many tasks. Instead, it can focus on deciding the most important and difficult issues from the point of view of member states, as José Manuel Barroso emphasized in one of his State of the Union speeches delivered on September 11, 2013. The then president of the European Commission stated that: "I recognize the importance of the principle of subsidiarity. For me, the principle of subsidiarity is not a technical concept. It is a fundamental democratic principle. The ever closer union between the citizens of Europe requires that decisions be made as openly and as close to the citizens as possible. Not everything needs to be resolved at the European level. Europe must concentrate its efforts where its actions will have the most added value. It should not encroach where it does not. The EU needs to act on a large scale on important issues and on a smaller scale on more trivial matters, something that may have sometimes been neglected in the past" (Official website of European Union).

The special role of the subsidiarity principle in the EU institutional system is also manifested in the fact that it contributes to a significant expansion of that system. This process can be observed especially in the area of policies of significant importance for the national level. One of them is the EU's cohesion policy, which aims to equalize disparities in living standards and development between the richest and poorest regions of EU member states (Kowalski & Ślusarczyk, 2006, p. 199. Solarz, 2009). The instruments used to achieve this goal are the Structural Funds and the Cohesion Fund. Cohesion policy is carried out on a partnership basis by central and regional authorities of the member states together with the European Commission. Their cooperation in this area is called "shared management," which proceeds in three basic stages.

1. In the first stage, on the basis of a proposal from the European Commission, the European Parliament and the Council of the European Union establish the budget and the rules for its use.
2. In the second stage, the Commission establishes the investment priorities and development needs of the member states, which it includes in the partnership agreements. Member states submit to it a draft partnership agreement and draft operational programs¹⁵, including targets for specific areas of action. They can cover entire EU countries or regions as well as two or more countries. With regard to the submitted investment plans, the EC negotiates with national authorities to determine their final content.
3. The third stage involves the implementation of the programs in question by the member states and representatives of their regions involving, among other things, the evaluation, selection or monitoring of projects. Activities in this regard are organized by "managing institutions" in each country or region (Zrozumieć politykę Unii Europejskiej, 2014).

The management of regional policy, and thus EU funds, is considered a classic example of the implementation of the principle of subsidiarity (Luc, 2012, p. 141). In its implementation, the role of the European Union is

¹⁵ An OP is a document approved by the European Commission, containing a set of coherent strategic priorities to be achieved with EU funds. The OP can be sectoral when it is managed centrally or regional when it is managed by provincial governments (Tkaczyński, Willa & Świstak, 2009, p. 289).

subsidiary. The Commission does not select or manage projects, but only approves general programs covering a certain range of possible projects and transfers funds to them. Supporting the development of the regions is therefore dealt with, mainly by the member states, or rather lower levels of their territorial division especially the regions (in Poland their equivalent are the voivodeships). They are admitted to this process by virtue of relevant regulations in internal law (Właźlak, 2010). In Poland, the main entity implementing EU development policy is the local government. Due to the application of the subsidiarity principle, its administration is charged with the duties and responsibilities of implementing EU subsidies. Although formally these institutions are not part of the EU institutional system, by carrying out the tasks delegated by it and taking responsibility for them they actually become them. They are part of the institutional system of the European Union *sensu largo*, which consists of many levels of institutions. Its upper boundary is the European Commission, while its lower boundary is the institutions of local self-government that have direct contact with the client in the process of distributing EU subsidies (Perkowski, 2010). Thus, the EU institutional system includes not only EU-level institutions and bodies, but, depending on the policies implemented at the national level, also central and regional member state bodies.

"SUBSIDIARY" RECONSTRUCTION OF THE INSTITUTIONAL SYSTEM OF THE EUROPEAN UNION AND ITS NATIONAL CONSEQUENCES

The concept of the institutional system of the EU *sensu largo*, where the inclusion of national bodies of the Member States performing tasks entrusted by the Union is allowed, is a valid assumption, but it is not precise and, if not developed, creates the paradox of simultaneously talking about a system whose boundaries remain undefined. Thus, in order for the concept of the institutional system of the EU in the largo sense, which includes national bodies, to be substantively defensible - the question of the national bodies that make up the system and the related rules must be clarified.

The division of competences, discussed when considering the principle of subsidiarity, is a standard and at the same time a model of intra-systemic relations between the institutions of the EU and the member states. In turn, the object of these relations *de facto* reflects the object of the EU's activities, and is therefore extremely extensive. A certain orientation here may be the question of which EU policies contain a particular area of cooperation. In strictly EU policies, the principle is EU competence. This means that the Union is the only entity responsible for the implementation of certain tasks, and only its institutions, on the basis of established procedures, can be active in the areas indicated in Article 3(1) TFEU (Kuś, 2014, p. 86. Saganek, 2010, pp. 85-86). In contrast, the activity of member states in these policies is limited. If it is necessary for it to carry out certain activities, the EU authorizes them to do so and clearly indicates which issues the states can address.

In the case of mixed policies, competence depends on whose jurisdiction the constituent issue of the policy in question remains. If the competence belongs to the Union, then it alone indicates to what extent to authorize national bodies to act. This is the case with the implementation of the Cohesion Policy. The EU defines its general framework of objectives for the directions of development, while the implementation of its assumptions with the help of instruments in the form of appropriate funds the Union entrusts to the member states. If the competence belongs to the member states then it is they who indicate what the Union can do. When it turns out that member states can handle specific tasks on their own, the Union no longer participates in them (Kus, 2014, p. 82). An important clue telling which areas the Union entrusts to member states or their local governments. seems to be financial flows. It can even be metaphorically stated that: "money and competence go hand in hand," because the EU, by transferring financial resources to member states, also transfers competence to deal with them. It then expects them to carry out related tasks, for example, organizing competitions, handling projects, inspecting the bodies handling the funds and controlling the spending of EU funds. This is an extremely important and responsible role at the same time. Thus, it can be concluded that the concept of institutional system *sensu largo* including national bodies (state and local government) is definitely applicable in the area of Cohesion Policy.

Thus, the institutional system of the European Union *sensu largo*, as a consequence of the "subsidiary" reconstruction, includes, first, the institutions of the EU level - institutions *sensu stricte*, which are always and in every dimension part of the institutional system of the European Union. In particular, this category includes the institutions indicated in Article 13(1) of the TEU, as well as other institutions operating at the EU level. All of them are interdependent and relevant in their activities (especially the institutions indicated in Article 13(1) TEU) in terms of individual policies. In practice, however, there are some disparities in the subject matter of their interests. For example, the European Council deals with the creation of strategic documents (e.g., the Lisbon Strategy, Europe 2020), the Council of the European Union and the European Parliament and partly the European Commission create secondary legislation, the Economic and Social Committee and the Committee of the Regions have advisory functions, the Court of Justice of the European Union and the General Court pronounce on contentious issues, while the Court of Auditors deals with the exercise of financial control. It must be admitted, however, that in the area of Cohesion Policy, the European Commission is of fundamental importance. This institution at the EU level is responsible for, among other things, negotiating the EU budget, managing EU funds, approving operational programs and controlling the expenditure of EU funds. Equally important, though not as momentous, is also the Committee of the Regions, which is substantively one of the most competent structures on the subject of funds in regional policy.

Secondly, the institutional system of the EU *sensu largo* includes national bodies that are involved in the process of implementing EU funds in Poland. They are part of this system only in terms of the tasks carried out on behalf of the EU. In the first years of Poland's membership in the EU, the boundary between the EU level and the national level (Poland) was clearly delineated. Nowadays, this demarcation is progressively disappearing, firstly, due to the fact that there is bilateral and regular cooperation between the European Commission and Polish governmental level institutions in the implementation of EU funds, and secondly, because the European Commission conducts regular cooperation with provincial governments in the implementation of Regional Operational Programs. However, returning to the EC's cooperation with national-level institutions, it should be emphasized that in the 2021-2027 financial perspective, the institution, in connection with the implementation of EU funds, is to cooperate with:

1. The Ministry of Funds and Regional Policy - the minister in charge of this ministry serves as the managing authority for the following operational programs: European Funds for Infrastructure, Climate, Environment, European Funds for Modern Economy, European Funds for Social Development, European Funds for Digital Development, European Funds for Eastern Poland, Technical Assistance for European Funds. In addition, the Department of Certifying Authority, established within the structure of the Ministry, submits certified declarations of expenditure and payment claims to the European Commission;
2. The Ministry of Family and Social Policy - the Minister in charge of this Ministry serves as the Managing Authority for the Operational Program European Funds for Food Aid;
3. The Ministry of Agriculture and Rural Development - the minister in charge of this ministry serves as the managing authority for the operational program European Funds for Fisheries;
4. The Ministry of Finance - the minister heading this ministry was responsible for receiving payments from the European Commission, while the General Inspector of Fiscal Control, appointed within the structure of this ministry, was responsible for presenting to the EC the audit strategy for EU funds in Poland (Odachowski, 2012).

The above institutions delegate tasks related to the implementation of EU funds to other bodies/institutions at the national level. The Ministry at the national level has established a number of institutions to handle the operational programs it manages. Thus, intermediary institutions have been established, respectively, for all managed operational programs.

For example, the Ministry of Funds and Regional Policy entrusts the implementation of the priorities of the European Funds for Social Development program to such institutions as the Ministry of Education and Science, the Ministry of Family and Social Policy, the Ministry of Health, the National Research and Development Center,

the Polish Agency for Enterprise Development as intermediary institutions. Intermediary institutions, in turn, can delegate tasks related to the implementation of EU funds to implementing institutions. An example of this is the European Funds for Eastern Poland program, where the intermediary institutions Polish Agency for Enterprise Development, and the Center for EU Transport Projects are supported by implementing institutions such as the Ministry of Climate and Environment, the National Fund for Environmental Protection and Water Management.

Third, the institutional system of the EU *sensu largo* includes various local government bodies and entities. The Ministry of Funds and Regional Policy has delegated a specific range of tasks related to the implementation of certain components of the European Funds for Social Development program to provincial governments, which in turn have delegated tasks to other entities such as local government institutions making them implementing institutions. Implementing institutions operating at the regional level can, by announcing a competition, also cede the handling of funds to other local entities such as district labor offices (*Polish PUP*), or large and experienced NGOs (Official site of European funds in Poland).

It is also possible to automatically move from the EU level to the local government level, which is the case with the implementation of Regional Operational Programs (ROPs) by provincial governments, which negotiated regional programs with the European Commission and then bear responsibility for their management and implementation in the regions. Previously, the provincial governments as managing institutions for the ROPs appointed intermediate institutions, whose function was performed, for example, by the Provincial Funds for Environmental Protection and Water Management. The institutional system of the EU *sensu largo* also included inter-state structures within its scope, due to the possibility of creating within the framework of European Territorial Cooperation Programs Joint Technical Secretariats (JTS) appointed to handle these programs. Mention should also be made of control bodies, i.e. Tax Control Offices (FCAs) performing financial control of beneficiaries (Krassowska, 2008, p. 18) and Provincial Administrative Courts (*Polish WSAs*) exercising judicial control in the process of implementation of EU funds in Poland (Kojło & Stachurski, 2010, pp. 88-142).

In the current financial perspective, it is difficult at this point to indicate the exact number of Polish institutions involved in the process of implementing EU funds due to the currently ongoing process of organizing the institutional structure, which requires detailed research. As a curiosity, it can be pointed out that in the financial perspective 2007-2013, the author of this publication diagnosed a total of nearly 140 managing, intermediary and implementing institutions in the process of distributing EU subsidies. It should be emphasized that in reality there are many more institutions involved in the process of implementing EU funds in Poland. These include entities that obtain EU funds and then transfer them, for example, in the form of financial resources, training, courses or counseling to the ultimate beneficiaries, i.e. individuals, institutions or social groups. It is almost impossible to indicate all the entities providing this type of support.

POLISH NATIONAL INSTITUTIONS IMPLEMENTING EUROPEAN UNION FUNDS AS PART OF THE EU INSTITUTIONAL SYSTEM *SENSU LARGO* AND THE RELATED IMPLICATIONS FOR THE SYSTEM OF IMPLEMENTING EU FUNDS IN POLAND

National bodies that carry out the tasks of the EU and are therefore part of its institutional system are not fundamentally different from the others. However, certain consequences are exemplified.

First, the Ministry of Funds and Regional Policy in each financial perspective is required to plan the institutional system for implementing funds at the national level. This involves a meticulous and transparent definition of competencies and tasks, and the involvement of people with the appropriate knowledge and experience to carry them out. Officials hired to handle funds can enjoy the privileges of implementing projects under the Technical Assistance Operational Program or the technical assistance component of national or regional programs (Szkolenia w administracji rządowej, 2009, pp.8-9). They are a form of support for officials to be able to better manage EU funds and oversee their disbursement and accounting. Technical assistance supports the administration

substantively, financially and organizationally. The program/component funds are used, among other things, to develop the potential of institutions involved in the administration of funds by improving the skills of officials using traditional forms such as: workshops, courses (including language courses), studies, training (both in terms of improving work efficiency and in a specific field, for example, law) and using innovative educational solutions, i.e.: e-learning, bench-learning, cooperation and twinning between institutions, and information and educational campaigns. Using the program, officials in particular can acquire/improve their knowledge on issues related to the handling of the implementation of the Cohesion Policy in, among others: public procurement, state aid or environmental impact. Another benefit of technical assistance for civil servants handling funds is an increase in salaries. Further mention should be made of improving the working conditions of officials through the purchase of equipment, subsidies or the creation and development of systems and ICT infrastructure (European funds of Poland).

Second, the system for implementing EU funds at the national level and especially the national bodies involved in the process of implementing EU funds are subject to special control.

The activity is carried out against them not only by national institutions such as: Supreme Chamber of Control, Internal Security Agency, or the President of the Public Procurement Office, but also by special structures belonging to the system of implementation of EU funds, i.e. the audit institution (AI) or monitoring committees. The function of the IA in Poland is performed by the General Inspectorate of Fiscal Control. This body, with the participation of the Ministry of Finance and the Treasury Control Offices, verifies whether activities related to the distribution of EU funds are carried out in accordance with the law and procedures by auditing the functioning of the entire management and control system for the implementation of EU funds. Monitoring committees, in turn, examine the progress of implementation of individual operational programs.

Moreover, peculiar to the system of implementation of EU funds is also the fact that the institutions operating it can be controlled by the European Union itself, or rather some of its institutions. Among them, the European Commission in particular should be pointed out. Its services can verify national bodies implementing EU funds, among other things, in terms of the effectiveness of management and control of the use of EU funds, the correctness of expenditures declared to the EC for financing, the correctness of project selection procedures, the correctness of procedures for reporting irregularities that have occurred, the implementation of compliance rules for carrying out public procurement, the correctness of guidelines provided to intermediate bodies and beneficiaries, and the implementation of promotional requirements. National bodies implementing EU funds may also be audited by the European Anti-Fraud Office, which may conduct inspections in member states in cooperation with national investigative services, police, judicial and administrative authorities in connection with fraud in the implementation of EU funds. The audit can also be carried out by auditors of the Court of Auditors, who check the bodies responsible for managing and spending EU funds. In particular, the auditors examine the way financial operations are recorded and documented, the legality and regularity of their execution, and the way funds are managed in terms of economy, efficiency and effectiveness.

Third, the system of implementation of EU funds at the national level and thus the institutions implementing EU funds in Poland, as part of the EU institutional system, are expected in a special way to comply with EU legal norms and standards of operation. In particular, those arising from the Charter of Fundamental Rights of the European Union, which in Article 41 obliges to maintain the standard of good administration and the European Code of Good Administrative Behaviour. This standard is based, among other things, on respect for the law, customer (recipient) orientation, reliability, acting honestly, impartially, objectively, transparently, timely, non-discriminatory, respecting standards of accessibility and equality in the process of applying for EU grants.

Fourth, due to the fact that national institutions implementing EU funds are part of the EU institutional system, beneficiaries have a special appeal path against the decisions issued in the evaluation of projects. Applicants have at their disposal the legal means of appeal, which they bring to the institutions indicated in the competition documents. These are most often the institutions announcing and organizing competitions, program management institutions or intermediary institutions in their management. These measures are subject to consideration according to a strictly

defined procedure. Thus, applicants in connection with objections to the evaluation of projects do not appeal, for example, to Local Government Appeal Colleges, i.e. bodies competent to consider, among other things, complaints and appeals against administrative decisions and complaints against decisions of administrative bodies, but to institutions involved in the process of implementing funds in Poland (Skibiński, 2009, p. 122).

CONCLUSIONS

As it seems, the perception of national bodies as part of the institutional system of the EU *sensu largo*, so far treated as an exception - in the area of implementation of EU funds is becoming the rule. This, in turn, comes with certain consequences. Since national officials carry out EU tasks, negotiate and have contact with its institutions, more should be expected of them. Awareness of this state of affairs is generally shallow, but the public interest relies on it being deep and pursued with conviction. National institutions involved in the process of implementing European Union funds, as part of the Union's institutional system, are obliged to act in accordance with its principles and standards. They should therefore be guided by the standard of good administration and respect the resulting right to good administration (as a general principle/fundamental right), which is confirmed by the Charter of Fundamental Rights of the European Union and the European Code of Good Administrative Behaviour.

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