EASTERN EUROPEAN JOURNAL OF TRANSNATIONAL RELATIONS

Implementation procedures for EU development policy in Poland

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Abstract. EU law obliges Member States to introduce such management and control systems for the implementation of financial instruments on their territory to ensure their proper functioning and compliance with the objectives and principles of EU development policy. Within the limits set by the principles and provisions of treaty and statutory law, Member States are free to design these systems. The aim of the article is to present an outline of the national model for the implementation of EU funds in Poland from a procedural perspective (described in full detail in the author's monograph cited below). The study mainly used a methodology of analytical research (modelling) and doctrinal legal research (analysis of subject literature) with elements of comparative legal research. The analysis shows that the research results indicate that the most frequently used and at the same time the basic method of implementing development policy instruments is using special administrative procedures. These procedures (referred to in the doctrine as third generation procedures) differ from the general administrative procedure in certain elements like stronger formalization, accelerating the trial, methods of proof, remedies, and others. Due to the administrative nature of these proceedings, the control of decisions or other acts issued in them is exercised before administrative courts. Only some disputes relating to claims arising from co-finance decision or contracts and other claims in contractual or tortious matters are settled in the polish common courts. Such construction and specificity of the characterized system is justified by the purposes and functions of EU development policy and nature of its financial instruments. Also for this reason the requirements placed on implementation procedures in terms of their public accessibility and functionality should be seen from a different perspective than standard jurisdictional procedures, designed for general administrative or civil matters.

Citation: Jaśkiewicz, J. (2023). Implementation procedures for EU development policy in Poland. *Eastern European Journal of Transnational Relations*, *7*(1), 95-106.
https://doi.org/10.15290/eejtr.2023.07.01.09

Academic Editors: Rafał Poździk & Marek Martyniuk

Publisher's Note:

Keywords: EU development policy, polish implementation procedures.

JEL Classification: K23, K49.

GOVERNANCE SYSTEM OF EU DEVELOPMENT POLICY

The EU's development policy is a public policy whose objectives, instruments and principles are the same throughout the Union and which is Community-based, in the sense that its programming and implementation involves the Union's institutions and those of the Member States. The scope of this policy is broad, encompassing what is known as cohesion policy, regional policy and sectoral policies (Common Agricultural Policy and Common Fisheries Policy), traditionally framed and regulated separately.

The model for the governance of this policy is set by Article 298 TFEU, referring to the notion of "good administration" or "good governance" developed in Western doctrine and associated with a move away from centralised and bureaucratic public management. In particular, it is about such management that will ensure the distribution of public goods in an effective, transparent, impartial, responsible, mature and taking into account the resources of a specific environment (Wegner-Kowalska, 2016, p. 3 and next). The essence of the idea of good governance is to base the steering processes on communication relations between administrative bodies and citizens, realised through deliberative discourse (Żak, 2017, p. 113.). This is of fundamental importance for the civil functioning of the state and law, and for the pluralistic social order created by citizens, so different from the order characteristic of a centralized system with a paternalistic vision of power and statehood, which, although it cares for citizens, does not involve them in public affairs (Turska, 1992, p. 278).

An inherent element of the EU development policy and the organization of its system is the cooperation of EU and national institutions. A broad forum and various instruments and forms of cooperation serve to implement all treaty principles, including: the principle of solidarity, the principle of partnership, the principle of subsidiarity and the principle of sustainable development (Trybka, 2018, p. 548 and next). European procedures are also required to ensure that the debate taking place within them is public, open, free from external and internal coercion and that it aims at rationally motivated consent. Such procedure is intended to lead to the selection of the best means of achieving the assumed goal as a common good (Jedlecka, Helios, 2013, p. 22).

The "good governance" model refers to three basic methods of governance in EU development policy - direct (exclusive governance), indirect (delegated governance) and shared (partnership governance). Among them, shared (indirect) governance is the general, preferred and most used method (Jaśkiewicz, 2023, p. 169). The increasing role and function of this management method is evidenced by successive reforms of the EU development policy management system (especially cohesion policy), carried out in recent programming periods and aimed at strengthening partnership and multi-level governance (Guz, 2012, p. 51-52). The EU's system of shared management is characterized by the fact that EU law does not strictly regulate its organization of functions and tasks in the national territory, leaving the member state with autonomy in shaping the national management and control system and its implementation procedures.

These principles of governance also apply to national procedural regulations, which must honour them and ensure their implementation. The essence of the relationship between the inclusive level and national autonomy is summarised in recital 55 of Regulation (EU) 2021/1060, which states that Member States and the Commission, under the principles of shared management, are equally responsible for the management and control of programmes and give assurance on the legal and regular use of the EU Funds. As Member States are in charge of implementing EU cohesion policy in their territories, they have the primary responsibility for the proper management and control of its implementation (Rodriguez-Pose & Garcilazo, 2013).

The provisions of Article 69 of Regulation (EU) 2021/1060 detail the obligations of Member States on other aspects of the procedure as well, stating that it is for Member States to have management and control systems in place which ensure that they operate in accordance with the principle of sound financial management and other principles. Member States' obligations also relate to the design of appropriate information, control and audit procedures, as Member States are required to take the necessary measures to ensure the effective functioning of their management and control systems, in particular to prevent irregularities, including fraud. Member States are also required to structure their national regulations (frameworks) in such a way as to ensure that complaints about the Funds are dealt with effectively.

EU DEVELOPMENT POLICY PRINCIPLES AND MEMBER STATES' PROCEDURAL AUTONOMY

Regulation 2021/1060 states that the implementation of financial instruments is based on the principle of partnership and multi-level governance, ensuring the involvement of regional, local and urban authorities and other public institutions, civil society, economic and social partners (Recital 13, 14 and 55 and Articles 7 and 8 Regulation 2021/1060). Management and control systems are very diverse in the EU, because EU law does not comprehensively and exclusively regulate these systems on the national level. Honouring national traditions, patterns and institutions, shaped by different historical, political and social circumstances, EU does not introduce any single model of procedural regulation an its area.

This approach stems from the essence and systemic assumptions of the European Union and expressed in the principles of partnership, shared management and efficiency, a way of managing and administering development policy that is mixed – integrative on the one hand, and subsidiary on the other.

The EU model of development policy governance thus leaves Member States with a choice of procedures in relation to certain functions, objectives, forms, and modes of action. The duties and tasks of the authorities of the member countries consist primarily in setting specific priorities and objectives of EU intervention and proper administration of EU funds, which is served by the national legal and institutional framework. However, national management systems and its institutions and procedures are evaluated by their effectiveness, and correlation (compatibility) with the EU system. Therefore, regulations have been introduced at the EU level, which are binding for member countries also in the formation of the national management system of development policy.

The provisions of the horizontal and sectoral regulations explicitly state that the implementation of the implementation instruments on the territory of a Member State is to be carried out in accordance with the institutional and legal system specific to the country (Brysiewicz & Poździk, 2012, p. 10). This freedom, referred to as institutional or procedural autonomy, applies both to the sphere of lawmaking and its application (Kmieciak 2009, p. 12). It sometimes goes so far that even regions of Member States can carry out their own development policy tasks directly on the basis of EU law, which applies to states with a federal or highly regionalized system (Jaśkiewicz, 2023, p. 202).

This autonomy is excluded when EU law contains specific and exhaustive procedural regulations. Moreover procedural autonomy, whenever a case is linked to EU law, must be exercised respecting the principles of equivalence (equivalence), loyal cooperation and efficiency, in accordance with the "Rewe/Comet" doctrine. This rule, updated by successive cases decided by its creator - the European Court of Justice (ECJ), requires the elimination not only of national rules (as well as practices) which prevent the exercise (enforcement) of claims based on EU law, but also of those rules which excessively impede such exercise (judgments in cases Rewe-Zentralfinanz, 33/76 and Comet BV, 45/76; The Queen, C-213/89; Unibet, C-432/05). Thus, if national procedural rules do not comply with the terms of this formula, the authorities (courts) of the Member States are obliged not to apply them (Taborowski, 2009).

In the case of development policy procedures, the scope of national autonomy is even narrower, as the subject of the policy is interventionism programmed and financed at EU level and guided by EU statutory acts. The limits of the freedom to design national procedures for the implementation of development policy are therefore defined in particular by the principles and rules contained in the EU legal acts established for specific programming periods, such as general (horizontal) regulations, sectoral regulations and financial regulations. National development policy procedures for the implementation of EU funds are therefore required to have stricter systemic and content correlations than those covered by the "Rewe/Comet" rule.

EU law, while leaving Member States some margin of discretion to design management and control systems on their territories, obliges them to adopt "adequate measures" to guarantee the proper functioning of management and control systems, specifying what needs to be done.

The framework for this adequacy and, at the same time, the limits of autonomy designate first by EU's treaties and EU statutory law and the universally binding principles and rules contained therein. Referring to the current general regulation it indicates that the implementation of EU funds should respect the principles set forth in Articles 3, 5 TEU and Article 10 TFEU, taking into account the Charter of Fundamental Rights of the European Union, and the obligations set forth in the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities, Its preamble also stresses that Member States and the Commission should strive to eliminate inequalities and promote gender equality, as well as combat equal forms and manifestations of social discrimination (recital 6 of the Regulation 2021/1060).

Reinforcing this relationship between the EU system and national systems, intended to strongly influence the shape and actual functioning of national or local procedural regulations introduced throughout the community, concerning the entire system of EU development policy, is the mechanism of conditionality, which imposes on Member States requirements related to the observance of the rule of law in key elements for the implementation, evaluation and control of the spending of EU funds. These elements include not only substantive requirements, but above all such a structure and organisation of the controlling entities (in particular the judiciary) that the actions and decisions taken by these entities within the framework of the given procedures are independent of external factors, which applies most of all to judicial control.

The provisions of the general and sectoral regulations also contain detailed regulations regarding sustainability of investments and to safeguard against the illegal use of EU Funds, reporting and monitoring of operational programmes, detailing the conditions and criteria for eligibility of expenditure, principles for designating regions and other areas or aims eligible for support, ensuring the proper functioning of the national management and control systems and setting out the specific functions of the managing, certifying and audit authorities.

POLISH IMPLEMENTATION PROCEDURES. INTRODUCTORY REMARKS

Development policy implementation procedures belong to the executive level and are related to its legal and financial instruments. At the EU (general) and shared levels, implementation procedures are established for European funds and, partly, for the development and implementation of partnership agreements and programs. Procedures for lower-level implementation instruments are regulated by national law, which should, however, be consistent with the principles and provisions of EU law. The system of Polish procedures in Poland is of a mixed nature, combining the features of regulatory procedures and jurisdictional procedures. Within this system can function administrative and non-administrative (civil) proceedings (modes).

National jurisdictional procedures may be adversarial or inquisitorial. The adversarial litigation is based on the principles of free exercises by the parties of their rights. The principles of adversarial proceedings are based on the assumption saying that if an individual is entitled to exercise specific rights in their own interest, only that individual shall decide if they wish to protect this right and by means of what remedies. A representative example of this model is civil proceedings.

In the inquisitorial model, in turn, the examination proceedings are based on the ex officio principle, which means that a competent authority shall carry the burden of evidence for establishing findings of fact ex officio. When it comes to the administrative procedure, the objective of the competent authority is to collect all information of material importance in a particular matter (principle concerning completeness of evidentiary proceedings). Therefore, the administrative authority shall seek for sources and evidence and shall review and verify the factual statements issued by the parties. A representative example of this model is general administrative proceedings.

Administrative procedures are, in the Polish system, the basic forms of implementation of the management and control of development policy implementation at national level. The implementation functions are not performed by national non-administrative procedures, but they can serve to protect rights, entitlements and claims arising from the implementation of implementation instruments. These procedures include general administrative proceedings and other proceedings to which the provisions of the (Polish) Code of Administrative Procedure or other administrative procedures based or modelled thereon are applicable as well as special administrative procedures constructed for other fields and applicable to the implementation and control of development policy at the national level (e.g. the Tax Ordinance, the Public Finance Act and its procedural provisions). Also regulations constructed exclusively for the purposes of implementing development policy at the national level, such procedures for applications for co-financing, are also of an administrative nature.

Non-administrative procedures, and within them primarily civil proceedings, are therefore used in the development policy system in an auxiliary way - not as a method of management or control, but as their complement in cases where some civil legal consequences may arise (property and non-property).

National administrative procedures derive from and are based on the system of public authority and the model of administrative jurisdictional procedure well established in Poland, based on the inequality of parties and the possibility of authoritative forming of their legal relations (Krawczyk, 2016, p. 104). These include in particular general administrative procedure, regulated in the Code of Administrative Proceedings, the Tax Ordinance modelled on it, and special procedures applied in the implementation of financial instruments of the cohesion policy, the common agricultural policy and the fisheries policy. Such procedures are used in procedures aimed at legal individualizing and concretization implementation financial instruments (e.g. granting subsidies or co-financing applications) and also in control procedures.

In special and hybrid administrative procedures, however, many elements characteristic of third generation procedures can be found, such as the introduction of the possibility of "fluid" participation of participants in the proceedings, using of dialogue methods leading to consensus, or the abandonment of the "canonical", in Polish administrative law, institution of legal interest. The "culmination" of this construction is the judicial and administrative control, concerning decisions or other acts or actions of an administrative nature, concerning he rights or obligations concretised in these proceedings (Kmieciak, 2015, p. 5 and next).

Non-administrative procedures are governed by public law too, but they have been constructed with a view to institutions and legal relations belonging to the sphere of private law rather than development policy matters. These are arbitration proceedings and proceedings before ordinary courts (civil courts), used, in the absence of special regulations, for the exercise of certain powers or the settlement of disputes concerning civil claims related to the application of development policy law and its instruments. In the civil procedure, disputes concerning the implementation of the implementation instruments are resolved in relation to such private law institutions as contractual liability, tort liability (including public authority), validity of declarations of intent and legal acts and others (Poździk, Brysiewicz, 2011, p. 46 and next). It is also in this procedure that disputes concerning claims arising from co-financing agreement are resolved (termination of these agreements, declaration of its invalidity or non-existence or other bond and tort claims).

The application of systemically and functionally different procedures in the national management and control system of development policy create a complex system not entirely consistent internally. It causes that some procedural issues such as jurisdiction, competence, conditions and prerequisites for initiating a given procedure, differences in

the construction and course of evidence, adjudication, legal and appellate remedies, mutual recognition of decisions and other become some times more important than merits of cases (Jaśkiewicz, 2023, p. 494 and next).

GENERAL ADMINISTRATIVE MODE. ASSUMPTIONS AND APPLICATIONS IN NATIONAL DEVELOPMENT POLICY

The administrative procedure, and within it the general mode, is the standard mode used to deal with public matters by concretising them for the individual addressee. The general procedure, and other administrative procedures based on it, belongs to the jurisdictional model (in the Barnes typology, these are first-generation procedures; Barnes, 2019, p. 284 and next). Its common feature is to entrust the resolution of a individual legal situations or disputes to administrative authorities, acting on the basis of codified procedural rules. They are regulated in the Code of Administrative Procedure and special acts. This model is also used in administrative court proceedings, including control proceedings concerning the area under consideration.

Administrative proceedings are defined in the Polish doctrine as 'a sequence of procedural acts of public administration bodies and other procedural entities, regulated by procedural law, aimed either at the realisation of a substantive legal norm or at the determination of another legal effect required by law' (Niewiadomski, 2002, p. 20). Decisions or other acts issued in administrative jurisdictional proceedings are mandatory in the sense that their adoption is a consequence of the valid initiation of proceedings and the fulfilment of the conditions necessary for the resolution of some individual case. The essence of a decision issued in administrative proceedings is the concretisation of some legal relationship arising from public law (*sensu largo*).

In the procedural aspect, the protection of the legal interest of an individual (sometimes of a collective) is expressed in the fact that the subject having it has the possibility to demand from the administrative body to take actions provided for by the law in order to satisfy his claim (Kmieciak, 2014, p. 181-182).

In administrative procedure the inquisitorial mode is applied, which requires the authority to take all legal permissible actions, necessary to clarify the relevant to the case facts subject to legal qualification. The parties participating in the administrative procedure are subordinated to the decisions of the administrative authority and have no influence on the legal organisation of the proceeding to take evidence; however, they may, to the extent permitted by the procedural norms, participate in its results within the institution of active participation in the procedure.

In accordance with the rules contained in Articles 7 and 77 § 1 of the Code of Administrative Procedure, the burden of proof is on the authority. The authority is therefore responsible for proving the truth of a fact (proving) and justifying its significance for the case (significance of the fact, justification of the factual basis of the decision) within the framework of a free assessment of evidence (Article 80 of the Code of Administrative Procedure). The party's guarantees are strengthened by the presumption contained in Article 81 a § 1 of the Code of Administrative Procedure, according to which 'if the subject matter of the administrative proceedings is the imposition of an obligation on a party or the restriction or deprivation of an entitlement of a party, and in this respect there remain unremovable doubts as to the facts, these doubts are resolved in favour of the party'. However, these rules may be modified in hybrid procedures, which is justified by the specificity of the regulation: its objectives, functions and environment, as well as the need to ensure efficiency of operation. Such modifications have been introduced into special development policy procedures.

The general administrative procedure is applicable to these cases in the field of implementation of development policy, which concern irregularities resulting in correction and obligation to return of the co-financing, administrative penalties or other effects of control beneficiaries. A similar procedure, governed by the provisions of the Tax Ordinance, determines the liability of members of authorities in the event of ineffective enforcement against legal persons or other organizational units.

SPECIAL ADMINISTRATIVE PROCEDURES IN THE IMPLEMENTATION SYSTEM FOR EU DEVELOPMENT POLICY INSTRUMENTS IN POLAND

The general administrative procedure is primarily used where there is a need for jurisdictional decisions, which also constitute a title for enforcement. Other functions and aspects are relevant in the case of distribution of EU funds, carried out within the framework of programmes or other implementation instruments aimed at development objectives and intended to beneficiaries. In this area, other regulations are applied in the national system – special administrative procedures which, as third generation procedures, are to a greater or lesser extent, deviations from the standard model (Kamiński, 2016, p. 289 and next). The use of such procedures results from the specificity of the implementation of financial instruments and from the fact that the procedures are primarily intended to effectively implement the objectives of EU interventionism (Baltina & Muravska, 2017, p. 271). The latter aspect is seen primarily in economic terms, as measurable effects of the implementation of the financial instruments, which is cited as an important and perhaps the strongest argument in favour of simplifying these procedures, introducing competitive elements, stronger formalisation and rewarding the activity of participants in these procedures.

The efficiency is also perceived in relation to the speed of settling cases and using legal remedies by beneficiaries of the EU aid, who participate in various types of implementation proceedings. In these procedures, standard administrative acts (decisions, grants, subsidies) or specific acts (co-financing agreement) are the direct basis for awarding funds to beneficiaries. The latter forms of concretization EU aid, combining public and private elements, are favoured by EU law and mentioned as a basic form of support in the horizontal regulations. In Polish system these decision-making procedures belong to hybrid or special procedures, used for conclusion of co-financing agreements with the beneficiaries.

These proceedings are regarded as a type of administrative procedure of the third generation, which, in an exclusive way, provides for the application of only some provisions of the Code of Administrative Procedure (Wegner 2020, p. 92-93). This solution is already proven, as it has already appeared in previous programming periods and was mainly tested under the Act on the principles of development policy and the Act on the principles governing the implementation of the cohesion policy programmes financed under the 2014–2020 financial perspective . The following characterisation of the implementation procedures in force in the Polish system is based on the mode regulated in Chapter 14 of the Act on the principles governing the implementation of tasks financed from European funds under 2021-2027 financial perspective (hereinafter referred to as Implementing Act 2021-2027), which can be regarded as a continuation and improvement of the mode used in previous financing periods. Separate, procedures, although more or less modelled on the discussed, function in sectoral policies - agricultural policy and fisheries policy.

The Implementing Act 2021-2027, following the Regulation 2021/1060 and the conditions indicated therein, specifies that the selection of projects for funding is to take place in an equal, transparent, fair and impartial (Article 45 sec. 1 and sec. 2). Achieving the proper effectiveness of these proceedings is achieved primarily by shortening (simplifying) the course of the explanatory (evidence) proceedings and changing the structure of remedies. The selection of projects for co-financing is made in a competitive or non- competitive mode. The former is the rule, the latter is the exception used to co-financing projects, the applicants of which, due to the nature or purpose of the project, are entities already indicated before submitting the application for project financing and which consist in the implementation of public tasks concerning strategic importance for the socio-economic development of the country, some region or some special area (Article 44 sec. 1 and sec. 2 Implementing Act 2021-2027).

From the point of view of the interests and guarantees of the participants (beneficiaries) the most important element of the competition procedure is the information on the result of the qualification of their applications, which is recognized by national law as an kind of public administration act. In the case of a positive assessment, this information 'opens the way' to the next stage of the competition or leads directly to the procedure of concluding a co-financing agreement. Negative information ends the competition procedure (competition mode), and it is with

regard to it that the appeal system and a specific legal remedy, known only to this procedure, in the form of a protest, have been constructed. Therefore, in the case of a negative evaluation, the information contains the justification of the result of this evaluation and the instruction on the possibility to request a protest (Article 56 sec. 1 to sec. 7 Implementing Act 2021-2027).

The protest is the only and exclusive remedy of a substantive and devolution nature provided for by these procedure (as well as its predecessors acts). Its function is to fight against the "unfavourable for the applicant" assessment of the application. Only the applicant, i.e. the entity that submitted the application for co-financing in the competition organized by the competent institution and was its participant, has the right to request a protest. This protest is examined by a managing authority (or an intermediate body - if it has been established for a given programme and the managing authority has entrusted it with tasks in this respect, on the basis of an agreement or contract). After reviewing it competent institution informs the applicant of the outcome of the examination of its protest (Article 63 to Article 68 Implementing Act 2021-2027).

This information shall include in particular:

1) the content of the decision whether or not to accept the protest, together with the reasons;

2) if the protest is not upheld, an instruction about the possibility of lodging a complaint to the administrative court. The subject of this complaint is "failure to consider the protest, negative reassessment of the project or leaving the protest unprocessed". The legitimate person to lodge a complaint is the applicant, by whom is meant the participant of the call for proposals, who has submitted the application for co-financing (Article 70 to Article 73 Implementing Act 2021-2027).

This special procedure can be considered as a matrix used in other sectors of development policy on the national level. Its elements have been incorporated into sectoral procedures - agricultural and fisheries. In the first sector two modes are used: a decision-making one (general administrative with some modifications) and a hybrid one related to the co-financing contract, which resembles, but is not identical, to the competition procedure in cohesion policy. In the second sector - fisheries are used two modes too:

1) on the basis of a co-financing agreement (for investment aid relating to fishing vessels, inshore fishing and compensation or other aid specifically indicated in law;

2) on the basis of an administrative decision (for aid for permanent or temporary cessation of fishing activities and for other compensations).

Even the decision modes in these procedures undergo significant modifications. This applies in particular to the modification of the rules for collecting factual material, which boil down to certain deviations from the inquisitorial mode. In these proceedings, it is the parties, and not the authority, who are obliged to present evidence and explain the circumstances of the case from which they derive legal consequences favourable to them. In this way a rule known from the Civil Code, that the burden of proving a fact lies with the person who draws legal effects from that fact, was transferred to the administrative procedure.

Such and other modifications are justified by the specificity of the proceedings and the situation of the beneficiaries of Union assistance in the perspective of the obligations incumbent upon the Member State and its authorities with regard to the correct spending of Union funds. Such solutions are honoured by EU practice and national case law, which emphasises that the rules of EU development policy establish not a right, but an obligation for a party to cooperate with an authority because the EU aid is a benefit for the parties. Consequently a lack of activity or cooperation with the authority must be assessed as a breach of EU aid rules and a party who fails to comply with the above obligation must be aware that the outcome of the authority's determination of the case depends on its attitude.

JUDICIAL CONTROL OF ADMINISTRATIVE IMPLEMENTATION PROCEDURES

Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms expresses the fundamental principle of procedural fairness, which is the right to an effective remedy. EU law also requires Member States to ensure effective access to judicial proceedings, including pursuing claims and legal remedies. With regard to Polish implementation procedures these functions are performed primarily by the administrative judiciary. Pursuant to Article 184 of the (Polish) Constitution, the Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration.

The provision of Article 176 of the Constitution stipulates, on the other hand, that court proceedings shall have at least two stages (two-instance procedure), whereas the organisational structure and jurisdiction, as well as procedure of the courts shall be specified by statute. The courts of first instance are Voivodship Administrative Courts.

This control of courts over execution of statutory powers by public administration shall be exercised solely on the basis of legality. Hence, the basic objective concerning control of administrative court is reinstatement of legality, disrupted by a illegal administrative decision. Such control also includes rulings on the legality of acts issued in implementation procedures under consideration. Although administrative courts do not assess purposefulness or legitimacy of administrative acts, it is pointed out that the solution complies with constitutional and international standards (Adamiak, 2008, p. 388). Control and review of public administration activities, exercised by administrative courts, includes also judgment with respect to cases concerning inaction of organs or excessive duration of proceedings. Jurisdiction of administrative courts in such cases applies therefore to failure to undertake acts or actions, required by law, with respect to individual cases within the specified timeframe by public administration organs.

A basic legal remedy to initiate proceedings before administrative court is a complaint. A complaint may be lodged upon exhaustion of means of appeal should these means of appeal served the claimant within the framework of proceedings before a competent authority in the case. A party to the proceedings shall therefore have a right, rather than obligation, to requesting a complaint to the court. The standard deadline for submitting a court complaint is 30 days from the date of receipt of the decision or other administrative act. In the cohesion policy implementation procedure the time limit for requesting a complaint is 14 days from the date of delivery of the information to the complainant, with the complaint being lodged directly with the provincial administrative court (not through the authorities as in the normal procedure). The shortening of the time limit and the change in the manner of filing a complaint is aimed at speeding up the examination of the case, which is strengthened by the regulation stating that the complaint should be examined within 30 days from the day of its filing (Article 73 sec. 2 to sec. 5 Implementing Act 2021-2027). The provisions of the general administrative court procedure apply to these cases with certain exceptions relate to the procedure for filing a complaint, with holding of an act or action by the court, mediation and simplified proceedings.

In development policy cases, the same rules apply as in other cases resolved by administrative courts. Proceedings before administrative courts are based on the adversarial principle, as procedural law provides for the same means of legal protection for the parties. The position of the authority, which is one of the two opposing parties to the administrative court proceedings, is tantamount to the position of the claimant, who has the same procedural rights. Some derogations from the provisions of administrative court proceedings concern the deadline and procedure for requesting a complaint, suspension of proceedings, exclusion of mediation and a simplified procedure (Article 76 Implementing Act 2021-2027). In these all cases the administrative court is not bound by the allegations and conclusions of the complaint and the legal basis invoked, and retains the competence to apply legal remedies to remove the state of infringement of law within the limits of the same case.

If the administrative court finds that leaving the protest without consideration was unjustified or that the project evaluation was carried out in a way that violated the law and this violation had a significant impact on the outcome of the evaluation, it shall consider the complaint and refer the case to the competent institution for reconsideration.

However, the case may not be referred for reconsideration if at any stage of the appeal procedure the amount allocated for co-financing of projects under the measure has been exhausted (these funds were allocated for projects covered by co-financing or selected for co-financing; Article 73 sec. 8, Article 77 sec. 2 and 3 Implementing Act 2021-2027).

CONCLUSIONS

Member State authorities and institutions have an important role in the implementation of EU development policy objectives and instruments in accordance with the principle of subsidiarity. The programming and management of development policy instruments takes place under a system of 'shared management', whereby the Commission entrusts the Member States with the implementation of EU programmes at national level.

EU law obliges Member States to introduce such management and control systems for the implementation of financial instruments on their territory to ensure their proper functioning and compliance with the objectives and principles of EU development policy. Within the limits set by the principles and provisions of treaty and statutory law, Member States are free to design these systems. This autonomy should be perceived as a competence, and at the same time an obligation of a given Member State to introduce its own procedures in an autonomous manner, but ensuring the effective implementation of the development policy principles, objectives and tasks in the national area.

For these reasons, Member States have the primary responsibility for the establishment and operation of the national administration and control system. This, combined with the supervision exercised by the EU authorities over the design and implementation of these development policy instruments, "forces" the Member States to correlate and link the system organization with the structure at the EU level and to compliance with the principles and provisions of EU law.

The basic mode of implementing EU development policy instruments on the territory of Poland are special administrative procedures (belonging to third generation procedures), in which concretisation of these instruments takes place through issuing an act qualifying a beneficiary's application to conclude a contract for co-financing or issuing a decision on co-financing. For this reason, the special procedures differ from the general administrative procedure in certain elements like stronger formalization, accelerating the trial, methods of proof, remedies and others. These changes, especially increased rigour is justified by the purpose and functions of financial instruments implemented in competitive procedures, which are based on competition and, in the case of a greater number of applicants than funds available for distribution, the introduction of criteria that reward their procedural activity.

The purpose of a competitive mode is to award or refuse to award some material good, and not to impose or enforce some public law obligation. Therefore, the requirements placed on these procedures in terms of their public accessibility and functionality should be seen from a different perspective than standard jurisdictional procedures designed for administrative matters in general and for all ordinary addressees (citizens) subject to administrative authority.

These special rules, as well as solutions borrowed from the civil field and introduced into the procedures for the distribution of EU funds in agriculture and fisheries, consisting in "shifting" the burden of proof onto the parties (participants of competitions) should be considered justified, as it is the entities applying for co-financing that should provide the authority with the necessary data to settle their matter. The requirements introduced in these procedures should be approved because, on the one hand, they serve the implementation of the principle of equal access to EU funds, and on the other hand, the implementation of the principle of their effective distribution.

Due to the administrative nature of implementation proceedings, the control of decisions or other acts issued in them is exercised primarily before administrative courts (in the general administrative court proceedings with some exclusions and changes). These procedure guarantee equality of 'arms' and a right to present arguments to litigants and possibility comprehensive examination of the circumstances which are relevant to resolve a litigation. Whereas

disputes relating to claims arising from co-finance decision or contracts and other claims in contractual or tortious matters are settled in the common courts, on the rules specified in the civil law and civil proceedings.

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