



The role and tasks of experts under the Act on the principles of implementing tasks financed from European funds in the 2021-2027

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Abstract. Poland is the largest beneficiary of funds from the European Union budget. Thus, countless projects that will receive support from these funds are being implemented in our country. In order to obtain funding, you must take part in a competitive, transparent and transparent competition organized by competent institutions. However, they are obliged to reliably assess these applications. Often, in order to be able to assess them, professional knowledge, experience and specific qualifications are required. These are not always owned by qualified clerical staff. For this purpose, based on many years of experience, the legislator in the Act on the rules for the implementation of tasks financed from European funds in the 2021-2027 financial perspective again enabled the competent institutions to use the substantive support of experts. The purpose of this article is to analyze the statutory duties and tasks of experts through the prism of the Act, taking into account the current practice, experience and jurisprudence. The purpose of this article is to analyze the legal solutions regarding the duties and rights of experts in the process of evaluating applications for co-financing from the European Union budget. The article uses the legal - comparative and historical method. On the basis of the conducted research, it should be clearly stated that the essence and basis for the functioning of experts in the application evaluation process have not changed in the new financial perspective. Guarantees of independence have been increased, and transparency in the work of experts has been increased.

Keywords: expert, project evaluation, co-financing, call for proposals.

JEL Classification: K23.

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INTRODUCTION

The new financial perspective of the European Union for 2021-2027 is also a big challenge for the Member States. What is important is not only the professional selection of projects that are submitted under competition procedures, but also the correct definition of the priorities of a given country.

External experts play an important role in the application evaluation process and support managing authorities with their knowledge and experience in the evaluation and selection of the project. The correct construction of legal norms in the Act will enable them to properly perform the obligations imposed on them. The aim of the article is to analyze whether and to what extent the previous experience of external experts, as well as the current implementation act, enable them to effectively support institutions in the evaluation of projects.

An important element of the article is the analysis of whether legal regulations ensure independence and impartiality of external experts, and whether their experience and specialist knowledge in a given field is actually used by institutions.

ROLES OF EXPERTS IN THE APPLICATION EVALUATION PROCESS

Following the example of the previous perspective of the European Union for the years 2014-2022, the Polish legislator in Chapter 17 of the Implementation Act regulated the issue of the functioning of experts (Ustawa z dnia 28 kwietnia 2022 r.). Its tasks are related to the selection of projects for co-financing, resulting from the project co-financing agreement or the project co-financing decision, as well as related to the appeal procedure. The possibility of using the specialist knowledge of experts by the public administration is already a standard in the Polish legal system¹. The legislator provided for a number of mechanisms in the implementation act that ensure not only impartiality, but also transparency of services provided by professional experts (Dolowiec et al., 2016, p. 276-281).

The role of experts is to provide substantive support to relevant institutions, and not to replace them in the decision-making process related to the selection of an application for co-financing. As a consequence, the assessment of a given application by an expert is not binding on the competent institution. However, it is worth emphasizing that omitting the expert's assessment or taking a decision contrary to his opinion requires exhaustive justification by the competent institution. This is a necessary element so that the final evaluation of the project is not considered arbitrary and, consequently, unlawful (V SA/Wa 1729/11). The administrative court is not competent to verify the substantive assessment of the project, based on experts' opinions. However, it is competent to control the assessment in the context of compliance with the principles of this assessment resulting from EU law, e.g. principles of equality, transparency, impartiality, immutability or reliability (II GSK 2249/13). Judicial evaluation of an expert's opinion consists in examining whether it is coherent, exhaustive, logical and whether it answers fundamental questions. The substantive content of the assessment is beyond the control of the administrative court, as the evaluator is an expert in a given field (I GSK 1955/18; and I GSK 2803/18).

The possibility of using specialist expert support by the competent institution is its entitlement, not its obligation. Importantly, the expert does not have to be included in the assessment of the entire project, but also in its part where his specialist knowledge is necessary. Taking into account the specificity of a given application, it is the competent institution that decides whether to include the expert in the project evaluation procedure and to what extent. When an expert is appointed to the project evaluation committee, he or she becomes an equal member and

¹ E.g. evaluation of projects under the NCN programs: Order No. 102/2020 of the Director of the National Science Center on the introduction of regulations for the performance by Experts of activities commissioned by the National Science Center of 28/12/2020 or the role of experts in calls for proposals under the European Solidarity Corps, where a detailed list of expert tasks is set out in Annex 4 to the rules for the call for applications for candidates for experts and for cooperation with experts participating in the process of evaluating applications for co-financing submitted to the European Solidarity Corps and evaluating Final Reports Submitted by Beneficiaries of the European Solidarity Corps.

it should be remembered that his or her role is equal to that of the other members of the committee. The settled jurisprudence of administrative courts emphasizes that the arguments of experts must be consistent, exhaustive and comply with general legal standards, as well as be related to the established criteria (I GSK 345/19).

In order for the relevant institution to benefit from professional substantive assistance by an expert, he or she must be placed on a publicly available list maintained by that institution - this is a manifestation of the principle of transparency. The legislator has defined mandatory criteria that a given person must meet in order to be entered on the list of experts by the competent institution. To these requirements, specified in art. 81 of the Act (Ustawa z dnia 28.04.2022), it is necessary to: enjoy full public rights, have full legal capacity, have not been convicted by a final judgment for an intentional crime or intentional fiscal crime, as well as have the required knowledge, skills, experience or authorization in a specific field. The basis for confirming the fulfillment of the above-mentioned criteria by an expert is the submission of a statement under pain of criminal liability for making false statements. The competent institution shall immediately inform the expert about his inclusion in the list of experts. An expert may be removed from the list in three cases. Firstly, the competent institution removes an expert from the list in the case of his request submitted in writing or electronically. Secondly, when there are circumstances in which an expert does not meet at least one of the criteria entitling him to be placed on the list of experts. Thirdly, if the expert improperly performs the contract concluded with the competent institution or if it is terminated for reasons attributable to him (Ustawa z dnia 28.04.2022). It is worth noting that the legislator refers to the general provisions on the provision of services by an expert. Consequently, the appeal is neither an administrative act nor an administrative action. Therefore, an appeal from the function of an expert cannot be appealed to the administrative court (II GSK 1362/12).

Current lists of experts are posted on websites and portals run by relevant institutions. When analyzing the materials posted, we can observe that the relevant institutions use the help of an expert with great interest, creating a wide list of them. Several thousand experts have been appointed under regional operational programmes. For example: RPO Województwa Pomorskiego: 479 (Serwis Regionalnego Programu Operacyjnego Województwa Pomorskiego, 2022), RPO Województwa Lubelskiego: 309 (Serwis Regionalnego Programu Operacyjnego Województwa Lubelskiego, 2022), RPO Województwa Podlaskiego: 352 (Serwis Regionalnego Programu Operacyjnego Województwa Podlaskiego, 2022), RPO Województwa Zachodniopomorskiego: 631 (Serwis Regionalnego Programu Operacyjnego Województwa Zachodniopomorskiego, 2022) oraz RPO Województwa Świętokrzyskiego: 183 (Serwis Regionalnego Programu Operacyjnego Województwa Świętokrzyskiego, 2022).

The expert performs his duties towards the relevant institution on the basis of a civil law contract concluded with it (II GSK 1192/12). The Implementation Act obliges the competent institution to conclude an agreement with the expert in order to provide his services, which specifies in particular: the scope of the expert's duties, as well as informing the competent institution of circumstances known to him that may raise doubts as to his impartiality. According to Art. 750 of the Civil Code (Ustawa z dnia 23.04.1964) the provisions governing the contract of mandate shall apply accordingly to the contract for the provision of services. Therefore, the contract concluded with the expert must contain the basic elements of civil law contracts. One of them are contractual penalties that make it possible to draw consequences against an expert for improper performance of his duties, including incorrect assessments. Other elements of the contract are: the expert's remuneration for the services provided, payment rules, as well as the rules for withdrawing and terminating the contract. Considering the nature of the concluded contract, it is not possible to include subcontracting clauses in the contract (Kuligowski, 2023, p. 696-697). In addition, the Ministry of Development Funds and Regional Policy issued guidelines on the use of expert services in programs for 2021-2027, effective from December 8, 2022 (Minister Funduszy i Polityki Regionalnej, 2022). According to them, it was considered appropriate for the contract with the expert to specify (Minister Funduszy i Polityki Regionalnej, 2022, p. 13):

- its validity period;

- the amount of remuneration for the services provided or the rules for determining its amount, if the contract is payable;
- rules for informing the competent institution about circumstances that may raise doubts as to the expert's impartiality;
- obliging the expert to keep confidential all information provided to him by the competent institution as part of his services;
- rules for excluding an expert from performing services;
- the rules of expert liability, including financial liability, in the event of circumstances in which the expert does not meet any of the criteria entitling him to be placed on the list kept by the competent institution;
- rules for evaluating the work of an expert;
- contract termination rules.

Competent institutions determine the principles of remuneration of experts in various ways. However, they apply the same standards to all their experts. Under the ROP of the Kujawsko-Pomorskie Voivodeship, experts receive a flat rate for the evaluation of each project (Uchwała nr 4/137/17), similarly in RPO Województwa Podlaskiego (Uchwała nr 53/539/2015) and RPO Województwa Zachodniopomorskiego (Uchwała nr 576/18).

The expert must not only meet the formal requirements, but must also guarantee independence and impartiality in the assessment of projects (I GSK 947/21). Experts, as well as other members of the project evaluation committee, submit a declaration of impartiality before proceeding with the evaluation. If there is a reason to exclude him or there are any doubts as to his impartiality, such an expert should be excluded from the project evaluation process. In the event of such a situation, the provisions on exclusion of an employee resulting from the provisions of the Code of Administrative Procedure shall apply accordingly. The application of the provisions respectively consists in applying them directly, not applying them or applying them when making modifications. It is the body applying the law that is obliged to properly adapt the standards contained in the Code of Administrative Procedure to the needs of a given procedure (Perkowski, 2010, p. 89).

The expert is subject to exclusion from the proceedings by virtue of the law itself, as a consequence, he is unable to participate in the proceedings due to the fulfillment of the provisions of the legal norm. In the light of the said provision, an expert shall be excluded from participation in the proceedings if he/she remains in a legal relationship with the applicant which unambiguously affects his/her rights or obligations. Thus, the reason for exclusion is not any legal relationship between the expert and the applicant, but one that affects his rights or obligations. An expert is also excluded if he or she is to evaluate an application prepared by a spouse or relatives and relatives up to the second degree or a person related to them by virtue of adoption, custody or guardianship. The reasons for excluding an expert from the work of the evaluation committee also apply after the end of marriage, adoption, guardianship or guardianship. Furthermore, an expert should not participate in the project evaluation procedure if he or she participated in the preparation of the project or was involved as the applicant's representative or expert. In connection with the above, the expert is excluded from the project evaluation procedure in any situation where there is a suspicion that his assessment will not be objective due to the relationship between him and the applicant, or he participated in any role at the stage of preparing the application. According to Art. 85 sec. 2 of the Implementation Act, the expert submits a statement to the competent institution that there are no grounds for exclusion listed in the law. The statement is made under pain of criminal liability for giving false testimony, which the expert should be advised of before submitting the statement (Kuligowski, 2023, p. 699-700).

In 2016, the "Serwis Samorządowy PAP" portal published an interesting analysis presenting not only the earnings of experts evaluating projects applying for co-financing from the European Union, but also the issue of the actual involvement of experts by the relevant institutions in this process (Serwis Samorządowy PAP, 2016). The analysis of the actual use of professional substantive support by experts as part of the assessment of applications by

competent institutions in the previous financial perspective of the European Union in the years 2014-2020 will be the subject of further research in this matter.

CONCLUSIONS

The legislator provided statutory mechanisms ensuring not only impartiality, but above all, independence of external experts in the assessment of application applications in the competitive procedure. It is worth noting that the current practice used by institutions indicates a high involvement of external experts in the process of assessing submitted documents.

The instrument of excluding an expert from the evaluation of applications and not being bound by the expert's opinion when selecting a given project for co-financing are some of the few legal solutions that facilitate the work of experts. However, it is worth paying attention to the low remuneration that experts receive for their work. Although they provide the service on the basis of a civil law contract and not on a full-time basis, it would be worth considering increasing the pool of funds for this purpose, thus reducing the workload of individual experts.

Ultimately, however, the current legal solutions regarding the role of the expert in the application evaluation procedure should also be positively assessed. The system has proven successful in Poland and satisfactorily enables the selection of real, reliable and justified applications for implementation.

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