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The use of public funds for environmental preservation and environmental education activities in the light of the Polish Supreme Audit Office reports¹

**Wykorzystanie środków publicznych na
działania dotyczące ochrony przyrody
i edukacji ekologicznej w świetle raportów
Najwyższej Izby Kontroli**

Streszczenie. Niniejszy artykuł ma na celu przedstawienie oceny prawidłowości wykorzystania środków publicznych, przekazanych na podstawie umów dotacji na działania dotyczące ochrony przyrody i edukacji ekologicznej w świetle informacji przedłożonych przez Najwyższą Izbę Kontroli. Obszary objęte kontrolą, służące realizacji założonego celu, dotyczyły: kompletności i terminowości wy-

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konania określonych umowami zadań, gospodarności i legalności wykorzystania środków finansowych, prawidłowości prowadzenia ewidencji finansowo-księgowej, przygotowywania sprawozdań oraz rozliczenia środków.

Słowa kluczowe: wykorzystywanie środków publicznych; działania dotyczące ochrony przyrody; edukacja ekologiczna; Najwyższa Izba Kontroli.

Abstract. This article aims to present the assessment of the implementation of public funds provided under grant agreements for environmental preservation and environmental education activities in the light of the reports submitted by the Polish Supreme Audit Office (NIK). The areas covered by the audit were: the completeness and timeliness of the tasks defined in the agreements, the economy and legality of the use of the financial resources, the correctness of keeping financial and accounting records, and the preparation of reports and the settlement of funds.

Keywords: implementation of public funds; environmental preservation; environmental education activities; Supreme Audit Office.

1. Introduction

The obligation to undertake activities regarding environmental preservation and environmental education, necessary for understanding the needs and the mechanisms of functioning of the natural environment, arises from the provisions of domestic law as well as from international law². Preserving the natural heritage for future generations is an indispensable element in the implementation of the concept of sustainable development as referred to in art. 5 of the Polish Constitution³. In Poland, as in other Member States of the EU, a number of financial mechanisms have been

² R. Balicki, *Obowiązek dbałości o stan środowiska* [in:] W. Skrzydło, S. Grabowska, R. Grabowski (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, Warszawa 2009, pp. 268–269.

³ B. Rakoczy, *Koncepcja współczesnego prawa ochrony środowiska a jego dynamiczny rozwój*, „Przegląd Prawa Ochrony Środowiska” 2012, No 2, pp. 62–63. See more: Z. Bukowski, *Zrównoważony rozwój w systemie prawa*, Toruń 2009; B. Rakoczy, *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej*, Toruń 2006.

introduced in order to subsidize environmental preservation and environmental education projects⁴. Every year, hundreds of such projects are implemented from public funds. Such actions are carried out by certain state institutions and authorities appointed for this purpose, as well as by other bodies, including regional and local authorities and entities not belonging to the public finance sector⁵.

This article aims to present the assessment of the implementation of public funds provided under grant agreements for environmental preservation and environmental education activities in the light of the reports submitted by the Polish Supreme Audit Office (NIK). The areas covered by the audit were: the completeness and timeliness of the tasks defined in the agreements, the economy and legality of the use of the financial resources, the correctness of keeping financial and accounting records, and the preparation of reports and the settlement of funds⁶.

2. The system of financing environmental protection in Poland

The European Funds and the National Fund for Environmental Protection and Water Management are the main sources of funding for environmental preservation and environmental education in Poland. The European funds are mainly obtained through: Priority V of the Operational Programme – Infrastructure and Environment “Nature protection and shaping of pro-ecological attitudes”; the Operational Programme “The protection of biological diversity and ecosystems” of the European Economic Area Financial Mechanism 2009-2014; and the Life+ Financial

⁴ W. Sobczyk, *Edukacja ekologiczna i prozdrowotna*, Kraków 2000, p. 11.

⁵ K. Karpus, *Bezpieczeństwo ekologiczne w Konstytucji RP*, [in:] ed. A. Bień-Kacała (et al.), *Kategoria bezpieczeństwa w regulacjach konstytucyjnych i praktyce ustrojowej państw Grupy Wyszehradzkiej*, Toruń 2016, pp. 120–121.

⁶ M. Serwaniec, *The legal status of the Polish Supreme Audit Office's Corps of Auditors*, „Toruńskie Studia Polsko-Włoskie/Studi Polacco-Italiani di Toruń” 2017, t. XIII, p. 53.

Instrument⁷. The national funds involved in the implementation of the projects in question were mostly taken from the National Fund for Environmental Protection and Water Management⁸ and the Provincial Fund for Environmental Protection and Water Management, as well as from regional and local authorities⁹. Pursuant to art. 400b Sec. 1 and 2 of the Act of 27 April 2001 on the Environmental Law¹⁰, the purpose of the National Fund and provincial funds is to finance environmental protection and water management, to the extent provided for in art. 400a Sec. 1 of the aforementioned Act, including all the undertakings related to the protection and restoration of protected species of fauna and flora, environmental education, and the promotion of environmental protection measures along with the principle of sustainable development. Furthermore, the purpose of the National Fund and the provincial funds is to create conditions for the implementation of environmental and water management financing. It is to be done through supporting the implementation along with the promotion of the supporting attitude itself, as well as through cooperation with other entities, including local and regional authorities, entrepreneurs and entities established outside the Republic of Poland (art. 400b Sec. 2a of the Environmental Law).

3. The results of the audit carried out by NIK

Most of the entities which were selected for the audit by NIK and which were the beneficiaries of the aforementioned funds, did not belong to the

⁷ M. Makles, *Analiza dostępności źródeł finansowania działań z zakresu edukacji ekologicznej oraz wsparcia funkcjonowania pozarządowych organizacji ekologicznych w latach 2014–2015*, pp. 407–421, <http://greenmind.pl> (access on-line: 02.09.2017).

⁸ See more: L. Będzikowska, *Źródła finansowania edukacji na rzecz zrównoważonego rozwoju*, http://www.rceeplock.nazwa.pl/files/rcee/mater_szkol/7_zrodla_edukacja.pdf (access on-line: 12.09.2017).

⁹ See K. Wychowalek, *Finansowanie edukacji ekologicznej ze środków wojewódzkich funduszy ochrony środowiska i gospodarki wodnej*, <http://krzysztof.wychowalek.pl/pliki/ekofinanse.pdf> (access on-line: 10.09.2017).

¹⁰ Ustawa z dnia 27 kwietnia 2001 r. – Prawo ochrony środowiska (Polish Journal of Laws 2013, item 1232 with amendments).

public finance sector¹¹. However, pursuant to art. 4 Sec. 2 of the Public Finance Act¹², the provisions of this law apply to these entities, since the law applies to entities other than public finance sector entities to the extent that they use public funds or manage such funds. The aforementioned sources of funding, pursuant to art. 5 of the Public Finance Act, are included in public funds. As a result, their spending is subject to special restrictions, as referred to in the national regulations and grant agreements. The entities were obliged to comply with both the Accounting Act¹³ and the Public Procurement Law¹⁴, in situations requiring such actions, as referred to in the grant agreements. It should also be noted that very often the entities applying for subsidizing are not the performers of the tasks included in the schedules. Most of the work is subcontracted, and the units which administer the execution of work are the beneficiaries of such funds. However, the beneficiary is responsible for the settlement of the project. It must be remembered that pursuant to Article 47 of the Public Finance Act, the entity applying for the provision of public funds for the implementation of a specified task should present an offer which guarantees the implementation of this task in accordance with the principles of fair competition and that the task will be performed in a timely, efficient and economical manner. Under the terms of the grant agreements, the resources must be spent in a deliberate, justified, reasonable, and cost-effective way. In order to qualify the expenditure for EU funding, it should not only be in line with the scope and objectives of the Programme / the Fund, but it must also be justified and necessary for the implementation of the project. The expenditure should be borne owing to its direct connection with the project and during its eligibility period. Such expenditure must comply with the applicable national law provisions, EU law,

¹¹ See: Polish Supreme Audit Office, *The use of public funds under grant agreements for environmental preservation and environmental education activities*, (KSI.410.007.00.2015, Nr ewid. 38/2016/P/15/054/KSI), Warsaw 2016, p. 5.

¹² Ustawa z dnia 27 sierpnia 2009 r. o finansach publicznych (Polish Journal of Laws 2013, item 885 with amendments).

¹³ Ustawa z dnia 29 września 1994 r. o rachunkowości (Polish Journal of Laws 2013, item 330 with amendments).

¹⁴ Ustawa z dnia 29 stycznia 2004 r. – Prawo zamówień publicznych (Polish Journal of Laws 2015, item 2164).

and the agreement. It should also be in accordance with the principle of sound financial management, and must be documented in VAT invoices or other accounting documents of an equivalent probative value, and entered into the financial and accounting system on this basis so that it can be identified and verified. When making deliveries or providing services specified in the project, the beneficiary should not omit to avoid any/a conflict of interest which is understood as the lack of impartiality and objectivity in fulfilling the provisions covered by the grant agreement¹⁵. The burden of proof that the aforementioned requirements set out in the grant agreement were fulfilled lies solely with the beneficiary. It means that the beneficiary must collect and produce all the documents that will confirm that the expenses incurred in the project were incurred in the manner specified in the grant agreement, that is in a deliberate, justified, reasonable, and cost-effective way¹⁶.

Pursuant to Regulation (EC) No 1303/2013 of the European Parliament and the Council¹⁷, in order to identify an irregularity which results in the full or partial reimbursement of the funds received, three cumulative conditions are necessary to be noted: (a) an infringement of a provision, (b) an infringement of a provision resulting from an act or omission by the beneficiary, (c) a single breach of law which has the effect of prejudicing the general budget of the European Union through financing unjustified expenditures from the general budget. The absence of actual or potential prejudice prevents such an infringement from being classified as an irregularity, and thus makes it impossible to initiate the procedure for the

¹⁵ A conflict of interest is understood in particular to be circumstances in which there are personal or financial relationships between the beneficiary and the supplier/ contractor, which will render the criteria adopted by the beneficiary impossible to be considered objective criteria.

¹⁶ See: Polish Supreme Audit Office, *The use of public funds...*, p. 12.

¹⁷ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, Dec. 17, 2013, p. 320).

recognition of such an expenditure as an irregular one. On the other hand, in accordance with Polish law, pursuant to Art. 207 Sec. 1 of the Public Finance Act, the following conditions are mandatory for initiating the recovery procedure: the misuse of funds, the use of funds in breach of procedures, or the acquisition of funds gained in excess or in error. Compliance with one of the aforementioned conditions does not condition the occurrence of irregularities under European law. There may be infringements that can be remedied in other ways than by imposing financial sanctions on the beneficiary¹⁸. It is only the lack of implementation of recommendations (guidance) that may have financial implications for the beneficiary, as a result of the possible termination of the grant agreement. Pursuant to Art. 30 Sec. 1 and 2 of the Act of 6 December 2006 on the principles of development policy¹⁹, the basis for subsidizing the project is the project grant agreement concluded between the beneficiary and the managing authority, or an intermediary body acting on its behalf, or an implementing body, or the decision referred to in Art. 28 Sec. 2. The agreement specifies the conditions for subsidizing the project as well as the rights and obligations of the beneficiary in connection therewith. Under the provisions of the project grant agreement, the institution which concluded the aforementioned agreement with the beneficiary may terminate the agreement with immediate effect, in writing, if the beneficiary does not implement the project under the conditions set out therein, in particular where the beneficiary does not comply with the recommendations (guidance) of the relevant institutions. In addition, some specific obligations are imposed on the beneficiary to be fulfilled after the final date of eligibility of the expenditure, e.g. the obligations concerning the sustainability of the project, information and promotion activities, and those regarding documentation archival. Detecting any infringements in these areas also involves the necessity to take all possible remedies, including, if necessary, corrective measures. It is only the lack of implementation of recommendations (guidance) of the relevant institutions that may lead to

¹⁸ Polish Supreme Audit Office, *The use of public funds...*, p. 13.

¹⁹ Ustawa z dnia 6 grudnia 2006 r. o zasadach prowadzenia polityki rozwoju (Polish Journal of Laws 2014, item 1649 with amendments).

the termination of the agreement and therefore result in the full or partial reimbursement of the funds received by the beneficiary from the EU funds²⁰. Pursuant to Art. 4 Sec. 1 item 4 and Art. 4a of the Act of 17 December 2004 on the responsibility for the breach of public finance discipline, the entities to be held responsible are the individuals who manage the public funds which were provided to the entities not belonging to the public finance sector, the individuals obliged to implement the project subsidized from the EU funds or international funds, as well as the individuals tasked or authorized to act on the behalf of the entity which was obliged to implement the project subsidized from the EU funds or international funds and which was either provided with such funds to implement the project, or which is using such funds.

The results of the audit carried out by NIK show that the grant system for activities regarding nature preservation and environmental education is aimed at the absorption of EU funds and expenditure of national funds, however, without proper attention paid to the quality of the projects and correctness of their implementation. According to NIK, it was inappropriate to repeatedly introduce annexes to grant agreements, including annexes regarding the scope of activities covered by the project and result indicators, as it might indicate that grants were provided to the projects which had been prepared without due diligence and which had not been analysed in terms of their feasibility. As many as 35% of the audited entities did not present a full set of documents related to the preparation of the application, including the lack of the basis for estimating the value of the project grant. In the opinion of NIK, the proper estimation of the project costs at the stage of applying for its subsidy is the first and necessary step for the funds to be spent economically. The beneficiaries, at the stage of applying for the subsidy, did not always have sufficient knowledge of the implementation feasibility to the extent projected, including the subject of protection specified in the project, co-operation with other entities, and consent to implement the project activities in the area to which the applicant is not entitled. According to NIK, when planning implementation of

²⁰ Polish Supreme Audit Office, *The use of public funds...*, p. 13–14.

the project in the area to which the applicant is not entitled, the conditions should be agreed in writing in advance, between the applicant and the entities managing these areas. The lack of such arrangements may prevent the task from being completed, or it may lead to delays and, in consequence, to the partial reimbursement of the grant. The grant agreements were also annexed repeatedly. In addition, the scope of work, the deadlines for its implementation, the project value, and even the result indicators were changed. The deadline of 34 (55%) out of the 60 projects analysed, was extended, pursuant to an annex, for a period ranging from 3 months to 2 years. In 25 out of the 38 completed projects, i.e. 66% of them, the project value changes were introduced pursuant to an annex. There were cases in which the scope of work specified in the agreement was first annexed owing to the savings, and then the cost of the project was increased. The changes in result indicators show that the project will not produce the expected results which could have influenced the decisions on accepting the grant application in the first place. It was also common practice to conclude amendments after the completion of the project thus indicating, in the opinion of NIK, that the agreement was adjusted to fit the actual dates and the scope of work, thereby making it impossible to assess the timeliness and completeness of work specified in the agreements²¹.

Within the ongoing projects, a number of service and supply agreements, ranging from several to 400, were concluded. In up to 35% of the audited entities, NIK raised certain objections owing to the way such contractors and suppliers had been selected. The audit revealed cases of irregularities concerning the method of defining the subject of the order or the criteria used while selecting the offer as well as irregularities in choosing the contractors without first analysing the market and their offers. The aforementioned issues led to the violation of the rules of equal treatment, fair competition, transparency of procedures, and to a lack of documentation proving the reliable estimation of the value of the order, which all impeded a proper evaluation of the efficiency of the spending of public

²¹ Ibidem, p. 19.

funds. Furthermore, in 42% of the contracts concluded between the beneficiaries and contractors, there were no provisions securing the beneficiary's interests in case of delay or the improper completion of the contract. In addition, there was, although required by the grant agreement, a failure to ensure a full transition of the economic rights and the copyrights of the work to the beneficiary. All the situations mentioned above might have required the ordering party to bear costs, not specified in the contract, but associated with the remuneration for the use of the aforementioned rights.

It should be noted that some invoices were approved despite the lack of documents confirming the performance of the contracted works. The payments for the contracted work were delayed. In 40% of the controlled entities, the audit revealed some irregularities in financial and accounting records, including the cases in which no rules had been established for recording general costs (including fixed costs) and project management costs. There were no rules as for dividing the costs of office operation and the costs of salaries of people involved in the implementation of particular projects. The audited records did not meet the requirements of durability, and the monthly reporting periods were closed with delays of several months. The audited entities did not comply with the procedural deadline for the statement of account for a given financial year, and the financial and accounting records did not make it possible to determine the costs / expenses incurred for particular projects subsidized from the European funds, NFOŚiGW (the National Fund for Environmental Protection and Water Management) or from the beneficiaries' resources. Contrary to Art. 22 Sec. 3 of the Accounting Act, some adjustments were made to accounting documents, and the parties did not comply with the provisions of the civil law contracts when authorising payments.

NIK also noted that the settlement of the projects had been prolonged. The payment claims issued, because of numerous errors and inaccuracies, needed to be corrected and filled in. The corrections were made in a negligent way which resulted in further comments from the funding institutions. What is more, both parties did not meet the deadline specified in the contract for preparing the correction and examining the application.

The final settlement of projects and disbursed funds often took place after many months and sometimes longer than one year after the completion of the project. Some beneficiaries started implementing another project with the same scope and subject matter as the one already implemented, despite not having completed or settled the first one, which should not have happened, according to NIK, especially due to the revealed inaccuracies in the accounting records²².

NIK audit disclosed that there had also been cases of not settling the advances granted for the implementation of the project, which resulted in the applying by the Implementing Body of financial penalties. There had also been cases of changes in the scope of activities or incomplete execution of tasks specified in the contracts. In one of the cases the costs of the project included a task which had not been provided for in the schedule with its due time being 2.5 year longer than the project deadline itself. The indicators specified in the agreements were not used for the settlement of some of the activities undertaken as part of educational projects. The beneficiary did not document the fact of achieving these indicators and the grant institution did not require them to be presented²³.

In accordance with the provisions of the grant agreements, all the beneficiaries carried out information and promotion measures. They posted information about their projects on their websites. They developed and distributed information material in the form of free books, brochures, leaflets, etc. The information boards and plaques were placed at the project sites. As a result of the contract annexation after the termination of the project, the information about the funds, placed on such boards before the completion of the project, was often inaccurate²⁴.

4. Conclusions

Although the granting institutions carried out the checks and verifications of the payment applications submitted by the beneficiaries, there were

²² Ibidem.

²³ Ibidem, p. 35.

²⁴ Ibidem, p. 49.

significant irregularities noted in some audited entities. This demonstrates the weaknesses of the management and control systems of these institutions. It is therefore necessary, according to NIK, to introduce additional control mechanisms when verifying applications for subsidizing the projects and supervising their implementation. It would be advisable for the granting institutions to require and enforce the following obligations on the beneficiaries: providing the institution with a solid cost analysis of the project at the very stage of applying for the subsidy; whenever it is necessary, the submitting by the aforementioned entities of the consent of land owners or administrators to the implementation of the project on their premises; storing all the documentation of the projects which are being implemented, including the estimation of the project value, the documents relating to the implementation of particular tasks, the selection of contractors, and the recording of the results achieved. It is also crucial for the decision-making institutions to verify all the grant applications, both in terms of their costs and feasibility. What is more, the decision-making institutions should provide financial resources for the actions undertaken under the project implementation contracts, which are the continuation of some prior actions, only after the final settlement of the earlier contract. Undoubtedly, controlling the beneficiaries' financial and accounting records should also be increased.

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