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SAVE PUBLIC ASSETS

Monitoring Corruption Threats in the Distribution of Structural Funds

The Case of Integrated Regional
Operational Programme (IROP) in Poland

Tomasz Grzegorz Grosse

RESEARCH REPORTS · POLICY PAPERS



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Warsaw, February 2007

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CITIZEN AND LAW PROGRAMME

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Tomasz Grzegorz Grosse

Corruption threats in the management system
of the Integrated Regional Operational Programme (IROP)

Summary

This report has been prepared on the basis of research on the Integrated Regional Operational Programme (IROP) using the EU structural funds in the budget period 2004—2006. The research was carried out by the Institute of Public Affairs in 2006. The main conclusion from the study is the conviction that the management system of the IROP does not sufficiently prevent political and administrative corruption. The project selection procedures and the recently changed tendering system are particularly threatened with corruption. The research carried out by the Institute of Public Affairs points to a number of reasons for that situation: (1) too complicated multistage management process, (2) inappropriate division of responsibilities among different public authorities as well as between politicians and officials, (3) poorly designed institutions (for instance, regional steering committees), (4) imprecise regulations concerning, for example the necessity to ensure transparency of the procedures, (5) lack of special regulations to prevent corruption, (6) political and administrative culture in Poland. That is why the system for managing the regional programmes in the years 2007—2013, that is now being designed, should take into account the conclusions presented in this report, and should also be analysed from the point of view of limiting the possibility of corruption.

Introduction¹

In recent years, we have seen extensive development of debate among experts and academics, concerning corruption. Phenomena related to various administrative pathologies, including corruption, can be found in all countries, irrespective of their development level, government policy, economic or social system². They are also present in the European administration and EU policies, especially those related to redistribution of funds from the EU budget³. Therefore, it is no wonder that researchers, civil society organisations and the general public are particularly interested in the EU structural funds, related to the implementation of EU policies and improvement of social and economic cohesion across the enlarged Europe. The new member states, which joined the EU in May 2004, have the reputation of countries with a poor quality public administration, additionally prone to corruption. That is why the interest in corruption threats related to the use of structural funds in those countries is particularly justified.

The purpose of this analysis is to provide an assessment of corruption threats embedded in the management system of the regional development programme for the years 2004—2006 — the Integrated Regional Operational Programme (IROP). The analysis presented in this study covers the main three phases of the public funds management.

- 1) First, the **funds programming**, which is the least exposed to corruption.
- 2) Second, the selection of projects, which is threatened by both the pathology of political corruption and administrative corruption as well.

¹ This report has been prepared on the basis of the research on the Integrated Regional Operational programme (IROP) which uses the EU structural funds in the financial period 2004—2006. The research was carried out in 2006, by the following employees and experts of the Institute of Public Affairs: Tomasz Grzegorz Grosse, PhD, Urszula Kozłowska, Jacek Kucharczyk, PhD (IPA Programming Director), Jarosław Zbieranek.

² Por. V. Tanzi (2002): *Corruption Around the World: Causes, Consequences, Scope, and Cures* in: G. T. Abed, S. Gupta (ed.) — *Governance, Corruption & Economic Performance*, Washington: International Monetary Fund.

³ C. Shore (2005): *Culture and Corruption in the EU: Reflections on fraud, nepotism and cronyism* in the European Commission, in: D. Haller, C. Shore (ed.) — *Corruption, Anthropological Perspectives*, London: Pluto Press.

3) The third stage of the analysis applies to the **implementation of projects**, and, related to that, evaluation of the monitoring and supervision systems.

As I have mentioned before, the purpose of the assessment of the IROP management system is to provide an initial evaluation of corruption threats, which is required for a research project carried out by the Institute of Public Affairs, in order to give the right focus to further, more detailed analyses to be carried out under that project.

IROP funds account for approximately 36 percent of all EU assistance funds in the years 2004—2006 (not taking into account the Cohesion Fund and CAP direct payments). IROP is co—financed from two EU structural funds: European Regional Development Fund (ERDF) and European Social Fund (ESF). The amount of funds spent under this programme is significant, the highest amount spent in all new Members States. 4,083.9 m Euro of public funding has been allocated for the implementation of IROP, including 2,968.5 m Euro (2004 prices) from structural funds resources. The level of co—financing from EU funding will reach 72%. It has been estimated that the structure of EU funds involvement in the implementation of structural policy in Poland, broken into individual structural funds, will be the following: ERDF — 85.2 percent (2,530.0 m Euro) and ESF — 14.8 percent (438.5 m Euro). Additionally, domestic public funding in the amount of 1,115.5 m Euro will be involved in the implementation of development activities. Apart from the public funding, the implementation of IROP will also engage private funding. The total value of the necessary contribution on the part of private entities is estimated to be ca. 146.2 m Euro⁴.

The main objective of the programme under analysis is to provide conditions for improving regional competitiveness and to counter marginalisation of some areas in such a way, as to facilitate the long—term economic development of Poland, its economic, social and territorial cohesion and its integration with the European Union. 75 percent of all IROP funding has been earmarked for infrastructure projects. The majority of funds have been allocated for improvement of living standards and for other social purposes. Investment has been focused largely on the basic infrastructure targets (road, utilities, environmental infrastructure), including activities related to local infrastructure, with relatively little significance for regional development. This means that the main **beneficiary** of the programme (that is an institution submitting a project) are territorial self—governments and administration bodies subordinate to local government. Entrepreneurs

⁴ *Integrated Regional Operational Programme 2004—2006*, Ministry of Economy, Labour and Social Policy, Warsaw 2004, p. 148.

participate in the programme mainly by carrying out investment projects commissioned by local administration units, to a lesser extent, through activities supporting the enterprises themselves. Similarly, the participation of social partners and non—governmental organisations is relatively small, the biggest in human resources development activities. IROP has been designed to achieve the following priorities:

- *Priority 1: Development and modernisation of infrastructure to enhance the competitiveness of regions* (approx. 59.4 percent of all IROP funds). Special emphasis is placed on modernisation of technical and social infrastructure, affecting the development potential of a region.
- *Priority 2 : Strengthening human resource development in the regions* (14 percent of all funds). The objective of this priority is to provide conditions for the development of human resources on the regional and local level. The emphasis is placed on retraining of workers before they become unemployed and on supporting farmers intending to leave agriculture.
- *Priority 3 : Local development* (24.5 percent of all funds). The main objective of this priority is to counter marginalisation, which is done by supporting mainly basic infrastructure investment at the local level.
- *Priority 4: Technical Assistance* (1.3 percent of all IROP funds). Under this priority support is provided to institutions involved in the implementation of the programme, i.e. the IROP Managing Ministry, offices subordinate to regional governments and voivods (who represent the central government in the regions), local self—government. They will receive support for employment of staff, training, equipment, etc.

Estimate of the division of funds into priorities implemented under IROP (in Euro in 2004 prices)

Priority area	Percentage	Total public aid for the priority	Total Structural Funds	Total domestic public aid	Private funds
		1=2+3	2	3	4
Development and modernisation of infrastructure to enhance the competitiveness of regions	59,4	2 462 020 369	1 762 567 948	699 452 421	50 297 474
Strengthening human resource development in the regions	14,8	598 655 517	438 469 535	160 185 982	14 003 097

Local Development	24,5	970 031 043	727 523 283	242 507 760	81 904 490
Technical assistance	1,3	53 220 003	39 910 003	13 310 000	0
Total	100	4 083 926 932	2 968 470 769	1 115 456 163	146 205 061

Source: *Integrated Regional Operational Programme 2004—2006*, Ministry of Economy, Labour and Social Policy, Warsaw 2004, p. 148.

Before presenting the main part of the analysis, it may be worthwhile to make a reference to literature on corruption in investment programmes implemented with the involvement of public funds. The point is to specify the basic evaluation criteria which would make it possible to carry out a proper assessment of the IROP management system.

The results of research in this area, carried out by economists, in most cases show the negative sides of corruption for economic and investment processes. It is not, however, always unequivocal and unquestionable. For instance, according to earlier studies, corruption may increase economic efficiency, especially from the microeconomic point of view, as it removes administrative barriers or accelerates the administrative process related to economic activity⁵. Other studies, on the other hand, indicate that a peculiar expression of a company's entrepreneurship and competitiveness is its capability of using the corruption mechanism and offering the most attractive bribe⁶.

The vast majority of economists, however, present research results, including statistical studies, which point out to the negative sides of corruption. According to them, corruption reduces economic growth and economic efficiency⁷. It lowers the level of economic investment⁸, both private and public. Corruption limits the amount of public revenue and increases public expenditure⁹. At the same time, public investment projects which involve corruption are usually less efficient, of poorer quality and more expensive than investment resulting from fair tender procedures¹⁰.

⁵ N. Leff (1964): *Economic Development Through Bureaucratic Corruption*, American Behavioral Scientist, pp. 8—14; S. P. Huntington (1968): *Political Order in Changing Societies*, New Haven: Yale University Press, F. T. Lui (1985): *An Equilibrium Queuing Model of Bribery*, Journal of Political Economy, vol. 93, August.

⁶ P. J. Beck, M. W. Maher (1986): *A Comparison of Bribery and Bidding in Thin Markets*, Economics Letters, vol. 20, no. 1, D. H. D. Lien (1986): *A Note on Competitive Bribery Games*, Economics Letters, vol. 22, no. 4.

⁷ H. Poirson (1998): *Economic Security, Private Investment, and Growth in Developing Countries*, IMF Working Paper no. 98/4, Washington, IMF; V. Tanzi (2002): *Corruption Around the World: Causes, Consequences, Scope, and Cures* in: G. T. Abed, S. Gupta (ed.) — *Governance, Corruption & Economic Performance*, Washington: International Monetary Fund; C. Leite, J. Weidmann (2002): *Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth*, in: G. T. Abed, S. Gupta (ed.) — *ibid.*

⁸ P. Mauro (1995): *Corruption and Growth*, *Quarterly Journal of Economics*, vol. 110, August.

⁹ V. Tanzi (2002): *Corruption Around the World: ibid.*

¹⁰ V. Tanzi, H. Davoodi (1997): *Corruption, public investment, and growth*, IMF Working Paper 97/139, Washington: IMF.

Moreover, it is pointed out that bribery may encourage officials to prolong the procedures and the time of delivering a service to entrepreneurs¹¹. This means that the complexity of bureaucratic procedures, delays in those procedures, create favourable conditions for the emergence of corruption offers aimed at facilitating or accelerating the administrative process. According to many economists, a winner of a corrupt tender procedure is not the one who is the most economically efficient, he only takes the most advantage of the corruption dividend¹².

Summarising the results of studies on corruption in investment programmes,¹³ it is possible to define the following criteria, which would allow us to make an initial assessment of the corruption threat in IROP.

- 1) Comprehensive information on investment programmes processes and making all the phases of public activity open to the public reduces the occurrence of corruption. It is particularly important to widely disseminate information about competitions and investment tender procedures, to publish information about selected projects and about tender results, together with the justification concerning the substance of the decision. It is also important to place the relevant information on the Internet.
- 2) Placing the appropriate financial procedures for selection and implementation of investment projects in the electronic environment, including the use of electronic tools for posting all financial decisions in the account books, may significantly reduce corruption.
- 3) Another way to curb corruption is to divide individual procedures into stages and to divide the responsibility for their implementation among different institutions or departments. Another procedure connected with practical anti—corruption activities is the “many pairs of eyes” principle, which means avoiding situations when decisions are made by one person.
- 4) An important element of countering corruption is to formally specify the principles and the criteria for making decisions as well as appropriate supervision and enforcement of their correct application. It should be remembered, however, that not all formal principles are defined in a precise way and that some formal rules may in fact favour corruption.

¹¹ G. Myrdal (1968): *Asian Drama: An Inquiry into the Poverty of Nations*, New York: Twentieth Century Fund.

¹² Eg. W. J. Baumol (1990): *Entrepreneurship: Productive, Unproductive, and Destructive*, *Journal of Political Economy*, vol. 98, October, K. M. Murphy, A. Shleifer, R. W. Vishny (1991): *The Allocation of Talent: Implication for Growth*, *Quarterly Journal of Economics*, vol. 106, May, F. T. Lui (1996): *Three Aspects of Corruption*, *Contemporary Economic Policy*, vol. 14, July.

¹³ See T. G. Grosse (2006): *Międzynarodowe doświadczenia w przeciwdziałaniu korupcji w administracji publicznej* in: C. Trutkowski (ed.) — *Przejrzysty samorząd. Podręcznik dobrych praktyk*, Warszawa: Wyd. naukowe Scholar; T. G. Grosse (2000): *Działania anty-korupcyjne w państwach członkowskich OECD*, Batory Foundation, Programme „Against Corruption”, Warsaw—Florence.

- 5) An important element of curbing corruption is to introduce formal rules against conflict of interest and systematic enforcement and supervision of the observance of those rules. One of the ways to regulate those issues is to introduce property declarations and to refrain from making decisions on matters that are in any way related to personal interests of the decision—maker or to his professional or public functions. An important way to ensure impartiality is to attach particular attention to the evaluation of investment projects on their merit, which also entails the use of the services of independent, professional experts, auditors and institutions supporting the administration in the investment process, which are not in any way related to the subject matter nor the parties involved in a given investment project.
- 6) An important element of countering corruption is an efficient system of supervision, monitoring and inspection. It may also be helpful to introduce a special reporting procedure to notify of administrative irregularities or suspicions of corruption (whistleblowing procedure). Another instrument are reports on irregularities on the basis of which corrections to management systems are made or registers are drawn up of people (companies) guilty of committing irregularities, who may be excluded from participation in investment programmes for a certain period of time.
- 7) An excessively complicated administrative system, bureaucratic procedures, extensive and complicated documentation create favourable conditions for corruption, connected, among other things, with informal expediting of administrative procedures. The fact that project implementation is often prolonged and delayed because of lengthy administrative procedures, may lead to corruption offers aimed at expediting those procedures.
- 8) Excessive pressure on absorption of funding may be conducive to administrative irregularities, including situations favourable for the occurrence of corruption.
- 9) Excessive centralisation of the management system and the so called procedural “bottlenecks” may lead to temporary work pile—up, excessive haste, organisational chaos and pressure to spend public money as quickly as possible. During such periods, a climate may be formed for the occurrence of irregularities in the implementation of investment programmes, including also a possibility of corruption.

Analysis of IROP management system

(A) Programming phase

It is possible to list two basic functions performed by local self—government politicians dealing with regional development. The first consists in development programming, that is preparation of strategic and operational documents related to regional development as well as appropriate content related criteria, ensuring the implementation of a content—oriented policy. The other function is to supervise whether the political choices arising out of the strategic and operational documents are correctly implemented. In this sense the role of regional politicians is limited to supervising the work of officials and experts implementing the regional policy and correcting it with reference to previously taken programming decisions, eliminating irregularities committed by officials, including occurrences of corruption.

Improperly exercised supervision of the regional policy implementation process provides opportunity for **administrative corruption**. I use this concept to describe the abuse of power by officials with a view to getting some private benefits or to describe bias towards certain social and economic interests. Whereas irregularities in the regional policy implementation process or excessive or unjustified intervention of politicians in the process of implementation of investment projects may lead to **political corruption**. It is a phenomenon of power abuse by politicians in order to gain some party or electoral benefits. That is exactly why the scope of politicians' intervention in the regional development programmes implementation process should be limited solely to correcting the errors of the administration, including those related to inadequate implementation of the regional policy directions. Such correcting is carried out by appropriate monitoring and supervision bodies. It should also, each time, be justified formally and from the content point of view (in relation to the law, the strategic documents and the criteria for the directions of the regional policy).

Centralisation of programming

The programming system of IROP is centralised. The key programming decisions in this respect have been taken by officials in the ministry competent for regional development (since 1 November 2005 it has been the Ministry of Regional Development). The decisions have been made on the basis of guidelines and have been agreed with the European Commission officials, who also had to endorse the final version of the programme. The role of regional politicians in relation to regional development programming under IROP has been practically limited to issuing opinions on subsequent versions of the programme, sent to them by central government officials. It is worth noting that the Managing Authority for IROP is the ministry competent for regional development and not the regional self—government of the voivodship (region). That means that the ultimate responsibility for preparing IROP and the so called *Programme Complement* (i.e. providing more detailed contents for particular voivodships) rests with that ministry. It is also responsible for efficiency and correctness of the overall management, which means that it takes the most important organisational and programming decisions, and it is also the main appellate body in case of any procedural problems. Important auxiliary functions in relation to the substantive focus of the programme are carried out by the Monitoring Committee operating at the ministry managing the IROP. The Committee examines and approves the content—related criteria for project selection for each of the IROP measures, and it endorses the above mentioned document *IROP Complement*.

The key factor for the centralisation of the IROP management system was the decision to have one regional development operational programme (instead of sixteen). Under one operational programme all the sixteen regions, regardless of their external conditions or development strategies, have the same list of priorities and very similar proportion of financing for particular measures. In a situation when IROP is becoming the most important instrument of regional development in Poland, it obviously limits the possibilities for regional voivodship self—governments to shape their regional development policies in an independent way.

Very limited participation of voivodship self—governments and of local government politicians in regional development programming is the reason why, at this stage of management, there is little room for political corruption. Such occurrences are mainly related to discussions at the central level. For instance, during IROP programming, the way of dividing the funds among voivodships was of key importance. At the time when that decision was at the consultation stage, there were evident attempts of lobbying by individual regions in favour of setting out the most attractive financial conditions. It was

also possible to exert some political pressure, behind the scenes, between the central government and the local government politicians representing the same political force currently in power¹⁴.

Another consequence of the limited participation of regional and local politicians in IROP programming is the natural shift of their interest towards subsequent stages of management, and in particular, towards the selection of projects for financing under IROP. This means a far-reaching intervention in the work of officials, significantly exceeding the content-related supervision and inspection. This has been confirmed in a systemic way, by establishing the institutions and the project selection procedures. The final decision as to that selection belongs to the **Voivodship Board**, i.e. the executive body of the voivodship self-government, grouping only regional politicians (instead of apolitical managers). Also at the earlier stage of the procedure, politicians have many possibilities to make arbitrary decisions. Regional Steering Committees, consisting mainly of regional and local politicians (or officials designated by them), can change the decisions earlier made by officials and experts in this respect. These are at least two institutional opportunities for political corruption to occur.

(B) Project selection phase

Most of the projects implemented under IROP are selected on the basis of open competitions, announced regularly for particular measures of the Programme. Therefore beneficiaries submit their own proposals for the implementation of particular measures of the IROP. It is rarely the case that big projects are entered for implementation in the regional *Programme Complement*. From the point of view of corruption prevention it is less important whether the projects have been submitted in open competitions or whether they have been included earlier in the operational programme in the form of larger projects. The important points are, in particular (1) maximum simplification and transparency of those processes, (2) transparency of the selection criteria, (3) quality of the legal regulations defining the selection principles, with particular emphasis placed on special regulations to prevent corruption, (4) precise definition of the role of politicians and officials in both processes, (5) appropriate design of the institutions responsible for decision-making.

¹⁴ See a similar discussion and competition of political influences in the ruling camp during the division of fund for regional programmes for the years 2007—2013: W. Pelowski (2006): *PiS ma czwarty już pomysł na podział funduszy UE*, Gazeta Wyborcza, dated 11—07—2006.

The main project selection procedure in IROP takes place at the regional level and is supervised by voivodship self—governments. It covers four stages:

- 1) formal assessment of projects by officials of the Marshal Office, responsible for IROP duties vested in the voivodship self—government,
- 2) technical and content evaluation by expert panels,
- 3) political recommendation by Regional Steering Committees (RSC),
- 4) adoption of final decisions concerning individual projects by the Voivodship Board.

Under the project implemented by the Institute of Public Affairs we have analysed in detail just this project selection procedure. It is worth remembering that there are three other procedures which apply to some of the priorities and measures under IROP. The first is related to measures implemented under Priority 2 on human resources development and to Measure 3.4 (*Micro—enterprises*) implemented under Priority 3. It is similar to the above mentioned, main procedure for project selection. It has been supplemented with a procedure under which the voivodship self—government prepares annual framework action plans, indicating the types of activities and their budget. The framework planes must obtain RSC recommendation and are then adopted by the Voivodship Board. On that basis the main project selection procedure begins.

The remaining project selection procedures have been centralised and transferred to the IROP Managing Ministry. As far as Measure 1.6 *Public transport development in agglomerations*, is concerned, implemented under Priority 1, projects are submitted directly to the ministry, which then arranges further project selection stages: (1) procedure of formal assessment by officials, (2) panel of experts and the technical and content related assessment of projects, (3) recommendation of the National Steering Committee, appointed solely for this Measure (it is a body operating on the central level at the IROP Managing Authority); (4) final decision making by the minister competent for regional development. Also at the central level the procedure for selecting applications submitted under Priority 4, *Technical Assistance is located*. The applications are assessed by the ministry officials from the point of view of their form and content, in accordance with the provisions of the IROP Complement. The main decisions on the selection of applications are made by a special committee appointed by the IROP Managing Ministry, consisting of representatives of the central government, voivods (central government representatives in regions) and voivodship self—governments. The IROP Managing Ministry also decides about the acceptance of projects submitted by voivodship self—government authorities under Priority 2 (thus the voivodship self—government is the beneficiary of those projects).

Centralisation of the project selection procedure in the cases described above shifts the risk of political and administrative corruption to the level of the IROP Managing Ministry. Extensive scope of duties of the ministry and insufficient resources of well—qualified officials¹⁵ increase the risk of administrative corruption occurrence. At the same time, direct influence of central government politicians on project and application selection decisions may be conducive to the temptation of political corruption and informal influencing of those decision—makers by their party colleagues who represent some territorial interests (e.g. deputies, representatives of regional and local self—government authorities). Further in my analysis, I will focus only on the basic project selection procedure, that is I will examine the possibility of corruption occurrence at the regional level. It is worth noting, however, that the above mentioned human resources problems in the IROP Managing Ministry affect the corruption threat also in the main stream of the project selection procedure. I have in mind the procedure of appeal from the decisions made by Voivodship Boards. The Supreme Chamber of Control (Najwyższa Izba Kontroli — NIK)¹⁶ report indicated that in 2005 this task was performed by just one employee, which resulted in a work pile—up, gigantic delays and provided opportunity for abuse.

Transparency of competitions

One of the prerequisites to countering corruption in investment programmes is providing comprehensive information about competitions and tenders, as well as caring for the widest possible participation of project applicants in those activities. The obligation to inform about call for projects under IROP lies mainly with voivodship self—governments. Research shows¹⁷ that Marshal Offices in all voivodships publish information about subsequent calls for projects, both at their Internet websites and in regional press. In some voivodships too little time was given for submitting project documentation (sometimes even less than two weeks), which, taking into consideration the complexity and the extensiveness of the required documentation, may have hindered the process of project submission by beneficiaries. In addition,

¹⁵ Human resource deficiencies and the poor quality of the background knowledge in the IROP managing ministry are also pointed out in the Supreme Chamber of Control's report: NIK (2006): *Information on the results of inspection of the use of structural funds under the Integrated Regional Operational Programme (IROP)*, Warsaw, p. 12.

¹⁶ NIK (2006), p. 26.

¹⁷ Por. *Przejrzyste Fundusze Strukturalne* (2006), Instytut Ekonomii Środowiska, CEE Bankwatch Network, Dolnośląska Fundacja Ekorozwoju, p. 17.

frequent procedural changes, including those concerning project submission forms or required attachments, made the process additionally difficult. Other research¹⁸ shows that beneficiaries have not been informed of the results of the formal and content—related assessment and that time schedules for calls for projects have not been publicly announced. The above mentioned difficulties may have been conducive to the occurrence of corruption.

The research conducted by the Institute of Public Affairs (IPA)¹⁹ indicates that voivodship self—governments place on their Internet websites only the minimum information required by the *Manual on IROP implementation procedure*²⁰. Only very few of them provide electronic access to all ranking lists and project assessment documents after each stage of the project selection procedure. What is missing, is mainly the access to minutes from the meetings of decision—making bodies or justifications of decisions made by political bodies, which change the assessment of a project or its place on a ranking list as compared to the earlier technical and merit—based assessment. Information on the Internet is often unclear, sometimes out—of—date. There is no clear guidance on available appellate procedures. There is no information about special anti—corruption procedures, for instance those related to reporting the occurrence of irregularities (*whistleblowing*). In many regions information about the experts who assess projects is not disclosed, which makes it impossible to check whether they are real professionals or whether they are not officially subordinated to the voivodship self—government. The IPA research clearly shows that the Internet websites of the Świętokrzyskie and Zachodnio—pomorskie voivodships give the poorest quality information about the implementation of IROP. In many regions communicating with officials via electronic mail is also very difficult.

The IPA research provided an opportunity to notice that regulations concerning transparency of competition procedures, and in particular those regulating the way of presenting information by voivodship self—governments are imprecise, inappropriate or that they are wrongly interpreted by regional governments. The regulations defined by the ministry managing the IROP²¹ do not provide for any coherent standard of presenting information on the Internet websites. There are no detailed regulations as to the scope of information on

¹⁸ NIK (2006), p. 8.

¹⁹ J. Zbieranek, U. Kozłowska (2006): *Access to information about the distribution of structural funds on regional level*, w: SAVE PUBLIC ASSETS: *Monitoring Corruption Threats in the Distribution of Structural Funds. The Case of Poland*, typescript, Instytut Spraw Publicznych, Warszawa.

²⁰ See [*Manual on IROP implementation procedure*] *Podręcznik procedur wdrażania ZPORR z załącznikami* — version of 28 October 2005 (including the amendments of 2 December 2005), points 6.1.9.1., Ministry of Regional Development, Warsaw.

²¹ See *Manual on IROP implementation procedure... ibidem*.

particular stages of competitions procedures to be presented. For instance, there is no obligation to publicise the grounds for decisions of the Voivodship Boards changing the order of the project ranking list²². The regulation included in the *Manual on IROP implementation procedure* concerning the restrictions to making the information of the composition of the experts panel public is inappropriate²³. Quite often the regulations are wrongly interpreted by voivodship self—government, which practically leads to limiting the access to information. For example, confidentiality declarations whose purpose is to protect personal data, commercial or business secrets, are used to restrict the openness of information on how the individual members of the decision—making bodies voted. They can also cause certain people to refrain from reporting irregularities. Thus interpretation of some binding regulations by regional self—governments increases the possibility of corruption, especially political corruption.

Formal verification of applications

The first phase of the project selection procedure is the formal verification of applications by Marshal Offices officials. Among problems related to that phase of the procedure, one should be mentioned first of all, namely the guidelines sent by the IROP Managing Ministry, which were frequently changed and often raised interpretation questions. That made it necessary to supplement the previously submitted projects or to repeat individual stages of the assessment²⁴. Moreover, the imprecise formal assessment criteria provided room for interpretation freedom for officials, which may lead to development of corruption. The complexity of the documentation and delays resulting from the guidelines changes were also conducive to corruption. An example of that may be a case noted by the press, of an official who offered to facilitate the procedure for project applications prepared by her husband's consultancy²⁵. A study carried out by the Polish Confederation of Private Employers „Lewiatan”²⁶ shows that in activities addressed to business, cases of officials extorting a bribe often take place, with the bribes reaching even 10 percent of the available public aid.

²² See *Manual on IROP implementation procedure... ibidem*, p. 55.

²³ See *Manual on IROP implementation procedure... ibidem*, p. 40.

²⁴ NIK (2006), p. 20.

²⁵ M. Czajkowska, M. Kowalski (2006): *Urzędniczka dbała o interes męża*, Gazeta Wyborcza, Bydgoszcz no. 107, dated 09—05—2006.

²⁶ See K. Niklewicz (2005): *Dobry rok w Unii. Przedsiębiorcy o unijnym rynku i funduszach strukturalnych*, Gazeta Wyborcza, No. 113, addition Mój Biznes, dated 17—05—2005, p. 8.

Another problem at this stage of the procedure is the insufficient knowledge of the subject matter and the number of officials assessing the applications. A study carried out by the Supreme Chamber of Control showed, that in some offices, in spite of the formal verification which had taken several months, the applications approved for implementation contained serious formal and content—related errors²⁷. It also happened that project verification was carried out by just one person, that is, in breach of the basic anti—corruption principle and contrary to the guidance provided by the *Manual on IROP implementation procedure*²⁸. It is also worth noting that the procedure of assessment by officials is to a great extent duplicated later on in the project implementation, i.e. by the voivod's officials who prepare the project financing agreement.

A serious deficiency of the project selection procedure and also of the subsequent stages of managing the project, are the prolonged difficulties with the launch of the computer programme SIMIK. It was assumed that the software would be an efficient tool for IROP management, reducing the possibility of corruption. However, the delays in launching particular modules of the programme make it virtually impossible to manage the IROP at the project level (it is not possible to input project application data). It is worth noting here, that the SIMIK system was expected to be fully implemented in early 2004. Whereas the costs of launching the computer system, that is not yet fully operational, amounted to over 12.5 m PLN (over 3 m Euro) by the end of 2005, half of which came from the EU budget. The European Commission has warned Poland that if the computer system is not completed by the end of 2006, the transfer of all structural funds to Poland may be withheld²⁹.

Assessment by experts

The next stage of the project selection procedure is the technical and content—related assessment carried out by panels of experts. The panels are appointed by voivodship self—governments according to guidance from the IROP Managing Ministry, provided in the *Manual on IROP implementation procedure*. Formal requirements for appointing the experts, described in the Manual, are imprecise. However, what is even worse, they are often not

²⁷ NIK (2006), p. 25.

²⁸ See *Podręcznik procedur wdrażania IROP z załącznikami* (Manual on IROP implementation procedure with) — version of 28 October 2005 (with amendments of 2 December 2005), point 6.1.9.1., Ministry of Regional Development, Warsaw.

²⁹ See L. Kostrzewski (2006): *Polska może stracić miliardy unijnej pomocy*, Gazeta Wyborcza, dated 11—07—2006.

observed in practice. That is related to the lack of appropriate mechanisms of supervising the work of experts by the Managing Authority, as well as to the insufficient disciplinary sanctions for experts and Marshal Offices for errors in appointing and in operation of the expert panels. As a result, subsequent research points out numerous irregularities in the work of those bodies. A Supreme Chamber of Control's report³⁰ showed frequent cases of insufficient qualifications of experts or their limited experience in regional policy, including failure to satisfy the formal requirement of five years experience in investment projects. In consequence, the opinions issued on projects were erroneous or issued without appropriate assessment against the required content criteria. In some cases project assessment was made without the required justification in the final project assessment card³¹. That means a relatively great extent of arbitrariness on the part of experts, which is a factor conducive to corruption. It also has negative effects for the proper implementation of the regional policy directions. That makes some commentators express severe criticism of this stage of the procedure in which the substantive content of the project is of secondary importance³². An additional factor making it easier for the experts to be arbitrary in their decisions, is the insufficient openness of their work. The panellists sign confidentiality declarations and the exact information about the number of points granted to projects broken down into individual criteria, is not always publicly announced (e.g. via Internet)³³. In addition, the *Manual on IROP implementation procedure* limits the possibilities to disclose information about the composition of expert panels³⁴, which makes the public control over their professionalism and impartiality even more difficult.

Impartiality of the experts is not sufficiently regulated, especially as far as the conflict of interest situations are concerned. Even though the panel members do sign impartiality declarations, there is practically no procedure to check the truth of those declarations nor are there any sanctions for their breach. The lack of instruments that would effectively prevent the occurrence of conflict of interests, both at the stage of the formal as well as content—related and technical assessment of a project, significantly increases the possibility of corruption. There have also been charges against some expert panels³⁵, that they are more willing to be driven by guidance from

³⁰ *Przejrzyste Fundusze Strukturalne* (2006), p. 20—21.

³¹ NIK (2006), p. 25.

³² See Transparency International Polska (2006): *Organizacje pozarządowe proponują usprawniony system wdrażania funduszy strukturalnych*, Warszawa, p. 3, www.transparency.pl.

³³ *Przejrzyste Fundusze Strukturalne* (2006), p. 32—33.

³⁴ Por. *Podręcznik procedur wdrażania ZPORR... ibidem*, p. 40.

³⁵ For instance, in Lower Silesia politicians from the Voivodship Board exerted pressure on the experts, see K. Niklewicz (2004): *Repeta z dotacji, bo to zły ekspert był*, *Gazeta Wyborcza* No. 288, 9—12—2004.

regional politicians (e.g. Voivodship Boards) than by the content—related project assessment criteria. This may indicate a possibility of the occurrence of political corruption practices. This is related to the fact that, as the IPA research has shown³⁶, some experts are recruited from among officials subordinated to the voivodship self—government authorities. This indicates a possibility that the assessment of projects may be influenced by some external factors not related to their contents, and may even be a signal of a political corruption risk.

Assessment by the Regional Steering Committee

The next stage of the procedure is the opinion issued by the Regional Steering Committee (RSC) on the ranking list of projects prepared by the expert panel. The Committee operates under the guidance of the **Voivodship Marshal**, i.e. the head of the voivodship self—government and the head of the Voivodship Board. It groups representatives of regional administration designated by the voivodship self—government, representatives of the central government administration (of the voivod), representatives of local self—governments and social partners, i.e. civil society organisation from a given voivodship. The idea behind calling this body to participate in the project assessment process was to guarantee the implementation of the partnership principle in regional policy. The point was to ensure appropriate civil society supervision over the project selection, exercised by NGOs and entities participating in the implementation of IROP. The essence of that idea was to create a body, bringing together many people, who represented different social interests involved in IROP. It was assumed that RSCs could contribute to significant reduction of administrative pathologies, including administrative and political corruption.

It seems that the original objective of RSC operation has not been achieved in practice, for two reasons. Firstly, because of the low representativeness of the people delegated to work in RSC, who do not fully reflect the range of entities involved in IROP and the related social, territorial and economic interests. Secondly, the RSC activities are not limited only to supervising the correctness of project selection, but they also, relatively often, lead to changes on the project ranking list. Quite often such decisions are not properly justified and are poorly explained to the public. Such actions are contrary to the guidance issued by the ministry competent for regional development, included in the *Manual on IROP implementation procedure*. It is worth noting at this

³⁶ An interview with a member of a Regional Steering Committee.

point that the above mentioned guidelines are imprecise and too narrowly refer to the RSC's obligation to give access to information. Often a misunderstood need for protection of confidential information was quoted as an excuse for hiding the justification of the decisions taken³⁷. Research³⁸ also points to situations when the lack of openness of the proceedings and hiding documentation is justified by reference to the guidance proposed by the IROP Managing Ministry. It is an example of using the guidance contrary to the ministry's intentions and against the "spirit" of the provisions of the Manual on IROP implementation procedure. It may give rise to suspicions that the arbitrariness of those decisions is related to the occurrence of political corruption. Research³⁹ and press reports⁴⁰ point out to the charges against the RSCs that it are driven not by the project content but by political or personal criteria. That in turn is related to the weakness of mechanisms preventing the conflict of interests among the RSC members while taking the decisions to make changes to the project ranking lists. Even though the RSC members do sign impartiality declarations, there is no system to verify them and no sanctions for a breach of the impartiality principle.

Earlier research and press reports are confirmed by interviews with members of RSC conducted in the autumn of 2006 by the Institute of Public Affairs (IPA). The major influence on decisions taken by that body is exerted by voivodship self—government authorities and the representatives of local self—governments who take part in RSC meetings. Representatives of the regional and local self—governments often informally agree on how they are going to vote on the project ranking list. As one of the respondents has put it, the predominant practice is the "today we are voting for your project, tomorrow — for mine" principle⁴¹. The research has also shown that decisions are not taken on the basis of the substantive regional policy criteria but mainly in relation to territorial preferences. These are related to representing the interests of a given local self—government (gmina or powiat) that is, they are connected with the willingness of the decision—makers to ingratiate themselves with the voters from the constituency from which the RSC members come or with the Voivodship Board. Such a way of selecting

³⁷ See M. Kowalski, K. Aładowicz (2004): *Dziela kasę po cichu*, Gazeta Wyborcza No. 279, 29—11—2004.

³⁸ *Przejrzyste Fundusze Strukturalne* (2006), p. 34—38.

³⁹ See Transparency International Polska (2006): *Organizacje pozarządowe proponują usprawniony system wdrażania funduszy strukturalnych*, Warsaw, p. 4, www.transparency.pl; *Przejrzyste Fundusze Strukturalne* (2006), p. 22.

⁴⁰ See press reports on irregularities in RSC operation in Wielkopolska region: *Wielkopolskie w kolejce do NIK* (2005), Gazeta Prawna, No. 76 (1441), 2005—04—19; *Minister trzyma kciuki* (2005), Gazeta Prawna, No. 78 (1443), 2005—04—21.

⁴¹ Interview with a member of an RSC, 22 September 2006.

projects falls within the category of the so called electoral corruption, where irregularities connected with project selection result from the desire to be re-elected.

The practice of being driven by party affiliation or personal connections have also been noted in the interviews⁴². Whereas in the IPA study on the analysis of the documents related to project selection procedure⁴³ no cases of changing the decisions of political bodies under the influence of a political party have been noted. It was, however, noticed that there had been some geographical preferences in the decision making related to representing particular interests connected with constituencies of the decision-makers.

The people interviewed by IPA also pointed to a problem of poor representativeness of those delegated to RSCs. There were no clear procedures and rules for selecting the representatives of particular social groups. Sometimes the selection was influenced by the Voivodship Board, in accordance with their preferences, which were not disclosed. There were also cases where the Board was unwilling to have any representative of NGOs selected⁴⁴, or a case of an NGO representative who was actually a subordinate of the Voivodship Marshal⁴⁵ etc. Representatives of citizens associations were treated with suspicion and reluctance, also because they did not participate in the “negotiations” of the territorial self-government representatives. Moreover, as people usually not directly interested in project selection (that is, not representing the associations who had submitted the projects) — they could potentially play a role in supervising the correctness of the project selection process. In practice, that was really difficult because (1) they were poorly represented in the works of RSCs, (2) the minutes of the RCS meetings were not made public, (3) there was not enough interest in those works on the part of the public, and what is the most important, (4) the essential decisions were taken outside the RSC meetings, that is, because of the earlier informal

⁴² In one of the interviews the following situation was described: *„During the meeting the Marshall received a phone call and changed his decision: an application was selected for which the Kaszubsko—Pomorskie Association had lobbied, an organisation that has a right to place candidates on the electoral lists of the Civic Platform”*, interview of 13 September 2006. Elsewhere in the same interview it was indicated why Gdańsk receives most subsidies: according to the respondent, *“it was necessary to create a favourable atmosphere in the media for Mr. Adamowicz (the City Mayor) before the local elections”*. Gmina Kaszuby—Kościerzyna receives subsidies, *“because that is where the PO [Civic Platform] people in the local government authorities come from”*. In another interview a case was where the Committee voted for a project supported because of the affiliation with the ruling party — Law and Justice [Prawo i Sprawiedliwość]; interview of 22 September 2006.

⁴³ See U. Kozłowska (2006): *Badanie zależności regionalno—politycznych w ramach dystrybucji funduszy strukturalnych w 2005 roku na przykładzie działania 1.1 (Modernizacja i rozbudowa regionalnego układu transportowego) i 3.1 (Obszary wiejskie) w wybranych województwach*, typescript, Instytut Spraw Publicznych.

⁴⁴ Interview with a representative of a RSC of 22 September 2006.

⁴⁵ Interview with a representative of a RSC of 20 September 2006.

arrangements between the representatives of territorial self—governments delegated to work on those Committees.

Decisions of Voivodship Boards

The final decision on project selection is taken by appropriate Voivodship Boards. Research⁴⁶ shows that the Boards often exercise their power to change the order of projects on the ranking list, which is vital for the practical implementation of projects. Changes made by the Boards are not always properly justified. The justification, as it was in the case of RSCs, is not always presented to the public, e.g. on the Internet website of the Marshal Office. Therefore, in the press one can often come across accusations of the political and not content—related background of the Boards' decisions⁴⁷.

In—depth interviews conducted by the Institute of Public Affairs bring examples of decisions taken by Voivodship Boards which changed the decisions earlier made by experts. According to the respondents, it is not a frequent practice as the Voivodship Boards are in control of the earlier stages of the project selection process (that is, the stage of the formal selection by voivodship Marshal's officials, the stage of the expert panel assessment and also the RSC decisions). If, however, it comes to changing the order of the project ranking list — such decisions are not usually based on substantive criteria related to regional policy. It was quite aptly put by one of the respondents: *“there were situations when projects that had received 95% of point from expert panels were later rejected by a Voivodship Board. When the RSC openly protested, the Board explained their decision by the principles of the voivodship strategy and by the fact that expert panels are supposed to assess projects only from the merit point of view. It is difficult not to agree with such arguments, yet in that particular case, political reasons prevailed: a friend from PSL [Peasants' Party] needed to have a big project implemented whereas the project that received the higher assessment was submitted by a person from a competitive party”*⁴⁸.

Interviews conducted by IPA also show how poor the justification of the Voivodship Boards' decisions is, and how reluctant they are to disclose those reasons to the public. In addition, voivodship development strategy, which is often invoked by the Boards, is treated by them in a purely instrumental way,

⁴⁶ *Przejrzyste Fundusze Strukturalne* (2006), p. 22.

⁴⁷ See the controversy around the decision of the Kujawsko—pomorskie Voivodship Board and favouring projects from the gmina of Mogilno, where two out of five Board members lived. See K. Niklewicz (2004): *Repeta z dotacji, bo to zły ekspert był*, *Gazeta Wyborcza* No. 288, 9—12—2004.

⁴⁸ An interview with a member of a Regional Steering Committee, 20 September 2006 r.

as an excuse used to hide the real reasons behind their decisions, which do not have anything to do with the content of a project.

The practical operation of RSCs and Voivodship Boards in the area of project selection shows that they frequently go beyond the content—related control whether the regional policy is properly implemented. Both stages, on the other hand, provide ample opportunity for discretionary intervention to local and regional politicians. Thus, they open an institutional “door” to irregularities related to political corruption. It is also worth noting that the format of RSCs operation and the electoral mandate for the voivodship self—government provide some peculiar public legitimisation of decisions which are not always consistent with the directions of the regional policy.

(C) Project implementation and supervision phase

In order to assess the corruption threat at the stage of project implementation it is important to make an assessment of the following aspects:

- 1) project financial management,
- 2) correctness of project implementation by beneficiaries and implementing institutions, especially in relation to tender procedures and public procurement,
- 3) system of monitoring and financial supervision.

Further in the analysis I shall discuss the above mentioned project implementation aspects.

Project financial management system

The responsibility for the flow of funds financing the projects has been vested in the central government administration. On the regional level, the voivod’s administration is responsible for that. The tasks of the voivod and the Voivodship Offices officials include signing agreements granting structural funding with entities whose projects have been approved for implementation (i.e. beneficiaries). That is related to appropriate application verification, financial supervision of project implementation and servicing the IROP accounts at the regional level. The voivodship self—government performs auxiliary tasks related to financial management only for Measures under Priority 2 and Measure 3.4. (*Micro—enterprises*). In relation to them, the voivodship self—government authorities sign framework financial agreements with voivods. On that basis they subsequently sign agreements with

beneficiaries and carry out monitoring and reporting activities in that respect. At the central level, financial management has been vested in the so called paying institution, i.e. the Ministry of Finance and the ministry managing the IROP.

The separation of the project selection stage from the financial management has no significance for countering corruption. Therefore the division of those tasks between the regional self—government administration and the voivod’s administration does not affect the corruption threat in any significant way. For eliminating the threat of corruption it seems much more important to separate the programming phase from the project selection phase and to have a clear definition of the roles of politicians and officials in those two processes. Financial management is only of technical importance. It implements the decisions taken at an earlier stage of the project lifecycle, when the project was approved for implementation. Two issues, however, are important for proper financial management: (1) simplification of the management system, with reduction of unnecessary or duplicated stages of financial applications approval; (2) the quality of financial supervision and effectiveness of correcting the irregularities in the financing system. From this point of view, the IROP financial management system shows some malfunctions, which may bring about various irregularities related to project financing.

The financial management system is complicated, time consuming and multi—stage. Some procedures and activities are needlessly repeated by various institutions. For instance, voivod’s officials formally verify the applications for project financing, which duplicates the activities carried out at the beginning of the project selection phase by Marshal Office officials. A report by the Supreme Chamber of Control (NIK) shows that it caused significant delays in concluding the agreements between voivods and beneficiaries⁴⁹. Then, the applications for financing processed by the voivod’s officials are further verified at the IROP Managing Ministry. Its employees check the applications from the point of view of their form and their contents. According to NIK inspectors⁵⁰ the “two pairs of eyes” rule, which safeguards against the danger of corruption, is usually observed. However, ministerial officials are not able to fulfil their task properly as they do not have access to the whole documentation of the case. What is more, the fact that the same documents are verified several times at different levels of management, makes the whole procedure much longer. That was the reason why all the applications for project expenditure refund were sent from the IROP

⁴⁹ NIK (2006), p. 8, 27.

⁵⁰ NIK (2006), p. 29—30.

Managing Ministry to the paying institution (Ministry of Finance) with a major delay. The applications are verified again at the Ministry of Finance.

The fact that the project financing procedure is multi—stage and centralised leads to situations when a number of applications are piling—up, waiting to be processed by the administration. That in turn causes excessive haste and pressure from political decision—makers in ministries to have the funds absorbed by a certain deadline. Such conditions may give rise to inaccuracies in application verification by officials and provide opportunity for occurrence of various financial irregularities. Even more so, as, as I have mentioned before, the computer system SIMIK does not fulfil the requirements for appropriate control over the correctness of project financing.

System of implementing projects and public procurement

According to available empirical data, the practical implementation of projects is, in most cases, correct, although in some cases in breach of the public procurement law⁵¹. This may indicate that the tasks performed at that particular stage of project lifecycle do not pose any serious corruption threats. A more detailed evaluation of project implementation shows, however, that this initial assessment is incorrect. The most risky, from the point of view of corruption threat at the stage of practical implementation of investment projects, is the organisation of tenders and selecting project contractors. Those are the responsibility of project beneficiaries, which in IROP are usually territorial self—governments. For IROP Priority 2 and Measure 3.4. the duty to arrange tenders is carried out by the so called implementing institutions, i.e. voivodship self—governments. The quality of legal provisions regulating public procurement and the quality of the system of supervising tender procedures under IROP are critical for the evaluation of the threat of corruption in this area.

The public procurement regulations, in force in Poland not so long ago, provided, according to experts⁵² and in view of the reports of the Supreme Chamber of Control,⁵³ a range of opportunities to not apply or to circumvent the law. That carried a high risk of corruption. At the same time, the above mentioned regulations were considered to be one of the main obstacles to quick and effective absorption of structural funds. That was why, on 7 April

⁵¹ NIK (2006), p. 9, 30.

⁵² See A. Panasiuk (2004): *System zamówień publicznych w Polsce*, Ed. OLYMPUS, Warszawa, p. 194.

⁵³ See NIK (2005): *Zagrożenie korupcją w świetle badań kontrolnych Najwyższej Izby Kontroli przeprowadzonych w roku 2004*, Supreme Chamber of Control, Warsaw.

2006, the Act regulating the issue of public procurement in Poland, which also applies to the way IROP tenders are organised, was amended⁵⁴.

The main changes brought by the amendment include⁵⁵ raising the financial threshold for projects that can apply simplified tender procedure. In comparison to earlier regulations, it means raising that threshold ten times, to the level of 60,000 Euro of project value. Under the new provisions, the obligations related to observing time limits for carrying out tenders, including submission of bids and the possibility to file appeals and complaints against tender results, have been liberalised. The ordering party has retained significant freedom to set the deadlines for application submission and placing the bids. That can lead to a situation where the dates may be set in such a way as to make it possible only for the “chosen” contractors to prepare an application or a bid on time. In addition, financial thresholds for projects requiring the most strict procedures have been raised and the powers of the agency regulating public procurement (i.e. Public Procurement Office) have been limited. The amendment has deprived the President of the Public Procurement Office of the rights related to issuing permissions in a number of cases, for instance to use the free order procedure, to negotiations without prior announcement, etc. It has left the decision as to the use of the above mentioned procedures solely in the hands of the interested ordering party. The Act does not provide any mechanisms that would allow for some systemic monitoring and verification of the performance of contracts with respect to public procurement. For instance, it contains a provision⁵⁶ that orders the exclusion from the proceedings of a, so called, dishonest contractor, that is a contractor who has failed to deliver a public contract or has not delivered it properly. However, because of the lack of a system for monitoring the implementation of public orders, the above mentioned provision is practically never applied.

All the above mentioned changes to the law on public procurement go in the direction of expediting and facilitating the expenditure of structural funds in Poland. At the same time, they increase the possibility of corruption occurrence. According to experts⁵⁷, they may result in an increase of the costs

⁵⁴ Act dated 7 April 2006 on amending the Act — Public Procurement Law and the Act on responsibility for violating the discipline of public finance (Journal of Laws dated 10 May 2006).

⁵⁵ See more on the subject: P. Wiśniewski (2006): *Korupcja w obszarze zamówień publicznych w Polsce po nowelizacji ustawy Prawo zamówień publicznych — spostrzeżenia podstawowe*, typescript, Institute of Public Affairs.

⁵⁶ See Art. 24 paragraph 1 point 1, Act dated 7 April 2006 amending the act — Public Procurement Law and the act on responsibility for violating the public finance discipline (Journal of Laws dated 10 May 2006).

⁵⁷ See P. Wiśniewski (2006): *Korupcja w obszarze zamówień publicznych w Polsce po nowelizacji ustawy Prawo zamówień publicznych — spostrzeżenia podstawowe*, typescript, Instytut Spraw Publicznych.

of investment projects and in monopolising the tenders by enterprises and municipal companies with links to local politicians⁵⁸. For that reason, the discussed stage of project implementation should be considered the most threatened with corruption within the whole IROP system.

Monitoring and financial supervision system

Also the monitoring and supervision functions have been largely transferred to central government administration, and in some parts, also centralised. Thus, the second, after programming, most important role of regional politicians has been given into the hands of the government and the government administration. Main responsibilities for IROP monitoring are with the Monitoring Committee operating at the IROP Managing Ministry. The Committee is composed of representatives of government administration (central and voivodship), representatives of voivodship self—governments, national organisations of territorial self—government as well as social and economic partners. The tasks of this body include i/a analysis of the process of IROP implementation, also from the point of view of achieving the regional policy objectives set out in the programme. The Committee also examines and approves all proposals for changes in the implementation of the programme. At the regional level, there are sub—committees monitoring the implementation of the programme in a given voivodship. They operate under the supervision of voivods, and within the structures of Voivodship Offices there are appropriate departments specialising in monitoring the process of IROP implementation. Voivodship Offices are also responsible for checking whether the principles of public contracting are correct and whether public procurement contracts are delivered by beneficiaries. Monitoring sub—committees have relatively small scope of competence, of only auxiliary nature, in relation to central institutions. They approve IROP implementation reports in a given voivodship and may file requests with the IROP Managing Ministry for changes to the programme.

Monitoring sub—committees are collective bodies, consisting of representatives of government administration (voivodship and central), voivodship self—government, local self—governments and civil society and business organisations from the region. As in the case of RSCs we may, however, be critical about the representativeness of those committees in relation to programme stakeholders. The fact that they operate under the aegis

⁵⁸ See M. Wielgo (2005): *Rewolucja w przetargach, czyli cel uświęca środki... z UE*, Gazeta Wyborcza No. 284, dated 07—12—2005; *Środki unijne muszą być wykorzystane*, Gazeta Prawna, No. 246 (1611), dated 20—12—2005.

of a voivod, means that it is the voivods who organise the development of regional partnership between different types of self—government and civil society organisations. Thus, voivods enter the sphere of regional and local policy which should be in the exclusive domain of voivodship self—governments. This also makes them active players on the regional political scene. It provides space for the development of political corruption and using the influence of the voivod for the purpose of the local electoral game and party influence. Such a format of political activity becomes evident during dIPAutes surrounding IROP, between a voivod and a Marshal (head of the regional self—government), which often have political undertones.

Limited participation of voivodship self—governments in monitoring IROP implementation reduces the possibility of implementing the regional policy by self—government politicians. It also weakens the regional politicians' ability to correct various irregularities in the operation of the territorial administration implementing IROP, including fight with corruption. In addition, on the regional level, there are no special procedures to counter corruption, such as a system of reporting irregularities and corruption suspicions (*whistleblowing*). The Institute of Public Affairs research shows⁵⁹, that none of the Marshal Offices' Internet sites contains information about a possibility to report corruption in the implementation of IROP measures. Little interest of regional decision—makers in fighting corruption may be related to the insufficient competencies of regions and the limited responsibility of regional politicians for monitoring of the programme. Centralisation of monitoring and supervision procedures is not only wrong from the point of view of managing regional development, but it is also inefficient and ineffective in identifying and combating irregularities. Thus centralisation of the monitoring and supervision system is not a sufficient guarantee for effective prevention of corruption. An example to illustrate that argument is the operation of the fiscal system, playing an important supervision role in proper expenditure of structural funds. Tax inspection offices in every voivodship are responsible for in—depth inspection of 5 percent of IROP expenditure, based on a representative sample of financial transactions and projects implemented under the programme. Practically, it means a detailed verification of expenditure and the way of delivering particular projects on the investment site. A pre—condition for launching that system is issuing appropriate methodological guidance and the selection of a control sample by the Bureau

⁵⁹ J. Zbieranek, U. Kozłowska (2006): *Access to information about the distribution of structural funds on regional level*, w: SAVE PUBLIC ASSETS: *Monitoring Corruption Threats in the Distribution of Structural Funds. The Case of Poland*, maszynopis, Instytut Spraw Publicznych, Warszawa.

of International Fiscal Relations located at the Finance Ministry (i.e. the paying institution). However, according to a report of the Supreme Chamber of Control, the above mentioned institution has not implemented the appropriate procedures that would enable the launch of the supervision system⁶⁰. In spite of the fact that almost one million PLN (approx. 250 thousand Euro) has been spent on experts work, the Manual on control procedures has been in many places incompatible with European law and thus, useless for tax offices. This may mean that, in spite of strict EU regulations for using EU funds, a possibility that irregularities, including corruption, will occur in Poland is relatively high. It is not the fault of legal regulations, but the fault of weakness of control systems and delays in the practical implementation of European law.

The Ministry of Finance is also to blame for the troubles related to the operation of the SIMIK computer system, necessary for proper financial supervision of IROP projects. Even though the EU regulations require the use of separate accounting systems for structural funds and a separate accounting code for all financial transactions within IROP, yet, poorly working main IT tool, i.e. the SIMIK computer programme, effectively hinders putting those standards into practice.

Another example of delays and not very accurate implementation of supervision procedures is reporting by the IROP Managing Ministry to the European Commission on financial irregularities within IROP. That is the basis on which the procedure is launched to recover the sums already paid from structural funds, together with interest. This is probably the most painful sanction against entities that use IROP fund in an improper way, and, indirectly, a tool to counter corruption. A NIK report shows that notification of irregularities has not been done on time and has not followed the adopted procedures⁶¹. It is worth remembering that we are now just at the beginning of the discussed procedure, as it only applies to funds to be reimbursed from the EU budget and in case of most of the projects the accounts have not been settled yet.

⁶⁰ NIK (2006), p. 34—35.

⁶¹ NIK (2006), p. 31.

Summary

The system of managing the IROP does not sufficiently prevent the occurrence of political and administrative corruption. An analysis of the IROP management system proves that it is the project selection procedures and the tendering procedures that are the most corruption prone. In case of project selection the most important threat is the occurrence of political corruption. That is related with the non—merit influence of local political politicians on the selection of projects. The IPA research has found, first of all, a tendency for improper influencing related to the constituency of political decision—makers (territorial influence), to a lesser extent related to party influence or personal contacts. The main threat in case of tender procedures is administrative corruption. It has also been noted, that the tender regulations amended in 2006 improve the efficiency of public spending, but at the same time significantly increase the risk of corruption.

Most projects implemented under IROP are selected in open competitions announced regularly for particular measures of the Programme. Beneficiaries submit their own proposals for the implementation of particular measures of the IROP. It is rarely the case that big projects are entered for implementation in the regional *Programme Complement*. From the point of view of corruption prevention it is less important whether the projects have been submitted in open competitions or whether they have been included earlier in the operational programme in the form of larger projects. For countering corruption the following are of key importance:

- (1) proper quality of procedure and institutions responsible for project selection and**
- (2) the quality of the procedure of selecting an investor to implement a given project (that is the tendering procedure).**

The important points are, in particular (a) maximum simplification and transparency of those processes, (b) transparency of the selection criteria, (c)

quality of the legal regulations defining the selection principles, with particular emphasis placed on special regulations to prevent corruption, (d) precise definition of the role of politicians and officials in both processes, (e) appropriate design of the institutions responsible for decision—making.

Summarising the analysis of the corruption threat in the management system of IROP, attention could be drawn to the following conclusions:

- 1) **The way of informing about activities undertaken during the implementation of the programme is insufficient**, which in some cases may be conducive to corruption. That applies in particular to the collection of applications and then the selection of projects. An example of a lack of sufficient information may be the cases when the schedule of subsequent calls for projects was not published by voivodship self—governments, the time given for submission of applications was too short, insufficient or simply no content—related justification of project selection decisions was provided.

Regulations concerning transparency of competition procedures, and in particular those regulating the way of presenting information by voivodship self—governments are imprecise, inappropriate or they are wrongly interpreted by regional governments. The regulations defined by the ministry managing the IROP⁶² do not provide for any coherent standard of presenting information on the Internet websites. There are no detailed regulations concerning the scope of information on particular stages of competitions procedures to be presented. For instance, there is no obligation to publicise the grounds for decisions of the Voivodship Boards changing the order of the project ranking list⁶³. The regulation included in the Manual on IROP implementation procedure concerning the restrictions to making the information of the composition of the experts panel public is inappropriate⁶⁴. Quite often the regulations are wrongly interpreted by voivodship self—government, which practically leads to limiting the access to information.

- 2) A great obstacle to proper implementation of project selection procedures, and later of project delivery and supervision of financial flows, is **the lack of a properly operating computer system SIMIK**. It increases the risk of corruption.

⁶² See *Manual on IROP implementation procedure... ibidem*.

⁶³ See *Manual on IROP implementation procedure... ibidem*, p. 55.

⁶⁴ See *Manual on IROP implementation procedure... ibidem*, p. 40.

- 3) NIK inspection of IROP showed that the centralisation of the management process, taking into account burdening of the Minister of Regional Development with a variety of tasks, considering shortage and high turnover of staff, extended the process of structural funds absorption. It has also reduced the possibility of correct implementation of regional policy by voivodship self—governments, having failed to take full account of the specific character and the initiative of regions⁶⁵. **Centralisation of IROP management leads to appearance of “bottlenecks” in the management process and pile—up of work for officials. It causes excessive haste and pressure from political decision—makers to have the structural funds absorbed as quickly as possible.** According to the N+2⁶⁶ rule it may happen that some of them will remain unused. **In such conditions different administrative irregularities may appear, including also cases of corruption.** Centralisation of management makes it also difficult to carry out monitoring and supervision activities. Government institutions are responsible for delays in launching appropriate procedures of financial supervision and of the computer system SIMIK, as well as for failing to enforce certain EU regulations concerning the use of structural funds.
- 4) **The separation of functions related to project implementation from supervision functions is critical for countering corruption. In addition, it is justified to separate the programming phase, which should be implemented by regional politicians, from the project selection and implementation phases, which should be implemented by experts and officials.** At the same time, regional politicians should have appropriate instruments to supervise the work of officials and to monitor project implementation. Under IROP, regional politicians do not have proper supervision instruments, and their role in monitoring has been significantly diminished and transferred to the central level. Self—government politicians, on the other hand, actively participate in project selection, and the imperfect procedure creates favourable climate for political corruption. Also the position of voivods in creating regional and local partnership favours such phenomena. The structure of the IROP management system and the division of responsibilities between

⁶⁵ NIK (2006), p. 12.

⁶⁶ The N+2 rule says that funds reserved in the EU budget for a given year should be paid to the beneficiary within two years following the year in which the obligation has been undertaken. In practice, it means that Member States must forward applications for payment to the Commission within two years from the allocation of funds, for the amount specified in the EU budget as an obligation for a given year. Funds not covered by the submitted applications are lost.

different public authorities create institutional incentives for political corruption.

- 5) One of the reasons for improper participation of regional and local politicians in project selection procedure is the centralisation of the regional development programming, that is depriving local politicians of a possibility to exert real influence on the programming of the development of their own voivodships. **In order to improve the management of regional programmes it is necessary to restore the quality of regional development programming by local politicians.** An important element of the reform of regional development programming is to base it on the preparation of a voivodship development strategy and operational programmes by self—government regional authorities in agreement with local self—governments. In the current situation, the voivodship development strategy document is simply a general planning document of limited practical value, which is used as a “cover” for irregularities during project selection. Decentralisation of regional development programming from the level of the IROP managing ministry down to the regional self—government level should be combined with such a design of programme management system for the years 2007—2013 that would focus the attention of politicians only on programming and supervision activities and leave the project selection to officials and experts.
- 6) **An example of an improper division of responsibilities between officials/experts and regional politicians can be inadequately designed institutions responsible for IROP management.** An example of that can be regional steering committees, which in their current form, contribute to increasing the risk of political corruption. The bodies representing local and regional politicians should only participate in development programming (preparation of strategic and operational documents) and in supervising the proper implementation of the regional development policy by officials. Politicians should not therefore select particular projects, but they should only formulate priorities and essential regional policy activities and should monitor whether the projects selected by officials are consistent with the essential regional policy objectives. Participation of politicians representing certain territorial interests (that is the interests of their own voters from particular gminas) in bodies involved in project selection inevitably contributes to the occurrence of the territorial (and non—merit) bias in project selection. Politicians will attach higher value to ingratiating themselves with their voters and to their own re—election

than to the substantive criteria of regional development. In such a situation it is only natural that a project selection logic develops, following the principle: “today we are voting for your project, tomorrow for mine”⁶⁷. That is why in the future management system (for the years 2007—2013) regional steering committees should be merged with the regional monitoring committees. The competencies of those new regional committees should be limited only to supervision and monitoring functions.

7) In relation to regional steering committees, the IPA research has also shown the **problem of inadequate representation of certain social groups**. Selection of those representatives has not been governed by any appropriate regulations, which led to situations when voivodship self—governments acquired excessive influence over the operation of those bodies. In case of creating collective bodies designed to supervise the management of regional programmes in the years 2007—2013, the following will be of utmost importance: (a) appropriate way of selecting delegates to such bodies, (b) transparency of selection regulations and criteria, (c) transparency of selection process with respect to the public and (d) representativeness of the members in relation to social groups interested in being involved in regional development programmes. The above mentioned conditions are also necessary to establish appropriate partnership between self—government authorities and civil society organisations.

8) **Excessively complex regulations and documentation the beneficiaries are required to submit, as well as frequent changes of rules and regulations, are an important factor conducive to development of administrative corruption.**

IROP management procedure is multi—stage and is implemented by a number of different public institutions at the regional and central levels. Some procedures are duplicated, which additionally extends the project lifecycle. Not in all cases is the distribution of various administrative functions among different institutions justified from the point of view of countering corruption. For instance, separation of project selection stage implemented by voivodship self—government from the financial implementation of the project by government administration is not particularly important. It is much more important to create: (a) a simple and relatively short project lifecycle procedure, (b) precise regulation preventing abuse and (c) an efficient system of

⁶⁷ An interview with a member of a Regional Steering Committee, 22 September 2006.

supervision and enforcement of adopted regulations. That is why an excessively complicated procedure and duplication of certain activities may be bad from the point of view of the corruption threat. It may also be conducive to dispersion of responsibility for possible administrative irregularities.

- 9) **A serious fault of the IROP management system is the imprecise regulation aimed at preventing administrative irregularities and corruption.** There is also a shortage of special procedures to prevent corruption, e.g. related to establishing a system of reporting the irregularities and suspicions of corruption (whistleblowing). Another regulation, aimed at preventing the conflict of interest, appointing professional and independent experts evaluating the projects, etc. is also imprecise. At the same time, an additional factor increasing the risk of corruption consists in insufficient implementation of existing regulations, limited disciplinary sanctions for their breach and poor supervision of how the standards aimed at preventing administrative irregularities are observed.

The analysis of corruption threat in the management system of IROP also shows certain regularities in the operation of Polish administration, related to administrative and political culture and the tradition of a socialist state⁶⁸. The most important conclusions referring to these phenomena include:

- **Critical for the practical operation of IROP are informal rules of behaviour and standards of political culture.** Those worth mentioning include reluctance of the administration to act openly before the public and to include social partners in its activities, as well as a very strongly political character of the functioning of public administration⁶⁹.
- **Standards of administrative and political culture often override, in practice, the formal provisions of law.** It is one of the reasons why practical implementation of certain regulations is delayed, and others are not properly implemented or are only implemented superficially. A sign of a low public respect for the law is the weakness of systems for monitoring and supervising the way in which IROP is implemented and introducing sanctions in case of any irregularities.
- **Some institutions legitimise administrative or political activities, which significantly diverge from the objectives for which they have been**

⁶⁸ See T. G. Grosse (2006): *New Modes of Governance in New European Union Member States. A report on social dialogue in selected European Union countries*, NewGov, Project no. CIT1—CT—2004—506392, ref. No. 17/D08, .

⁶⁹ T. G. Grosse (2005): *Nowe metody zarządzania zadaniami publicznymi w Unii Europejskiej i w Polsce*, Studia Polityczne, vol. 17.

established, and sometimes they even serve the purpose of **sanctioning pathologies or corruption**. For instance, Regional Steering Committees do not properly fulfil their function consisting in monitoring whether projects have been correctly selected from the point of view of their content, nor do they appropriately represent entities involved in IROP in the region. Instead, they actually legitimise decisions taken in accordance with local political culture, which, in some cases, raise reasonable corruption suspicions. Some regulations are re—interpreted by local officials or politicians contrary to the intentions of those who designed the management system, and sometimes even in evident contradiction with those intentions and the spirit of the law. For instance, the guidelines of the IROP Managing Ministry, aimed at increasing the openness of the project selection procedure, have in some regions been used to actually limit the public access to the results and the justification of administrative decisions. Similarly, the confidentiality declarations which are supposed to protect personal data, commercial or business secrets, are actually used to restrict the openness of information on how the individual members of the decision—making bodies voted. They can also cause certain people to refrain from reporting irregularities.

- The wrong structure of the division of powers in the IROP management system and the standards of political culture also lead to a **wrong interpretation of political correctness**. For instance, in project selection it has been considered right to divide the funds equally among all local self—governments in a given voivodship. Thus, implementation of IROP leads to creating new standards of political culture. Indeed, they do provide safeguards against suspicions of political corruption, but at the same time they go far away from the essence of regional policy, which should be driven by different merit criteria and not just by the principle of allocating the same amount of funds to all interested parties. Thus, not only some institutions involved in IROP implementation, but also the newly emerging political standards actually block the opportunities for the development of self—government regional policy.