

## Tools Used in European Funds Spending – Part II

---

# Fight Against Fraud in the EU Funds

The second part of the article related to the protection of EU financial interests against fraud focuses on measures and good practices examples that, if implemented within the management and control system, may significantly contribute to counteracting corruption. The examples of mechanisms are related to highest-risk areas, and refer to both measures for prevention and for identification of suspected fraud. The article describes tools that are applied mainly by the institutions responsible for EU funds implementation aimed at identifying fraud, including a mechanism for anonymous reporting on irregularities. The article also discusses potential instruments developed in response to the most frequent irregularities areas, i.e. breaches in public procurement, conflicts of interests, or collusive tendering. An innovative instrument, designated for social control of public funds spending – the so called integrity pact – has been discussed in more detail. The author also presents IT tools to increase public spending transparency and to identify suspicious transactions. The examples of mechanisms referred to in the article can be successfully used in practice by all public administration entities, and contribute to the development of integrity culture and increased trust in state bodies.

**MARCIN SZYMAŃSKI**

---

### Anti-Fraud System Elements

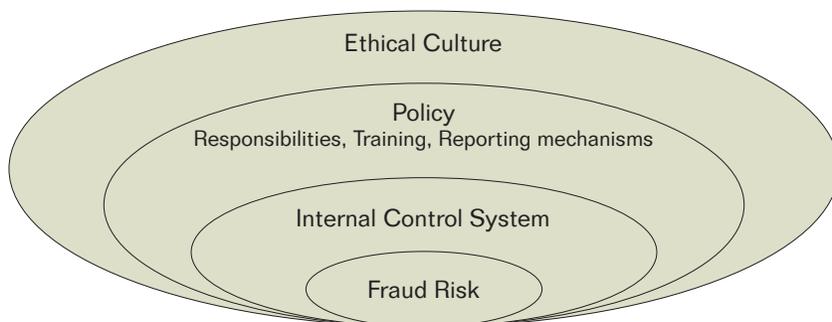
The recommendation of the OECD Council on public integrity<sup>1</sup> emphasises

that effective fight against corruption is possible through ensuring integrity in the public sector, through consistent adherence to common values, principles and ethical norms, and through

---

<sup>1</sup> Recommendation of the Council on Public Integrity, 26 January 2017 -C(2017)5, <<https://www.oecd.org/gov/ethics/integrity-recommendation-polish.pdf>>.

Figure 1. Elements designed for fraud combating



Source: Based on the EC Guidance<sup>2</sup>.

prioritising public interest over private interest. However, it does not suffice to introduce a bigger number of principles and their more rigorous execution. A holistic attitude is indispensable, along with cherishing integrity culture across society. Effective fraud combating can be possible only if high integrity standards are applied, if the issue is addressed in a systemic and consistent manner, and if all competent public bodies are actually involved. It is also important to use the potential of civil society organisations.

Therefore, anti-corruption policies must focus simultaneously on all elements of fraud combating, i.e. firstly, on prevention, secondly, on detection, and thirdly, on appropriate follow-up measures.

1. Prevention. In accordance with the traditional concept of explaining corruption prone conditions (so called Cressey's Fraud Triangle<sup>3</sup>), apart from pressure, motivation stemming, e.g. from living conditions, and rationalisation, resulting, for example, from low income, an opportunity is indispensable, resulting from a weak internal control system. Hence, prevention is a key element of a system for combating fraud, implemented mainly through:

- high standards of integrity and ethical conduct, which should be ensured among others through a system of trainings and appropriate "tone at the top" – especially at the management level demonstrating no tolerance for any breaches;
- strong, based on a reliable risk analysis, internal control system at each level, and

<sup>2</sup> Source: Guidance for Member States and Programme Authorities entitled *Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures*, June 2014, EGESIF\_14-0021-00 16/06/2014, p. 13 (hereinafter referred to as: *EC Guidance on Fraud Risk Analysis*).

<sup>3</sup> Donald R. Cressey, *Other People's Money: A Study in the Social Psychology of Embezzlement*, Montclair, NJ, Patterson Smith 1973, p. 30.

in the case of EU funds, also at the beneficiary level. The system should ensure that appropriate anti-fraud procedures and mechanisms are designed and implemented,

- transparent legislative process, clear and easy to implement provisions, comprising deterrent sanctions,
- high level of transparency of public activities, which allows for easy social control and increases social awareness as for public institutions activities.

2. Detection. It is the most difficult element of fraud combating. Effective detection of irregularities may be possible thanks to, among others:

- properly designed system for control and verification, aimed at detecting fraud,
- ensuring high quality staff capable of detecting fraud symptoms,
- application of effective channels for reporting on suspected fraud, as well as appropriate use of this information,
- effective use of IT tools, including databases e.g. for detecting double financing.

3. Follow-up. Inclination for fraud increases if an impression exists that the probability of detecting a fraud or severe punishment is low. This element of the process should focus on:

- defining clear procedures for conduct and reporting on suspected fraud,
- fast and effective cooperation and exchange of information among institutions, especially with law protection bodies and secret service,

- effective criminal proceedings,
- application of sanctions of deterrent nature,
- effective recovery of unduly paid funds,
- recording all fraud cases and suspected fraud in order to introduce improvements to be used at the stage of prevention and detection.

Anti-fraud mechanisms should be therefore built in the internal control system of a given institution. Among the main objectives of internal control, set forth in the Act on public finance, vital from the perspective of fraud prevention, the following should be emphasised:

- ensuring compliance with the law and procedures,
- ensuring compliance with and promotion of ethical conduct,
- effective risk management.

### Anti-Fraud Policy

A point of departure for anti-corruption measures, which allows to systematise the approach to fraud combating, should be an anti-corruption policy at the appropriate national level. At the end of 2006, the United Nations Convention Against Corruption<sup>4</sup> was adopted, which obliged Poland to implement and maintain a coordinated anti-corruption policy that promotes participation of society, and reflects the principles of the rule of law, proper management of public affairs and public property, transparency and accountability (Article

<sup>4</sup> United Nations Convention Against Corruption, adopted by the UN General Assembly on 31 October 2003 (Dz.U. 2007 No 84 item 563). An appraisal of the implementation of obligations stemming from the Convention can be accessed in: Makowski G., Nowak C., Wojciechowska-Nowak A.: *Realizacja wybranych postanowień Konwencji Narodów Zjednoczonych przeciwko korupcji w Polsce*. Fundacja im. Stefana Batorego, 2015.

5(1) of the Convention). To be effective, the obligations set forth in the Convention should be implemented through strategic documents. The EC also encouraged Member States to adopt such documents and to this end the EC issued comprehensive guidelines that to a large extent use and refer to examples and experience of individual EU Member States<sup>5</sup>. The guidelines present the desired process of preparing, introducing and evaluation of strategy effectiveness, as well as propose a strategy structure, with its key element being an action plan with expected results to be achieved.

In Poland, no national strategy has been developed that would be strictly dedicated to combating fraud in EU funds. Maintaining a holistic approach, in 2014 *Government Programme for Corruption Prevention for 2014–2019*<sup>6</sup> was elaborated, aimed at reducing corruption through strengthening preventive and educational measures in society and public administration, as well as through increasing the effectiveness of the fight against corruption<sup>7</sup>. It is worth

observing that the implementation of the programme was audited by the Supreme Audit Office<sup>8</sup>, and the audit revealed delays in the programme implementation, as well as its weaknesses, e.g. the lack of detailed schedules for individual initiatives, not precise indicators, the lack of an effective system for information exchange and cooperation – among those who implemented individual tasks, as well as between the academics and the non-governmental sector<sup>9</sup>. Moreover, the programme contained significant deficiencies, e.g. the issue of whistleblower protection was not discussed at all, nor was the issue of political parties funding<sup>10</sup>.

The programme for 2014–2019 was replaced in 2017 with another version covering the years 2018–2020<sup>11</sup>, designated as a tool to ensure flexible planning and management of legislative, operational, preventive and educational measures to be taken by state services and bodies in the area of corruption prevention<sup>12</sup>. In general, the contents of the programme are in line with the

<sup>5</sup> Guidelines on National Anti-Fraud Strategies Ref. Ares(2016)6943965 – 13/12/2016, Guidelines for National Anti-Fraud Strategies for European Structural and Investment Funds (ESIF) Ref. Ares(2015)130814 – 13/01/2015, Practical steps towards drafting of a National Anti-Fraud Strategy, Ref. Ares(2015)5642419 – 07/12/2015.

<sup>6</sup> Resolution No 37 of the Council of Ministers of 1 April 2014 (M.P.2014.299), on the basis of Article 19(2) of the Act of 6 December 2006 on the rules for development policy implementation.

<sup>7</sup> The first anti-corruption strategy in Poland was adopted in September 2002, called *Programme for Combating Corruption – Anti-Corruption Strategy*, which was later elaborated with the Programme for Fight Against Corruption – Anti-Corruption Strategy – 2nd Stage of Implementation 2005–2009.

<sup>8</sup> *Implementation of the Government Programme for Corruption Prevention for 2014–2019* (Polish name of the audit: *Wdrożenie Rządowego Programu Przeciwdziałania Korupcji na lata 2014–2019* – P/15/007).

<sup>9</sup> <<https://www.nik.gov.pl/aktualnosci/nik-o-wdrazaniu-rzadowego-programu-przeciwdzialania-korupcji.html>>.

<sup>10</sup> For more details see: W. Jasiński, *Rządowy program przeciwdziałania korupcji Kształtowanie polityki anty-korupcyjnej w latach 2014–2019*, "Kontrola Państwowa" No 5/2014, p. 95.

<sup>11</sup> Resolution No 207 of the Council of Ministers of 19 December 2017 (M.P. 2018 item 12).

<sup>12</sup> <<https://cba.gov.pl/pl/antykorupc/rzadowy-program-przeciw/3409,Rzadowy-Program-Przeciwdzialania-Korupcji-na-lata-2018-2020.html>>.

suggestions of the EC guidance referred to above. The programme sets the main goal, namely “actually reduce corruption crimes in the country and increase social awareness in the area of preventing corruption behaviours”. An advantage of the programme is the regular reporting process and publication of information on its progress, which indicates the tasks performed by individual administrative units, including those not directly indicated in the programme, yet contributing to corruption prevention. Unfortunately, the main goal of the programme implementation, which was improving Poland’s performance in the Transparency International Corruption Perceptions Index, has not been achieved (62 points in 2016). It was expected that by 2020 Poland would reach 65 points, while in 2020 the index for Poland was 56<sup>13</sup> and it translated also into a drop in the ranking. Transparency International listed Poland as an example of one of the greatest drops in the index among the EU Member States (from 65 in 2015 to 56 in 2020)<sup>14</sup>. However, the measures taken within the programme should be appreciated, e.g. *Guidance on Developing and Implementing Effective Compliance Programmes in the Public Sector* and *Anti-Corruption Guidance for the Public Administration as for Unified Institutional Solutions and Rules of Conduct for Officials and Persons from the PTEF Group*, issued by the Central Anti-Corruption Bureau (CBA) in 2020.

These documents can be helpful in improving organisational and procedural solutions for corruption prevention in public sector units.

With regard to EU funds, the *Guidance on management verifications of Operational Programmes for 2014–2020* needs to be referred to. It obliges all operational programmes managing authorities to develop a document on preventing corruption and ways to deal in situations when corruption or fraud has been detected, including conflicts of interests (Chapter 8 of the *Guidance*). Individual managing authorities have elaborated such documents, in different forms, such as guidance, recommendations or instructions. An example here are the *Recommendations on Irregularities Preventing and Correcting, Including Fraud, Within the Infrastructure and Environment Operational Programme 2014–2020*, which present, e.g. the most frequent types of fraud in infrastructural projects, suggested remedial measures, ways of proceeding in the case when a fraud has been detected, rules for conducting a fraud risk analysis by all institutions within the operational programme implementation system, as well as the issues related to irregularities and fraud monitoring and settlement. Adopting separate documents on fraud prevention for each programme seems to be a good solution, considering the legal responsibility of each managing authority, as well as the specifics and diversity of the projects implemented.

<sup>13</sup> <<https://www.transparency.org/en/cpi/2020/index/nzl#>>.

<sup>14</sup> <<https://www.transparency.org/en/news/cpi-2020-western-europe-eu.>>.

## Control Environment and Ethics Culture

Effective fraud combating within a given institution is not possible without a stable internal control system, including particularly control environment and appropriate organisational culture.

Robust ethical culture in an organisation creates favourable conditions for eliminating one of the elements that are a precondition for fraud occurrence, i.e. rationalisation, which is an excuse for illegal behaviours, e.g. the conviction that illegal activity is a norm within the institution. A culture for fraud combating may thus stop potential fraudsters and engage the whole staff in fraud combating. The following tools can be used for establishing integrity culture:

1. declaration of objectives – a clear message inside and outside an organisation, showing that highest ethical standards are striven for,
2. codes of ethics – properly communicated, known and observed by the staff of an institution, including those related to the issue of (not) accepting gifts and hospitality, as well as procedures related to conflict of interests management,
3. engagement of the management and tone at the top<sup>15</sup> – clear and frequent messages from top management expressing the expectation to meet highest ethical standards. It should be accompanied with information on controls aimed at preventing and detecting fraud, as well as with notifying

competent bodies of fraud cases – in order to verify them and punish perpetrators,

4. employment policy favouring open, competitive recruitment that leads to employing experts engaged in integrity promotion (ethical issues may also be a criterion in the recruitment process in assessing the skills of candidates),

5. appointing ethics advisors. Ethics advisor should be reliable person from the office, who can be addressed by staff members in the case of ethical doubts, in order to obtain advice on how to proceed. An ethics advisor should also support, on a daily basis, the manager of the entity in promoting ethical values of the organisation<sup>16</sup>,

6. assigning responsibilities to staff members and clear division of duties,

7. establishing inter-institutional cooperation allowing for permanent exchange of information and experience with other organisations, especially with law protection bodies. An example here can be the cooperation agreement between the Office of Competition and Consumer Protection (UOKiK) and the Public Procurement Office (UZP) concluded in 2017, aimed to increase the effectiveness of the performance of their basic tasks. It foresees, e.g. exchange of information related to the risk of irregularities in the public procurement system, and practices that limit competitiveness, especially collusive tendering. As for cooperation in the field of appropriate use of EU funds in Poland we can refer to the following

<sup>15</sup> Item 4.2.1 of the EC Guidance on Fraud Risk Analysis.

<sup>16</sup> Details on ethics advisors can be accessed from the Civil Service website: <<https://www.gov.pl/web/sluzbacywilna/doradca-ds-etyki>>.

agreements concluded by the minister of regional development with:

- Public Procurement Office, related to, among others, exchange of information on public procurement verifications,
- State Prosecutor's Office, related to exchanging information on ongoing or completed criminal proceedings related to EU funded projects,
- Central Anti-Corruption Bureau on providing its organisational units with information gathered in the IT system for supporting operational programmes implementation – SL2014,
- Agency for Restructuring and Modernisation of Agriculture on exchange of information in order to perform cross-check audits to prevent double financing of the same expenditure from EU funds<sup>17</sup>.

8. an important role can be also played by the internal audit function, whose task is independent assessment of internal control functioning for the top management of the organisation and related advisory role. Work of internal auditors may contribute to improvements in organisational culture, as well as to strengthening controls, i.e. actually limiting “opportunities” for fraud,

9. training policy and awareness raising – training should provide not only theoretical knowledge, but practical as well, in order to facilitate detection and to ensure appropriate response to cases of suspected

fraud if such are identified. Awareness raising may also be less formalised, e.g. through bulletins, instructions, posters, intranet pages, as well as through putting ethics related issues on group meetings agendas. As for civil service, it is worth mentioning the important role of the Head of Civil Service in setting high integrity standards. With a view to performing the obligation to safeguard civil service principles, several initiatives have been taken, e.g.:

- website dedicated to ethics in the Civil Service<sup>18</sup>, where all necessary documents related to compliance with integrity principles are posted,
- dissemination of the *Recommendation of the OECD Council on Public Integrity*,
- issuing the recommendations of the Head of the Civil Service on promotion of integrity culture in the Civil Service<sup>19</sup>,
- development of a training package on ethics and solving ethical dilemmas for various target groups,
- development of a questionnaire for anonymous self-assessment of the organisation's integrity culture,
- coordination of the works of the team of ethics advisors in the Civil Service, appointed in 2017,
- creation of an e-learning platform for remote training of various groups (persons at higher positions in the Civil Service, persons at lower positions, and new members of the Civil Service)<sup>20</sup>.

<sup>17</sup> <<https://www.gov.pl/web/popcwsparcie/zasady-wspolpracy-instytucji-koordynujacej-umowe-partnerstwa-z-cba-prokuratura-krajowa-i-arimr-w-zakresie-nieprawidlowosci-oraz-kontroli-krzyzowych>>.

<sup>18</sup> Available from: <<https://www.gov.pl/web/sluzbacywilna/etyka-w-urzedzie>>.

<sup>19</sup> <<https://www.gov.pl/web/sluzbacywilna/zalecenie-szefa-sluzby-cywilnej>>.

<sup>20</sup> <<https://www.gov.pl/web/sluzbacywilna/e-learning>>.

Similar measures aimed at awareness raising as for ethical conduct are also taken by the Central Anti-Corruption Bureau, which is the host of the internet service on anti-corruption: [antykorupcja.gov.pl](http://antykorupcja.gov.pl), where information is available on ethical issues. The Bureau has also launched an e-learning platform targeting various groups. Each training module is concluded with a knowledge test. Once the test is passed, a certificate on the course completion can be generated<sup>21</sup>.

A systemic approach to corruption prevention can also be applied through introducing norms developed e.g. by the International Organisation for Standardisation (ISO):

- ISO 19600 “Compliance management systems – Guidelines”<sup>22</sup>, whose objectives are close to those of internal control systems. The standard is a set of guidance related to ensuring the effectiveness of compliance management systems. Compliance is understood in a broad way, not only as compliance with legal regulations, but also as compliance with values, ethical norms, standards and social expectations;
- standard PN-ISO37001:2017-05, directly dedicated to corruption combating, entitled “Anti-bribery management systems – Requirements with guidance for use”. It was based on the British standard, in force since 2011, BS10500 “Anti-bribery management system”, developed by the British Standards Institution (BSI).

It is worth emphasising that a series of initiatives as for administrative potential building has been implemented by the Directorate-General Regional and Urban Policy<sup>23</sup>, aimed at ensuring that Member States can best use funds within the Cohesion Policy and meet challenges related to their use through improving their structures, human resources, systems and tools. These can include, among other, a system for exchanging information, practices and experience among various Member States (Taix Regio Peer 2 Peer), organisation of training for managing, certifying and audit authorities, developing tools for preparing action plans for administrative capacity building. Also worth noting is a new IT platform (EU Funds Anti-fraud Knowledge and Resource Centre) established by the EC for the anti-fraud practitioners. It contains videos, good practices examples, case studies, links to relevant legislation and other material on fraud<sup>24</sup>.

## Fraud Risk Management

The effectiveness of anti-corruption measures can be ensured through focusing resources, which are usually limited, on the highest risk areas. In order to establish which areas these are, a risk analysis should be made in a comprehensive and systematic manner. In the case of EU funds, in order to facilitate managing authorities in performing the obligation to introduce fraud combating measures

---

<sup>21</sup> <<https://szkolenia-antykorupcyjne.edu.pl/>>.

<sup>22</sup> <<https://www.iso.org/obp/ui/#iso:std:iso:19600:en>>.

<sup>23</sup> For more information visit: <[https://ec.europa.eu/regional\\_policy/pl/policy/how/improving-investment/](https://ec.europa.eu/regional_policy/pl/policy/how/improving-investment/)>.

<sup>24</sup> <[https://ec.europa.eu/antifraud-knowledge-centre/index\\_pl](https://ec.europa.eu/antifraud-knowledge-centre/index_pl)>.

(set forth in the provisions of *Regulation 1303/2013*), the EC issued guidance entitled *Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures*<sup>25</sup>. The EC recommends a proactive and well-structured approach to fraud risk management. As a result of such measures, solid internal control systems should be established, to contribute to effective prevention or detection of fraud. However, it has to be considered that the mechanisms implemented should not pose a huge administrative burden. The guidance indicates that the tools implemented should vary depending on the specifics of the given operational programme. An accompanying element of risk management should be a clear declaration on involvement of institutions in fraud combating, as a deterrent for potential fraudsters.

The EC guidance comprises a tool for fraud risk assessment in the three basic processes of projects implementation:

- selection stage, choosing projects for co-financing,
- implementation and verification (audit) stage,
- expenditure settlement stage, including certification and payment settlement.

Cyclical risk analyses are aimed to help identify areas to which most attention should be paid; as a result it will be

possible to introduce control mechanisms to limit the probability or consequences of fraud to an acceptable level. The guidance also contains a list of potential control mechanisms that can be applied by authorities in order to reduce the possibility of risk, or to increase the probability of its detection.

The risk management methodology proposed by the EC in the guidance is based on the following sequence of measures:

- gross risk evaluation for a given fraud in one of the processes indicated,
- indication of existing control mechanisms and evaluation of their effectiveness,
- net risk analysis concerning existing control mechanisms,
- proposing and implementing additional mechanisms if the net risk level is not acceptable.

The manner for risk assessment is evaluated by the audit authority, which to this end can use the checklist included in Annex 4 to the EC guidance.

Risk management is effective if it is conducted regularly and constantly improved based on the appraisal of the effectiveness of procedures in place. It can be best illustrated with the diagram elaborated by the ECA in Special Report No 6/2019, based on the COSO model<sup>26</sup>:

For instance, in the case of the Infrastructure and Environment Programme<sup>27</sup>,

<sup>25</sup> Guidance for Member States and Implementing Authorities, June 2014, EGESIF\_14-0021-00 16/06/2014.

<sup>26</sup> Committee of Sponsoring Organizations of the Treadway Commission (COSO).

<sup>27</sup> Recommendations on Irregularities Prevention and Correction, Including Fraud, Within the Infrastructure and Environment Programme 2014–2020 <<https://www.pois.gov.pl/strony/o-programie/dokumenty/zalaczenia-w-zakresie-przeciwdzialania-i-korygowania-nieprawidlowosciw-tym-naduzyciach-finansowych-w-ramach-programu-operacyjnego-infrastruktura-i-srodowisko-2014-2020/>>.

Figure 2. **Fraud risk management**



Source: Based on ECA Special Report 6/2019, p. 10.

the risk assessment process covers all the authorities involved in the Programme implementation, which appoint a special team for conducting analyses. These analyses are made at least once a year and they take into account the results of the review of all processes, procedures and control mechanisms related to potential or actual fraud cases. On this basis, each risk that has been identified is assigned with appropriate control mechanisms, preventing fraud or allowing for its detection. The results of the analysis made by individual authorities within the Infrastructure and Environment Operational Programme are submitted to the managing authority that, on this basis, conducts an analysis for the whole programme, comprising also conclusions and recommendations to be implemented in all programme authorities or individual sectors.

### Detection – Tools to Identify Fraud

Above a risk management model aimed at ensuring an effective control system, immune to a possibility of fraud, has been described. The system should also comprise tools for effective identification of fraud in individual projects or transactions. Such tools include:

#### Sampling of Highest Risk Projects or Transactions

It is not justified, purposeful nor possible to examine all projects and expenditure. Audits must always be effective and proportionate, so we have to consider their costs and expected results. In the case of EU projects within the Cohesion Policy there is a requirement to examine every payment application of a beneficiary, while the scope and detail of the examination depends on the procedures and risk assessment adopted. Simultaneously, not every

project is subject to obligatory on-the-spot verification. And it is also the case of the appraisal of beneficiaries' compliance with the public procurement procedures. Such audits are conducted on a sample of projects or procurements. Therefore, risk assessment is key here. It should consider an audit sample of such projects or procurements where a fraud risk exists. It is worth emphasising that with regard to the measures of the audit authority, which is responsible for setting the error level in the transactions of a given operational programme, a requirement has been set for random sampling, taking at the same time the risk level into account<sup>28</sup>.

### Control Checklists

Appropriate design of control procedures, including checklists, is an important element, too. It allows for examining important aspects of a given expenditure. Such checklists should take into account the fraud risk and identification of the so called red flags. For instance, in the case of the Infrastructure and Environment

Operational Programme (POIiŚ), the checklists for various control types were supplemented with a list of signals that can indicate a fraud<sup>29</sup>. Of course it is vital to ensure participation in the process of qualified staff, sensitive to fraud risks, able to identify them and, at least, to submit them for further proceedings to other specialised bodies<sup>30</sup>.

### Fraud Notification Channels and Protection of Whistleblowers

Channels for reporting on irregularities are a very effective tool for fraud identification. The ECA, in Item 34 of Special Report 6/2019 indicates, referring to the global study on occupational fraud and abuse, that mechanisms for notifying about irregularities are considered the most important source of fraud detection. This was also confirmed in the Report to the Nations 2020, developed by the *Association of Certified Fraud Examiners*<sup>31</sup>.

Many national and European institutions have such tools at their disposal, allowing for anonymous reporting on

---

<sup>28</sup> In accordance with Article 127(1) of the Resolution 1303/2013, the managing authority applies non-statistical methods of sampling based on professional judgement with regard to at least 10% of the expenditure declared to the EC during the given accounting year.

<sup>29</sup> For instance, a checklist on symptoms that can indicate fraud to be used during an audit of contracts awarding, which is Annex No 1d to the recommendations for authorities involved in the implementation on the Infrastructure and Environment Operational Programme 2014-2020 with regard to control procedures and the system for annual settlements <<https://www.pois.gov.pl/strony/o-programie/dokumenty/zalecenia-dla-instytucji-zaangazowanych-w-realizacje-programu-operacyjnego-infrastruktura-i-srodowisko-2014-2020-w-zakresie-procedur-kontrolnych-korygowania-wydatkow-oraz-systemu-rocznych-rozliczen/>>.

<sup>30</sup> Analogically to the International Standard for the Professional Practice of Internal Auditors No 1210.A2 which reads: *Internal auditors must have sufficient knowledge to evaluate the risk of fraud and the manner in which it is managed by the organisation, but are not expected to have the expertise of a person whose primary responsibility is detecting and investigating fraud.*

<sup>31</sup> The highest number of fraud – as many as 43% - were detected thanks to notifications. To compare, only 15% of fraud was detected as a result of the work of internal audit: <<https://www.acfe.com/report-to-the-nations/2020/>>.

potential breaches and necessity to take appropriate steps. Anonymous information, in accordance with respective regulations, cannot be considered in the complaint mode set forth in the administrative proceedings code. It can, however, be extremely valuable and allow for taking explanatory or control measures by the competent institution, and ultimately lead to fraud detection and holding the responsible persons accountable.

Usually, forms for reporting on suspected fraud are available from an institution's website. Some institutions have dedicated telephone lines. The following are examples of channels for reporting on irregularities:

1. Forms available from the website of the European Anti-Fraud Office<sup>32</sup> to notify about a suspected fraud. They allow for, among others, anonymous reporting and providing necessary documents. Forms allow for further anonymous contact of the Office staff with the whistleblower with the use of a safe mailbox.

2. Simple forms available from the website of the Central Anti-Corruption Bureau (CBA)<sup>33</sup> to report a potential corruption case. The CBA also has a special telephone line and e-mail address where information on suspected crime can be delivered.

3. Special service for whistleblowers provided by the Office of Competition and Consumer Protection<sup>34</sup> to report suspected breaches of the competition law, e.g. price

fixing or market division. The UOKiK, like OLAF, allows for creating a special mailbox for a whistleblower to ensure interaction between the Office and the person who reports a breach.

4. With regard to EU funds implementation, individual managing authorities allow for reporting on suspected irregularities. For example, in 2015 a system for fraud reporting was launched for the Infrastructure and Environment Operational Programme<sup>35</sup>, to anonymously notify of suspected irregularities with the use of a simple form. The questions in the form directly refer to the issues related to EU projects implementation, which prevents from reporting on cases that are not connected with European funds implementation. In the case of POIiŚ, all the authorities involved in the programme, as well as beneficiaries, are obliged, on the basis of grant agreements concluded, to notify, at least at their websites, on the functioning of the mechanism for reporting on irregularities, so as to ensure that all persons involved in the programme or projects implementation are aware of a possibility to report a fraud, and can in this way contribute to ensuring the programme appropriate implementation. In addition, both the authorities and beneficiaries are obliged not to retaliate against whistleblowers.

However, in its report 6/2019, the ECA indicated that several practical problems

---

<sup>32</sup> <[https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud\\_en](https://ec.europa.eu/anti-fraud/olaf-and-you/report-fraud_en)>.

<sup>33</sup> <<https://cba.gov.pl/pl/zgloszenie>>.

<sup>34</sup> <<https://report.whistleb.com/pl/uokik>>.

<sup>35</sup> <<https://www.pois.gov.pl/strony/zglaszanie-nieprawidlowosci/>>.

related to whistleblowing mechanisms still prevailed. For instance, they did not always guarantee anonymity. Besides beneficiaries and society did not have sufficient knowledge of them. Another issue was the lack of a unified approach of EU Member States towards whistleblower protection. This was changed when on 7 October 2019 the European Parliament adopted the directive on the protection of persons who report breaches<sup>36</sup>, which unified the standards in the whole EU<sup>37</sup>. As of 17 December 2019, Member States have two years for implementing the directive into national laws. In accordance with the directive, each organisation that employs over 50 persons will be obliged to introduce channels for anonymous reporting on irregularities. Interestingly, whistleblowers will be allowed to report breaches of law not only within their organisation, but also directly to competent bodies, depending on the case and its circumstances. Simultaneously, if appropriate measures are not taken in the case of a serious threat to public interest, whistleblowers are allowed to disclose the case publicly, e.g. by informing the media. The main objective of the directive is to provide whistleblowers with protection from retaliation

and repressive measures (e.g. dismissal, demotion) for reporting a breach. It is, however, worth observing that protection will cover whistleblowers who have the basis to claim that the information they provide is true. Whistleblowers will be provided with protection if the case reported is covered with the subject-matter scope of the directive. In this context, protection will be ensured for persons who report breaches of specific EU laws, including breaches that affect EU financial interests, which has been explicitly set forth in the directive.

Introduction of the directive in the Polish conditions will undoubtedly pose a huge challenge, due to the lack of systemic and comprehensive regulations with regard to whistleblower protection. Implementation of the directive provisions will have to coincide with the change in awareness and the way whistleblowers are perceived as they are associated and regarded as informers<sup>38</sup>. It has to be remembered, though, that whistleblowers act in good faith and take care of common good and public interest, and hence they deserve respect, appreciation, and should be duly protected. That is why implementation of systems to report breaches and

---

<sup>36</sup> Directive of the European Parliament and of the Council (EU) 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law (L 305/17).

<sup>37</sup> It is worth observing that the Civil Law Convention on Corruption (Dz.U. 2004 No 244, item 2443), in force in Poland since 2003, in Article 9 imposes the obligation to introduce regulations providing protection against any unjustified sanctions for persons who report corruption, acting in good faith. However, the obligation has not been met in Poland to date. For more details read: Jakub Bouhouni, *Od 17 lat powinniśmy mieć przepisy chroniące sygnalistów*. <<https://www.swps.pl/strefa-prawa/artykuly/22957-od-17-lat-powinnismy-miec-przepisy-chroniace-sygnalistow>>. Moreover, the obligation to protect whistleblowers has been imposed with Article 33 of the United Nations Anti-Corruption Convention, ratified by Poland in 2006.

<sup>38</sup> More in: M. Waszak. 2020. *Strážnicy demokracji. Nowe perspektywy ochrony sygnalistów*, Fundacja im. S. Batorego, Warszawa, p. 19.

to protect whistleblowers should be accompanied with an appropriate training process, aimed at strengthening integrity culture and ethical conduct among employees and customers of the given organisation. For the reporting system to be effective, and not to discourage reporting on illegal acts, the following standards have to be met:

- ensuring effective and actual guarantee of anonymity and necessary legal assistance for a whistleblower,
- entrusting tasks to a competent person, unit or outsourcing, to ensure that every information is approached in a due, reliable, unbiased and objective manner, capable of confirming that a whistleblower is really motivated with good will,
- approach of the management and determination to explain reported suspected cases,
- providing real protection to a whistleblower against any kind of retaliation,
- appropriate communication of the objectives of reporting on breaches and encouraging people to do so.

### **Application of Advanced Data Analysis Methods**

IT tools for data analysis can be helpful in directing specific measures of fraud combating towards high risk beneficiaries. It is also the most important priority of the EC anti-fraud strategy of 2019. However, the ECA in its Special Report 6/2019 stated that the potential of advanced data analysis methods was not fully used in fraud detection. Advanced data analysis methods allow for identifying red flags and for detecting high risk situations. The outcome of data analysis should be used

for sampling or for taking other measures devised to confirm a fraud.

The IT tools that facilitate sampling of high risk projects for audit or allowing to detect fraud symptoms include:

1. ARACHNE system. In order to facilitate Member States in fraud combating, the EC has developed and introduced the ARACHNE tool which helps identify projects where a fraud risk can exist. ARACHNE is an integrated IT tool that allows for data exploration and enrichment. It contains a comprehensive database of projects implemented with European funds, expanded with publicly available data (Orbis and World Compliance). On this basis, the tool calculates fraud risk indicators for individual projects, beneficiaries, contracts and contractors. The system identifies over a hundred of risk indicators, grouped in seven categories, such as public procurement awarding and warning against a risk of losing reputation. Although the system is available to Member States for free, not all states and managing authorities have been using it. According to the information provided by the Commission in December 2018, 21 Member States used ARACHNE for 165 programmes, comprising 54% of the total EU funds in the cohesion area for 2014–2020. According to the ECA, despite using the tool, some Member States made little progress in making necessary operational data available or in using the tool for internal control. It seems that the main reason for the states' unwillingness to use ARACHNE stems from the need to constantly feed the system with data necessary for further analyses. Moreover, algorithms for risk assessment indicators

are not open, and Member States have no impact on that. Red flags require to redirect resources to explaining whether a fraud has actually taken place. However, there is no evidence that the tool is actually effective and whether it actually contributes to fraud detection. According to the study conducted in November 2018 by the Commission, managing authorities were of the opinion that ARACHNE, in its current form, did not fully meet their needs<sup>39</sup>. Hence, for the time being the tool can be used only as an auxiliary element, e.g. in sampling of projects to audit.

2. Risk Barometer<sup>40</sup> – a free tool for a risk analysis in public procurement developed by the *Batory Foundation* and *Zamówienia 2.0* service, in cooperation with the Hungarian Government Transparency Institute, and in consultation with experts from public administration offices. The tool analyses procurement with regard to potential existence of a specific fraud indicator (red flag). Of course, the very identification of a red flag (similarly as in the ARACHNE system) does not mean that a fraud took place, it shows, however, that a risk factor exists and therefore additional verification is recommended to confirm or exclude the given fraud type.

3. Public registers, especially a register of excluded entities and the national criminal register, information obtained from them may confirm the reliability of a given entity. Data to support examination of connections or other information that can indicate a risk can be also found in publicly available registers of benefits or property declarations<sup>41</sup>. The Minister of Finance administers the register of entities that cannot receive support for implementation of programmes financed with EU funds. Exclusion from co-financing is imposed if the circumstances set forth in Article 207(4) of the Act on public finance exist, i.e.:

- forgery of documents to be the basis for payment,
- failure to return funds with interests within 14 days from the date when 14 days passed since the final decision on returning funds was delivered,
- fraud conducted by a beneficiary, beneficiary's partner, entity authorised to incur expenditures, and in the case when these entities are not natural persons – by a person authorised to act on behalf of the beneficiary within the project, if the crime conducted by the above entities has been confirmed with a legally valid court verdict.

---

<sup>39</sup> DG REGIO, *Preventing fraud and corruption in the European Structural and Investment Funds – taking stock of practices in the EU Member States*, October 2018, available at: <[https://ec.europa.eu/regional\\_policy/en/information/publications/studies/2018/study-on-the-implementation-of-article-125-4-c-of-the-regulation-eu-no-1303-2013-laying-down-the-common-provisions-on-the-european-structural-and-investment-fund-in-member-states](https://ec.europa.eu/regional_policy/en/information/publications/studies/2018/study-on-the-implementation-of-article-125-4-c-of-the-regulation-eu-no-1303-2013-laying-down-the-common-provisions-on-the-european-structural-and-investment-fund-in-member-states)>.

<sup>40</sup> <<http://barometryzyka.pl/>>.

<sup>41</sup> Registers and declarations submitted on the basis of the Act of 21 August 1997 on limitations to economic operations by persons performing public functions (Dz.U.2019.0.2399 – Article 12), (submitted, among other, on the basis of Article 10 of the Act of 21 August 1997 on limitations to economic operations by persons performing public functions, or on the basis of the Act on local self-government.

Every beneficiary, before receiving a grant, is verified with regard to being listed in the register of excluded entities. Beneficiaries also provide statements on not being included in the national criminal register. Such verification ensures that EU funds are granted to reliable and honest entities, and reduces the risk of improper use of funds.

4. Databases, registers and tools administered by private entities, e.g. credit bureaus or debtor registers, the use of which can be also helpful in assessing the risk of entities reliability, including fraud.

5. Application of the central IT system SL2014 – the SL system is a system to support implementation of operational programmes within European funds 2014–2020, which records, among others, all beneficiaries of EU funds within the cohesion policy, and all expenditure incurred within the projects. As for counteracting misuse, the system allows, in the first place, for cross-checks aimed at excluding possibilities for financing the same expenditure within various projects or programmes.

6. Unmanned aircraft, satellite maps. During audit activities, especially on spot, it is also possible to use modern technologies, including unmanned aircraft or satellite data in order to, among others, verify the actual progress of the project<sup>42</sup>, or detect a potential fraud.

7. IMS Signals System. Within the system for data exchange between a Member State and the European Commission, in the area of notifying irregularities, a signalling tool has been implemented for exchanging information on potentially risky entities and other potential risks among competent authorities in various operational programmes.

8. Early Detection and Exclusion System (EDES). At the level of the EU, with regard to instruments directly and indirectly managed by the EC, since 2016 the publicly available system for early detection and exclusion (EDES) has been operational<sup>43</sup> where data is available on entities that committed gross fraud resulting in depriving them of an opportunity to receive support from EU funds<sup>44</sup>. The system has been designed to protect EU financial interests against unreliable entities applying for European co-financing. The system allows for detecting risky entities, provides information on entities excluded from an opportunity to receive European funds as a result of one of the presumptions set forth in Article 136(1) of the EU Financial Regulation (e.g. serious breach of professional duties), as well as information on financial charges imposed. Moreover, the system allows for publishing the most extreme breach cases. This information may come from, among others, court verdicts, findings of

---

<sup>42</sup> Unmanned aircrafts are used in supervision of investments by the two largest beneficiaries of the Infrastructure and Environment Operational Programme: GDDKiA and PKP PLK SA <<https://www.gov.pl/web/infrastruktura/wykorzystanie-dronow-w-realizacji-inwestycji-infrastrukturalnych>>.

<sup>43</sup> <[https://ec.europa.eu/info/strategy/eu-budget/how-it-works/annual-lifecycle/implementation/anti-fraud-measures/edes/database\\_en](https://ec.europa.eu/info/strategy/eu-budget/how-it-works/annual-lifecycle/implementation/anti-fraud-measures/edes/database_en)>.

<sup>44</sup> The system is now operational on the basis of Article 135 of the EU Financial Regulation.

investigation bodies (OLAF, European Public Prosecutor's Office), or the ECA. Although the system does not operate in the cohesion policy, the data gathered therein can be used for risk analysis.

It is worth drawing attention to IT systems used in other states, especially related to public tenders where machine-readable data are gathered, which allows for appropriate analyses. An example here can be the ProZorro System<sup>45</sup> in Ukraine, based on the Open Contracting Data Standard. The system was developed in cooperation with non-governmental organisations, Transparency International and the European Bank for Reconstruction and Development. The system allows for access to all data related to public procurement, for on-line processing of public procurement, and additionally for full common insight of the interested third parties in the procedure – from submission of an offer to its selection, which allows for social monitoring of public funds spending.

While in Romania the IT Prevent system<sup>46</sup> is in operation, allowing for comparing data from various IT systems in the public procurement process. It is administered by the National Ethics Agency which is mandated to notify other bodies of a necessity to take corrective measures or to begin investigation.

Another interesting project is RECORD, implemented by NGOs with the use of European funds, aimed at reducing corruption in public procurement awarding. An element of the project is a tool (Tenders Guru internet platform) to monitor corruption risks in public procurement in some Member States, including Poland<sup>47</sup>.

### Base of Competitiveness

Unfortunately, for many years the largest number of irregularities has been still identified in the field of public procurement. The main objective of the provisions regulating public procurement awarding is to ensure fair competition and to ensure that procurement is awarded only on the basis of the value for money principle<sup>48</sup>. A significant part of public funds, including European funds, is spent through procurement where the provisions on public procurement do not apply, due to subject-matter reasons or due to the procurement volume. However, in accordance with the guidance of the European Commission<sup>49</sup>, when awarding procurement within European projects where procurement directives do not apply, the contracting party should provide for appropriate publication of information on the proceedings, describe the subject matter of the contract in a precise and non-discriminatory

---

<sup>45</sup> <<https://prozorro.gov.ua/en>>.

<sup>46</sup> <<https://www.uti.eu.com/business-lines/information-technology-and-communications/smart-government-solutions/portfolio/prevent-national-integrity-agency-ani/>>.

<sup>47</sup> The tool and project description available at: <<https://tenders.guru/>>.

<sup>48</sup> In particular the verdicts of the Court of Justice of the EU: of 20 September 1988 on C-31/87 Gebroeders Beentjes BV vs the Netherlands and of 10 November 1998 on C-360/96 Gemeente Arnhem and Gemeente Rheden vs BFI Holding BV.

<sup>49</sup> Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/02).

manner, and ensure equal access to the proceedings to all interested contractors from various EU Member States.

In order to implement these obligations, especially related to publication of contract notices in the 2014-2020 financial perspective, the minister competent for regional development developed and implemented the IT tool called the Competitiveness Base. It allows for publication of public procurement notices and submitting offers. The use of the system is a prerequisite for implementation, set forth in the Guidance on eligibility of expenditure within the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014 – 2020, the so called competition principle. The special feature of the system is that it gathers, in one place, procurements over a defined threshold announced by all beneficiaries of European funds. This provides an appropriate level of competition, since potential contractors can easily access information about procurement. In addition, the use of the system significantly reduces the risk of collusive tendering.

It is worth observing that a similar solution was supposed to be disseminated also outside EU projects, thanks to the provisions of the new law on public procurement that, in its original version, introduced the

notion of the so called minor procurement, i.e. between 50 and 130 thousand PLN, which was required, as a rule, to be published in the Public Procurement Bulletin. The solution was controversial, though, mainly because it formalised and prolonged the procurement process, so ultimately the legislator abandoned it before the law entered into force<sup>50</sup>. From the perspective of contractors and public funds protection against fraud, it does not seem appropriate, though. Without legal provisions, access to public procurement will not become more accessible for potential contractors while the lack of transparency – if contract notices are not published in one place – will hamper social monitoring and control of such procurement, which only in 2019 amounted to about 35.3 billion PLN<sup>51</sup> (i.e. about 25% of the value of European procurement). Despite the lack of a legal obligation, some contracting parties apply procedures and tools that provide transparency and increase procurement effectiveness. A good example here is the City Office of Łódź that publishes public procurement notices below the threshold on its website<sup>52</sup>.

In this context, it is worth recalling the draft proposal elaborated on the initiative of MPs within the anti-corruption package<sup>53</sup>, amending, among others, the

---

<sup>50</sup> Provisions related to minor procurement repealed on the basis of the Act of 27 November 2020 on the amendments to the Act on construction licenses or services, to the Act – Public Procurement law, and several other acts (Dz.U. 2020 item 2275).

<sup>51</sup> Report by the President of the Public Procurement Office on the performance of public procurement system in 2019, p. 30.

<sup>52</sup> More in: M. Kajalidis, *Dobre praktyki przy zamówieniach publicznych poniżej progów*, <https://epf.org.pl/pl/2020/10/29/dobre-praktyki-przy-zamowieniach-publicznych-ponizej-progow/>.

<sup>53</sup> Draft law developed by MPs on amendments to the Act – Criminal Code and several other acts. Parliamentary document No 1252 available at: <<https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1252>>.

regulations of the Act on public finance through introduction of an on-line contracts register for public finance sector entities. The proposal is aimed at increasing the transparency of the activities undertaken by public administration bodies. It sets forth that the register will be administered by each entity separately (although in accordance with the same scheme) at the dedicated website of the Public Information Bulletin, which in fact reduces the possibility of a broader systemic analysis of expenditure. Moreover, the register comprises contracts already concluded, with the minor procurement awarding process being beyond social monitoring. Therefore, the added value of this mechanism seems to be rather limited.

### **Simplified Costs – Focus on Results**

The use of simplified methods of expenditure settlement, to the largest extent possible, e.g. settling projects on the basis of flat rate, lump sum or with the use of unit costs, could certainly provide a remedy for reducing the number of irregularities in public procurement. Then, projects are accounted for on the basis of delivered products and their outcomes

and any minor shortcomings will not result in financial corrections. Such a solution is allowed by European regulations, however to date it has been used mainly for non-infrastructure projects. Undoubtedly, in the next financial perspective 2021–2027 it has to be seriously considered whether such solutions should be implemented more widely, this being also expected by the EC and the ECA.

### **Prevention and Detection of Conflicts of Interests**

One of the greatest challenges in the area of fraud combating is a conflict of interests. Personal or capital connections can be perceived as a natural thing, and as long as a conflict of interests is properly disclosed and managed it should not cause concern. However, it is often identified after the fact, e.g. as a result of an audit. Then, it causes a justified suspicion of favouring, bias and lack of objectivity, or – directly – of a corruption connection.

A conflict of interests arises when a private interest of a given person or their other personal reasons, in a given situation, could negatively affect an unbiased and objective performance of duties or tasks that should be performed minding public interest<sup>54</sup>.

---

<sup>54</sup> A similar definition is used by OECD: *Managing Conflict of Interest in the Public Service*, pp. 24-25, <<https://www.oecd.org/gov/ethics/48994419.pdf>>.

The OECD defines three types of conflicts of interest:

- An actual conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.
- An apparent conflict of interest can be said to exist where it appears that a public official's private interests could improperly influence the performance of their duties but this is not in fact the case.
- A potential conflict of interests arises where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.

Therefore, a conflict of interests relates to a situation where public interest, or the interest of a given organisation, competes with the private interest of a given person. That is why, in accordance with the principle that nobody can judge in their own case<sup>55</sup>, a person in conflict should be excluded from the whole decision making process.

### Causes of the phenomenon

A high number of fraud related to conflicts of interests may be due to several factors. Firstly, thanks to publicly available information on the internet, personal or capital connections can be quite easily identified. Secondly, audit institutions, representatives of the civil society, and the media are sensitive to these issues and frequently detect or disclose such connections. A large number of cases stems also from popularization of mechanisms for anonymous reporting on irregularities.

The reason for frequent conflicts of interests is also lack of due awareness of persons that are in conflict. Frequently, such persons do not realise that they should be excluded from the decision making process, because they are convinced that even in a situation of a conflict of interests, they

do not behave reprehensibly, because they do not, or even do not expect, any benefits in return. Still, it has to be remembered that the so called apparent conflict of interest is also a conflict, i.e. when a given person can be regarded by others as acting in a non-objective and biased manner, even if it is not so in reality. Moreover, it has to be remembered that one's private interest affects this person's activities also in a subconscious manner<sup>56</sup>.

In Poland, lack of awareness may be due to imprecise legal regulations on the issue as these do not comprise<sup>57</sup> a legal definition of a conflict of interests<sup>58</sup> at all, and related issues are dispersed in various regulations. For instance, there is an obligation to declare connections and to be excluded from an administrative procedure or public procurement proceedings on the basis of the provisions of the Administrative Proceedings Code and the Law on Public Procurement respectively. However, these are, on one hand, case-law provisions, which provide specific types of connections that imply exclusion. On the other hand, they contain general and imprecise presumptions that may be difficult to interpret, e.g. the prerequisite set forth in the law on public procurement

<sup>55</sup> The principle was applied already in the Roman law: *Qui iurisdictioni praeest, neque sibi ius dicere*.

<sup>56</sup> *Konflikt interesów – czym jest i jak go unikać. Poradnik dla pracowników administracji rządowej*, p. 9. The guide was developed and issued within the Government Anti-Corruption Programme for 2014–2019. <<https://antykorrupcja.gov.pl/ak/konflikt/11895,Konflikt-interesow-Czym-jest-i-jak-go-unikac.html>>.

<sup>57</sup> The new law on public procurement in Article 56(2) indicates situations where a conflict of interests arises in public procurement awarding (Act of 11 September 2019 – Public procurement law, Dz.U. 2019, item 2019 with later amendments), this is not, however, a standard legal definition.

<sup>58</sup> G. Makowski, *Konflikt interesów w polskiej administracji rządowej – prawo, praktyka, postawy urzędników*, p. 3 <<https://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Konflikt%20interesow%20w%20polskiej%20administracji%20rządowej%20-%20wnioski%20i%20rekommendacje.pdf>>.

to exclude persons *in such a legal or actual relation with the contractor that may raise justified doubts as for their impartiality and objectivity*<sup>59</sup>. It is similar in the case of European funds domestic regulations. Experts who evaluate applications are excluded in circumstances set forth in the Administrative Proceedings Code, as well as if *it is probable that other circumstances exist that may raise doubts as for impartiality of an expert*<sup>60</sup>.

### Definition of a Conflict of Interests in the EU Law

The EU regulations, in turn, contain a definition of a conflict of interest in the provisions of the EU Financial Regulation and the EU Directive on Public Procurement. The broadest definition, comprising the widest spectrum of the issue, is the one in the procurement directive. According to this definition, conflict of interest covers any situation where staff members of the contracting authority or of a procurement service provider acting on behalf of the contracting authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure<sup>61</sup>. This definition focuses on the way a given

situation may be perceived by external parties. That is why a conflict of interest will take place irrespectively of its actual impact on the decision.

For EU funds implementation, the definition of a conflict of interests from the EU Financial Regulation is applied, which is directly binding in all Member State. The obligation to prevent conflicts of interests and solving them is then unrelated to national executive measures, although Member States have the competence to apply additional or more detailed national provisions. The definition of a conflict of interests from the EU Financial Regulation provides that a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest. This definition emphasises that the very risk of partiality (a threat to impartial and objective exercise of the functions) constitutes a conflict of interests. The provisions of the EU Financial Regulation apply to a conflict of interests management at the national level, i.e. to the staff of national authorities engaged in the implementation, monitoring and auditing of the EU budget. Above all it has to be noted that the current EU Financial Regulation, unlike its previous

---

<sup>59</sup> More in: M. Wnuk, *Konflikt interesów – niedoceniany zabójca zaufania*, Zamówienia Publiczne Doradca 7/2020.

<sup>60</sup> Article 49(9) of the Act of 11 July 2014 on the principles of implementation of programs in the area of cohesion policy in the financial perspective 2014–2020.

<sup>61</sup> Article 24 of the Directive of the European Parliament and of the Council 2014/24/EU of 26 February 2014 on public procurement, repealing Directive 2004/18/EC (O.J. L 94/65).

versions, extends the application of the issues related to a conflict of interests to all management modes and entities, including national bodies at all levels. The measures taken by national bodies with a view to preventing and detecting conflicts of interests can be therefore subject to audits by independent national audit bodies, to EC monitoring and auditing, to ECA Audits and OLAF investigations. According to the new provisions, situations related to a conflict of interest must be prevented, or responded to appropriately, including situations that “may objectively be perceived” as a conflict of interests (Article 61(1) of the EU Financial Regulation *in fine*). Therefore, a failure to react to a situation when a conflict of interests is perceived is considered an irregularity.

#### Management of Conflicts of Interests

In order to properly manage a conflict of interests and not to allow it to occur, it is necessary to have appropriate policies and procedures in place. They should address such issues as, among others, reporting on conflicts of interests, gifts and hospitality received, sensitive information processing, or personal data protection. The key objective of such procedures should be to raise awareness of the necessity to immediately report on any potential conflict of interests if circumstances exist that may lead to such a suspicion. One of the ways to disclose conflicts of interests may also

be a requirement to provide declarations on current and previous interests or commitments of given persons. Institutions that decide to use such declarations should establish clear and objective criteria for their appraisal, and apply them in a consistent manner. Another way to prevent a conflict of interests risk is regular and effective staff turnover at the most crucial positions.

To conclude, all institutions that have public funds at their disposal, including all beneficiaries of EU funds, have to strive to avoid situations that can be perceived as conflicts of interests, and immediately report on any relation or any other potential impact on impartiality and objectivity, and exclude persons in conflict. Lack of conflict of interests management may negatively affect the reputation of a given institution, and bring the risk of losing its good name. That is why exclusion from proceedings, even just in case, should be recommended.

It is worth observing, that the EC pays significant attention to the issue of a conflict of interests. It has been reflected, e.g. in the guidelines on determining financial corrections for breaches in public procurement, where a sanction of 100% of ineligible expenditure has been foreseen if a conflict of interests is identified<sup>62</sup>. In addition, OLAF services have also issued a practical guide in the area, where the notions are explained as well as expected means to prevent existence of a conflict

---

<sup>62</sup> Item 21 of the Annex to Commission Decision laying down the guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement, C(2019) 3452 final.

of interests<sup>63</sup>. Moreover, the EC issued in April 2021 detailed guidelines concerning conflict of interest issue, which indicate expectations as regards avoiding and management of conflict of interest by the Member States<sup>64</sup>.

In order to raise awareness of European funds beneficiaries and to make them more sensitive to the issue, for projects implemented within the Infrastructure and Environment Operational Programme a requirement has been introduced to ensure measures to prevent conflicts of interests in grant agreements. Also, in agreements, a conflict of interests is understood in accordance with the provisions of the EU Financial Regulation.

### Prevention of Collusive Tendering Risk

Another challenge related to fraud is the risk of anti-competitive activities, especially collusive tendering. Collusive tendering, or bid rigging, occurs when businesses, that would otherwise be expected to compete, secretly conspire, usually to raise prices of their goods or services<sup>65</sup>. Bid rigging therefore distorts the basic objective of public procurement, since due to unfair competition the most economical offer is not chosen. Such practices are non-compliant with the rules of competition, that is why they may imply administrative sanctions, civil

sanctions (e.g. invalidity of legal actions) or criminal and administrative sanctions (fines up to 10% of the turnover), and are considered an offence (Article 305(1) of the Criminal Code<sup>66</sup>).

A risk of collusive tendering should be taken into account especially at the beginning of EU financial perspective implementation, especially in large infrastructural projects where there is an accumulation of public procurement and strong competition occurs, stemming from contractors' efforts to obtain the highest volume of contracts to be usually performed over several years. This problem became visible in Poland at the beginning of the financial perspective 2007–2013 when, due to suspicious activities in road tenders, the EC suspended, for some time, payments within the Infrastructure and Environment Operational Programme 2007–2013. Cases of bid rigging were also identified in the implementation of a project in the railway sector. In the tender for the construction of a system for train movement steering there were actually two independent collusive tendering situations. On the basis of the materials gathered by the investigation bodies, the President of the UOKiK issued a decision to impose a fine of about 9 million PLN on tendering entities<sup>67</sup>.

---

<sup>63</sup> Identification of conflicts of interests in public procurement within structural activities. Practical guide for managers developed by a group of experts from Member States coordinated by department D.2 of OLAF – Fraud Prevention – <<https://ec.europa.eu/sfc/sites/sfc2014/files/sfc-files/guide-conflict-of-interests-PL.pdf>>.

<sup>64</sup> Guidance on the avoidance and management of conflicts of interest under the Financial Regulation, Brussels, 7.4.2021C(2021) 2119 final.

<sup>65</sup> OECD Guidelines on Fighting Bid Rigging, 2009.

<sup>66</sup> Act of 6 June 1997 Criminal Code (Dz. U. 2020 item 1444, 1517). Hereinafter referred to as the Criminal Code.

<sup>67</sup> Decision of the President of the UOKiK No DOK-10/2014 and No DOK-11/2014.

The basic legal act that regulates the matters related to competition protection in Poland is the *Act on Competition and Consumer Protection*, also referred to as the *Anti-monopoly Act*<sup>68</sup>. It covers entrepreneurs and introduces a ban on activities that could reduce competition. In accordance with Article 6(1)(7) of the Act, bid rigging is *an agreement, the objective or result of which is to eliminate, reduce or breach in another way the competition on the market*. Therefore, bid rigging is agreeing terms of offers, especially with regard to the scope of work or price, among entrepreneurs who take part in a tender, or between them and the entity that organises the tender.

#### Types of Collusive Tendering

Collusive tendering may take various forms, frequently quite sophisticated, that is why it is so difficult to detect and prove. There are two main types of collusive tendering:

- Horizontal, or a cartel, i.e. an agreement reducing competition among entrepreneurs who should compete.
- Vertical, i.e. an agreement among entities at different levels (e.g. between the tender organiser and the tenderer).

The most frequent mechanisms of collusive tendering include:

1. Bid-suppression, which consists in resignation of one or several potential contractors from a bid, or in withdrawing an offer, or taking other steps so that this offer is not taken into account – so that another offer is selected, which the bid

participants have agreed to be the winning one. For example, a bidder may not extend the deadline for offer validity, or submit a statement that the so called third party is not willing to give access to their resources, or that a qualified expert has resigned from cooperation. Such a statement usually allows for withdrawing from the procurement legally and for receiving the bid bond back. As a consequence, the contracting party is obliged to allocate a higher amount for a bid, or to announce a new bid – when the new offer exceeds the amount allocated for procurement. Such behaviours of the contractor are a symptom of bid rigging, they do not, however, necessarily prove it;

2. Cover bidding, which consists in submitting less attractive offers than the one which collusion participants have appointed to win. Cover bids appear to be competitive offers, or are aimed at demonstrating the contracting party that the supported offer is advantageous;

3. Market allocation, which consists in selecting and agreeing on bids (chosen on the basis of geographical, or subject matter criteria), in which individual collusion actors will participate and win, and other where they will not submit offers, or will submit security offers only.

#### Activities of the President of the Office for Competition and Consumer Protection

The body competent for fighting collusion among entrepreneurs is the President of the Office for Competition and Consumer Protection (UOKiK) – with this

---

<sup>68</sup> Act of 16 February 2007 on competition and consumer protection (Dz. U. 2007 No 50, item 331 with later amendments).

being one of the Office's priorities. It is achieved through audits, judicature and cooperation with other bodies and authorities, as well as through educational and information activities. UOKiK can obtain information about a suspected collusive tender on the basis of:

- formal notification (Article 86 of the Anti-monopoly Act),
- information submitted within the leniency programme (Article 113a of the Anti-monopoly act). The programme allows entrepreneurs to avoid financial liability for taking part in a collusion if they report on a collusion early enough. Unfortunately, participation in the programme does not exempt from criminal responsibility, so in practice it is hardly ever used,
- information obtained from other anti-monopoly bodies (Article 73(2)(3) of the Anti-monopoly Act and Article 12 of Regulation 1/2003<sup>69</sup>),
- information obtained from other national bodies (Article 72 of the Anti-monopoly Act),
- information from market actors, MPs, journalists, anonymous information, including information received from dedicated channels for whistleblowers.

UOKiK also conducts its own market analyses and control activities.

**Consequences of Collusion in EU Project**  
Collusive tendering, irrespectively of its type, is considered an irregularity

– according to the provisions of funds related regulations – even if the beneficiary did not participate in it or was not aware of its existence at all. However, potential sanctions in such a situation will be less severe. In accordance with guidelines for determining financial corrections for breaches in public procurement, for collusive tenders in which the contracting party (beneficiary) has not participated the sanction is 25% of the value of eligible expenditure in the collusion.

Having the above in mind, it is also in beneficiaries' interest to take measures for preventing or detecting collusion symptoms. A catalogue of such measures is available in publications by UOKiK or the EC<sup>70</sup>. If there are presumptions that a collusion exists and the offer submission can be regarded as unfair competition, the contracting party is obliged to reject the offer. Unfortunately, the mechanism that indicates a potential collusion may be visible only after several procurement proceedings of various contracting parties have been analysed. That is why it is an extremely difficult task, and it may provide a real challenge even to specialised competition protection bodies. It seems, however, that the activities taken by UOKiK, especially related to launching the mechanism for anonymous reporting on anti-competition activities, may provide an effective tool in the fight against bid rigging. One of the ways to prevent collusion may also be the integrity pact mechanism described below.

<sup>69</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (O.J. L 001, 04/01/2003 P. 0001 – 0025).

<sup>70</sup> For instance COCOF Information Note on Fraud Indicators for ERDF, ESF and CF of 18 February 2009, COCOF 09/0003/00-EN.

## Integrity Pact

One of the ways to prevent fraud in investments implementation is the integrity pact. This instrument is currently promoted by the European Commission services, who find it advantageous, especially for reducing problems that may accompany public procurement awarding financed with EU funds. In the EC view, the implementation of the pact also contributes to strengthening the transparency of procurement and its reliability, to enhancing trust in public institutions, and to generating savings and increased competitiveness through better quality of public procurement. The mechanism of integrity pacts received the award of the European Ombudsman who acknowledged pacts as a good tool for engaging society in the monitoring of public funds spending in large investments. The initiative was also recognised as a good practice example in the document by G20 Group, comprising examples of transparent and fair implementation of infrastructure projects<sup>71</sup>. Moreover, the ECA in its Special Report 06/2019 (p. 26) recalled integrity pacts as an innovative method for fraud preventing that should be promoted.

The instrument was launched in 1990s by Transparency International, mainly with

a view to corruption combating in countries where corruption was a systemic problem. Integrity pacts were aimed at reducing problems that may occur especially in public procurement, as well as at strengthening transparency and monitoring of public funds spending.

The integrity pact itself is a sort of a civil law agreement concluded between the contracting party and the other actors of the project, i.e. the investor-contracting party and contractors and sub-contractors, where all parties commit to act in a fair and transparent manner, and – primarily – to submit themselves to monitoring of an external observer – an expert overseeing an appropriate investment course. Such an observer should be a civil society organisation<sup>72</sup> that provides impartiality and independence in investment monitoring.

In 2015, Directorate-General for Regional and Urban Policy of the European Commission announced the launch of the pilot programme with regard to integrity pacts. The pacts within the pilot programme comprised in total 17 projects in 11 Member States<sup>73</sup>. In Poland, the pilot covered one investment only – the project implemented by the Polish Railways PKP SA entitled *Works on Railway No 1 Częstochowa – Zawiercie, co-financed from European funds within the Infrastructure*

---

<sup>71</sup> G20 Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development, document: <[https://www.g20-insights.org/related\\_literature/g20-japan-compendium-practices-integrity-transparency-infrastructure-development/](https://www.g20-insights.org/related_literature/g20-japan-compendium-practices-integrity-transparency-infrastructure-development/)>.

<sup>72</sup> Civil society refers to all forms of social action carried out by individuals or groups who are neither connected to, nor managed by, the State. A civil society organisation is an organisational structure whose members serve the general interest through a democratic process, and which plays the role of mediator between public authorities and citizens. <[https://eur-lex.europa.eu/summary/glossary/civil\\_society\\_organisation.html?locale=pl](https://eur-lex.europa.eu/summary/glossary/civil_society_organisation.html?locale=pl)>.

<sup>73</sup> <[https://ec.europa.eu/regional\\_policy/en/policy/how/improving-investment/integrity-pacts/](https://ec.europa.eu/regional_policy/en/policy/how/improving-investment/integrity-pacts/)>.

*and Environment Programme*. It is the first integrity pact implemented in Poland, and the only railway project in the EU covered with the pact within the EC's initiative. The civil partner (observer) in the pact implementation is the Stefan Batory Foundation, a partner of Transparency International.

When the managing authority for the POIiŚ, which is required to implement effective anti-fraud measures, applied for the project to fall under the integrity pact, the intention was to test whether the pact can be an effective tool for preventing such fraud risks that may arise in infrastructural projects, i.e. especially collusive tendering, a conflict of interests or breaches in the public procurement law.

Since integrity pacts are not rooted in Polish legal regulations at all, in order to implement the pilot programme the following solutions were developed:

- firstly, the agreement between the civil observer and the investor, where the investor committed, among others, to submit to monitoring, to give access to documentation related to the project, to apply high ethical standards, and to allow the observer representation to participate in the works of the tender committee;
- secondly, the regulations typical of the integrity pact have been integrated in the provisions of the public procurement contract, binding for the winning tenderer. Therefore, the contractor also committed themselves to, among others, submitting to monitoring, implementing anti-corruption procedures, including the mechanism for anonymous reporting on irregularities.

The advantages of this initiative include, for sure, raised awareness both of

the contracting party and the contractor, which has significantly increased transparency standards and has led to additional anti-fraud procedures implementation. Interestingly, the pact covers not only the procurement process, but also its implementation where irregularity risks remains high. As a result, the progress of the project implementation can be verified systematically. During the pact implementation, various issues of systemic nature, e.g. related to the possibility of contracts indexation stemming from an unexpected growth of prices on the construction market have been identified. Monitoring is also accompanied with events, conferences or workshops organised by the observer during which the issues identified during the integrity pact implementation are discussed. Also, an internet service was launched by the observer ([www.paktuczciwosci.pl](http://www.paktuczciwosci.pl)), where all information related to this initiative implementation in Poland are available.

To conclude, it needs to be stated that the integrity pact can provide not only a tool for corruption prevention, but it can be regarded as an important element of establishing the climate of cooperation and mutual trust. It also allows for engaging communities interested in the investment implementation in the consultation process and providing them with some impact on the manner of its implementation. Costs of monitoring in case of complex infrastructural investments are high, since experts in many fields must be engaged, still it can be relatively low if compared to the project value and expected benefits. Hence, the idea of integrity pact in Poland, also for smaller

investments of high importance to citizens should be still developed. However, it has to be considered how to establish it in legal regulations, e.g. related to public procurement, and how to set its financing – so as to ensure the observer's independence and impartiality from all the actors of the investment.

### **Preventing the Risk of Financing Works Unperformed or Underperformed**

Another significant risk is the one concerning unperformed works or works performed at a lower standard than expected. These issues are also very difficult to detect and prove. They can result from a collusion of the contracting party or the supervising engineer and contractor. Moreover, in order to identify them, expert knowledge is often required, as well as detailed testing of whether appropriate material has been used in construction, especially in infrastructural projects.

The risk of low quality work may be also significantly high when there is a large accumulation of investments in a given period, when the supplies of materials and construction services are lower, and consequently their costs increase. Without appropriate indexation clauses, which was quite common in contracts concluded on the basis of the previous versions of the public procurement law, a contractor is tempted to make savings by lowering the quality of work or materials used. This may result not only in uneconomical use of public funds, but may reduce the usefulness and stability of the investments as well, and in extreme cases – even lead to construction disasters. Such acts will be usually classified as an offence in

accordance with Article 286(1) of the Criminal Code, which reads that those who bring other persons to uneconomical management of assets by misleading are subject to a prison sentence of up to eight years.

In order to prevent such fraud, due diligence of investor's supervision over the contractor should be applied, or prolong guarantees for the construction quality. Undoubtedly, an effective tool here can be public-private partnership, where the private partner is responsible for the management and maintenance of the infrastructure delivered for a long time. Within the Infrastructure and Environment Programme, two basic measures have been provided, supported with the Programme technical assistance funds, i.e.:

- support for the establishment and operations of GDDKiA laboratories that make tests of materials used in roads construction,
- support for regional construction supervision inspectorates that, among others, monitor the projects and verify whether materials of the expected quality have been used.

### **Preventing the Risk of Using False Documents**

False documents of various types and forms can be used at all stages of the project implementation. Forgery may occur already at the stage of application submission, when untrue information is certified or a false bank guarantee is submitted, to allegedly confirm the financial situation of the applicant. Forgery may also take place at the stage of public procurement proceedings or when additional documents are submitted

in order to obtain a refund (especially invoices or payment confirmations). Falsification may be committed both at the beneficiary and contractor level. Various types of crimes against documents reliability have been set forth in Chapter XXXIV of the Criminal Code.

Nowadays, documents are most often submitted in an electronic form such as scans, which may hamper forgery identification. Therefore it is important to examine original documents at the beneficiary premises during on spot checks. Recommended forms of forgery prevention include specialist training for the staff who verify documents submitted by beneficiaries. Cooperation among individual bodies is also of high importance. For instance, the managing authority or the intermediate body acting on its behalf, or the implementing authority are not entitled to examine the beneficiary's contractors or subcontractors, in order, e.g. to find out whether a given document has been actually issued. It is important to establish procedures on what to do if doubts arise as for authenticity of a document, including support from competent bodies.

### Engaging Beneficiaries in Fraud Combating

Effective fraud combating is not possible without beneficiaries' engagement in the process. That is why in some operational

programmes beneficiaries have been made responsible e.g. for fraud risk analyses, prevention of conflicts of interests, and promotion of reporting on irregularities mechanisms. In the case of the Infrastructure and Environment Programme, the managing authority has issued dedicated guidance<sup>74</sup> to facilitate the performance of beneficiaries' duties. The guidance also presents individual types of fraud with proposals for their prevention, the consequences of fraud. It also contains a simple tool to conduct a fraud risk self-assessment for a project. The document is of a quite universal nature, and it can be also used by beneficiaries of other programmes or by public institutions for corruption prevention.

In 2020, a survey was conducted among beneficiaries of this programme, aimed at assessing the awareness of fraud risks and anti-corruption tools used in European projects implementation<sup>75</sup>. The vast majority of the interviewed considered the mechanism used in the programme for anonymous reporting on irregularities useful. Beneficiaries also revealed their interest in covering their projects with the so called integrity pack, as well as in using the tools to support verification of compliance and quality of construction materials. The study confirmed high awareness of threats and consequences of fraud occurrence in projects. The majority of those surveyed were aware of conflicts of

---

<sup>74</sup> Guidelines on fraud prevention, especially in projects implemented within the Infrastructure and Environment Programme 2014–2020, <<https://www.pois.gov.pl/strony/o-programie/dokumenty-poradnik-w-zakresie-przeciwdzialania-naduzyciom-finansowym-w-szczegolnosci-w-ramach-projektow-realizowanych-z-programu-operacyjnego-infrastruktura-i-srodowisko-2014-2020/>>.

<sup>75</sup> Report and summary presentation available at: <<https://www.pois.gov.pl/strony/wiadomosci/badanie-na-temat-przeciwdzialania-i-zwalczania-naduzy-c-finansowych-w-wydatkowaniu-srodkow-ue/>>.

interests and collusive tendering, and what is more – they claimed to apply additional mechanisms to prevent them.

## Conclusion

In the next years, Member States will be spending funds from the EU's largest package ever. It comprises funds from the multi-annual financial perspective (2021–2027) and the reconstruction plan – designed to mitigate the crisis and provide the basis for developing modern and sustainable Europe. It will be a great challenge to eliminate fraud in the funds spending. However, it seems feasible to reduce fraud because over the last years EU institutions have made fraud combating their priority. Numerous organisational and legislative initiatives related to the establishment of the European Public Prosecutor's Office or harmonisation of criminal provisions with regard to illegal activities threatening EU financial interests have been taken. Strategic documents that set concrete achievable objectives have been developed. Also, recommendations have been issued to support practical implementation of anti-corruption solutions. These are aimed to increase assurance as for reliability of funds spending. As a result of these initiatives, provisions that make the awarding of European funds conditional on compliance with the rule of law principles, to safeguard EU financial interests, have also been adopted.

Moreover, Member States' managing authorities, responsible for implementation of programmes financed from the

cohesion policy, have also been engaged in fraud combating, and they have been obliged to introduce effective anti-fraud measures. These authorities must have a stable and reliable management and control system in place, which has to include matters related to protection of EU financial interests. Moreover, they have taken a series of initiatives and measures directly aimed at fraud prevention and detection, which include, among others, regular fraud risk analyses, mechanisms to facilitate whistleblowing and participation in the integrity pact. As a result, the number of fraud cases detected by managing authorities has increased<sup>76</sup>. However, a structured and well-thought-out approach based on a reliable risk analysis, where new IT technologies have to be applied so that to increase the effectiveness of anti-fraud measures is necessary.

Considering the multidimensional nature of corruption phenomena, the activity of the institutions responsible for appropriate use of European funds will not suffice. The mechanisms and tools presented in the article may, and they should, be implemented not only by authorities directly involved in European funds implementation, but also by other bodies at the government and self-government level, and by beneficiaries of European support themselves. To this end, a set of available guidance published by institutions that deal with corruption prevention, e.g. CBA can be used. Close cooperation and exchange of information among various

---

<sup>76</sup> Already in 2014, 64% of fraud cases were detected by managing authorities and not by specialised bodies, JAFS 2015–2020, p. 22.

entities which facilitates fraud prevention and detection, as well as proper management of European funds is necessary, too. It needs to be emphasised that, in accordance with the Treaty of Lisbon, fraud combating lies with Member States, so at the level of every country a system has to be established to ensure effective fight against all acts to the detriment of the EU budget. To this end, it seems necessary to elaborate and introduce in Poland another anti-corruption programme of a strategic nature, to respond to current challenges, and simultaneously to ensure sufficient finances for its implementation (including those from the EU budget).

Among the initiatives taken, whistleblowing mechanisms seem to be of special importance. They should be further developed. According to studies, these are the most effective tools to detect illegal actions. In Poland, it will be key to develop and implement the provisions of the European directive on whistleblower protection, which should be based not only on the minimum requirements set forth in the directive, but also on the experience of other states that have already introduced and applied such provisions. At the same time, it is necessary to take informative activities to raise awareness of the benefits stemming from such an instrument, which should also break the negative image of those who report on fraud.

It has to be stressed, though, that there is no single recipe for combating fraud because it exists in various areas, and may be of various nature and specificity. That is why it is indispensable to engage all

stakeholders in the fraud prevention process, including society – through ensuring full transparency of the decisions and activities taken, also with relation to the way EU funds are spent. Here, tools that allow for easy insight into the public procurement process so that civil control is exercised over budget funds spending should be developed. The integrity pact may be an example, which should be tested on the largest number of investments possible. It is also advisable to develop new IT tools for automatic tracking of, e.g. procurement progress and its effectiveness.

These activities have to be complemented with appropriate responding to all types of fraud detected, such as drawing conclusions, and exemplary, yet proportionate, punishment for perpetrators. Sanctions must have a deterrent effect for potential perpetrators, and they must reflect the “zero tolerance” approach to corruption. Simultaneously, it is necessary to promote principles of ethical conduct among officials, beneficiaries and society as a whole. Introduction of additional regulations, procedures or appointment of new competent bodies in the area will not suffice without constant enhancement of integrity culture and trust for public bodies.

**MARCIN SZYMAŃSKI**

Deputy Director  
Department of Infrastructural  
Programmes,  
Ministry of Development Funds  
and Regional Policy

*The sole responsibility for the contents of the article lies with the author. The opinions presented in the article in no sense reflect the official position of the institutions the author has relations with.*

**Key words:** fraud, EU funds, management control, fraud detection, integrity pact, IT tools, bid rigging

### Bibliografia:

1. Bouhouni J. *Od 17 lat powinniśmy mieć przepisy chroniące sygnalistów*, Strefa Prawa Uniwersytetu SWPS.
2. Cressey D. R. 1973. *Other People's Money: A Study in the Social Psychology of Embezzlement*, Montclair, NJ, Patterson Smith.
3. Item 21 o the Annex to Commission Decision laying down the guidelines for determining financial corrections to be made to expenditure financed by the Union for non-compliance with the applicable rules on public procurement, C(2019) 3452 final.
4. Jasiński W. 2014. *Rządowy program przeciwdziałania korupcji. Kształtowanie polityki antykorupcyjnej w latach 2014–2019*, „Kontrola Państwowa” No 5.
5. Makowski G., Nowak C., Wojciechowska-Nowak A. 2015. *Realizacja wybranych postanowień Konwencji Narodów Zjednoczonych przeciwko korupcji w Polsce*, Fundacja im. Stefana Batorego.
6. Makowski G., Mileszyk N., Sobiech R., Stokowska A., Wiaderek G. 2014. *Konflikt interesów w polskiej administracji rządowej – prawo, praktyka, postawy*, Fundacja im. S. Batorego, Warszawa.
7. Guidance on the avoidance and management of conflicts of interest under the Financial Regulation Brussels, European Commission, 7.4.2021C(2021) 2119 final.
8. *G20 Compendium of Good Practices for Promoting Integrity and Transparency in Infrastructure Development, July 2019 r.*
9. Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives, 2006/C 179/02.
10. United Nations Convention against Corruption, 31.10.2003, Dz.U.2007, No 84, 563.
11. Note COCOF: *Information Note on Fraud Indicators for ERDF, ESF and CF*, 18.2.2009, COCOF 09/0003/00-EN.
12. Guidance for Member States and Programme Authorities entitled *Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures*, June 2014, EGESIF\_14-0021-00 16/06/2014, p. 13.
13. Practical guide for managers developed by a group of experts from Member States coordinated by department D.2 of OLAF – Fraud Prevention, <<https://ec.europa.eu/sfc/sites/sfc2014/files/sfc-files/guide-conflict-of-interests-PL.pdf>>.
14. Recommendation of the Council on Public Integrity, 26 January 2017 – C(2017)5, <<https://www.oecd.org/gov/ethics/integrity-recommendation-polish.pdf>>.
15. Resolution No 37 of the Council of Ministers of 1 April 2014 (M.P.2014.299), on the basis of Article 19(2) of the Act of 6 December 2006 on the rules for development policy implementation.

16. Resolution No 207 of the Council of Ministers of 19 December 2017 (M.P. 2018 item 12).
17. The President of Public Procurement Office Report on Public Procurement System in 2019.
18. Kajalidis M. 2020. *Dobre praktyki przy zamówieniach publicznych poniżej progów*, Fundacja Moje Państwo.
19. Special report No 06/2019: Tackling fraud in EU cohesion spending: managing authorities need to strengthen detection, response and coordination, European Court of Auditors, 6/2019.
20. Waszak M. 2020. *Strażnicy demokracji. Nowe perspektywy ochrony sygnalistów*, Fundacja im. S. Batorego, Warszawa.
21. Common Anti-Fraud Strategy 2015–2020, European Commission, December 2015.
22. Wnuk M. 2020. *Konflikt interesów – niedoceniany zabójca zaufania*, Zamówienia Publiczne, „Doradca” No 7.
23. OECD Guidelines: *Managing Conflict of Interest in the Public Service*, May 2003 r.
24. OECD Guidelines on Fighting Bid Rigging, 2009.