



Sławomir **SNARSKI** • Marek **MARTYNIUK**

# ANALYSIS OF APPEAL PROCEDURE FOR CO-FINANCING OF ENVIRONMENTAL PROJECTS UNDER REGIONAL OPERATIONAL PROGRAMME FOR PODLASKIE VOIVODESHIP 2007-2013

Sławomir **Snarski**, PhD – *Białystok University of Technology*  
Marek **Martyniuk**, MA – *University of Białystok, Faculty of Law*

Correspondence address:  
Faculty of Forestry in Hajnowka  
Piłsudskiego street 8, Hajnowka, 17-200, Poland  
e-mail: s.snarski@pb.edu.pl

**ABSTRACT:** The purpose of the paper was to examine the effectiveness of the appeal procedure for co-financing of environmental projects within the framework of the Regional Operational Programme for Podlaskie Voivodeship 2007-2013. The analysis was based on the secondary data of the Podlaskie Voivodeship Marshal's Office and the literature covering the research area. The results of research indicated that the appeal procedure concerning the process of application for the co-financing of projects under Priority Axis V. Development of infrastructure for environmental protection of the programme proved to be a low effective mechanism of verification of the correctness of projects' assessment. The paper comprises the first detailed analysis in the existing body of literature of the effectiveness of the appeal procedure concerning environmental projects, which may constitute a valuable diagnostic tool in defining the scope of the evaluation of other EU-funded regional programmes in future financial perspectives.

**KEY WORDS:** European funds, environmental projects, appeal procedure

## Introduction

A significant increase in investments for environmental protection constituted one of the direct consequences of Poland's accession to the European Union. In the 2007-2013 programming period, European funds were the main source of financing for environmental projects in the country (Barczak, Kowalewska, 2014; Karpińska, 2007). An inherent part of the implementation of the EU cohesion policy in Polish regions were regional operational programmes (Kornberger-Sokołowska, 2012). Efficient use of financial resources from these programmes was determined by the establishment of effective procedures of the assessment and selection of submitted project proposals. Of particular importance in this regard was the establishment of a proper appeal procedure forming a mechanism for verifying the correctness of the assessment of submitted documents (Perkowski, Martyniuk, 2017). Therefore, in order to contribute to a reduction of the development disparities between Podlaskie Voivodeship and other regions of Poland, as well as to make environmental infrastructure conform with the legal constraints of the European Union, the Regional Operational Programme for Podlaskie Voivodeship 2007-2013 (hereinafter referred to as "the programme") was introduced.

The programme was approved by the Board of Podlaskie Voivodeship on 9 November 2007 through Resolution No. 46/599/07. It was one of the instruments for achieving the goals of the National Strategic Reference Framework 2007-2013 – a document defining national priorities and the allocation of a substantial part of European funds under the cohesion policy in the 2007-2013 financial perspective (Perkowski, 2010a). According to the teleological provisions of the Podlaskie Voivodeship Development Strategy 2020 of 30 January 2006, the preservation of the natural environment was recognized as one of the main strategic objectives of the region's development. Therefore, the Board of Podlaskie Voivodeship, performing the function of the Managing Authority of the programme, established Priority Axis V. *Development of infrastructure for environmental protection* and allocated an amount of PLN 484.2 million to support the maintenance and improvement of the quality of the natural environment by part-financing the eligible costs of 249 projects in this field. However, in accordance with the information disclosed by the Podlaskie Voivodeship Marshal's Office in Białystok, within the same priority axis as many as 205 grant applications of a total value of PLN 1,137.9 million were rejected by the Managing Authority. Taking into consideration the amount of funds disbursed on environmental protection in the region and the rejection of such a considerable number of project proposals,

the purpose of this paper was an attempt to verify the effectiveness of the appeal procedure for co-financing of environmental projects under the programme.

### An overview of the literature

The paper comprises the first in the existing body of literature detailed analysis of the effectiveness of the appeal procedure for co-financing of environmental projects under the programme. While an analysis of the availability of European funds is a popular subject matter in the scientific literature, numerous questions with respect to the principles for evaluation, and the selection and award criteria concerning environmental projects in Poland remain unanswered. Therefore, the research was conducted in order to bridge the gap in this regard. The existing scientific studies relevant to environmental protection or the support for environmental projects under the programmes financed from the budget of the European Union do not constitute a detailed analysis due to their general nature or introductory character. For instance, Lejczyk and Poździk performed a general assessment of the complexity of procedures for obtaining EU financial support in the period 2007-2013 in Poland, including projects aimed at increasing environmental protection (Lejczyk, Poździk, 2010). Perkowski, in turn, dealt with only theoretical aspects of the appeal procedure employed under the European financial instruments, including the programme, mainly in the context of the Polish implementation system (Perkowski, 2010b). As for Szubiakowski, it should be indicated that in his study concerning the proceedings on allocation of funds under the EU development policy and judicial review in such matters, he did not use any examples of specific operational programmes (Szubiakowski, 2009). Considering the idea of the third-generation administrative procedures, based on the example of proceedings for co-financing of projects under operational programmes, Kmiecik in his research completely omitted the impact of the appeal procedure on the implementation of environmental projects (Kmiecik, 2015). Suwaj and Perkowski discussed, among others, the practical aspects of the appeal procedure under the structural funds. However, they focused primarily on the concept of prevention of inactivity in administrative proceedings in Poland (Suwaj, Perkowski, 2010). Łacny, on the other hand, focused on largely theoretical study of protection of fundamental rights in the field of spending European funds within operational programmes in general (Łacny, 2015).

## Research methods

The disbursement of significant funds from the EU budget under the programme in Podlaskie Voivodeship, accompanied by the rejection of a large number of applications for co-financing of environmental projects, raised the following research questions: Did the process of selection of submitted applications provide the applicants with an effective appeal procedure in order to objectively assess project proposals and to select the best of them? How many of the submitted protests and applications for reconsideration were approved? Did the appeal procedure constitute an effective instrument of verification of the quality assessment of submitted project proposals, or was it intended to affirm the earlier decisions made in the interest of the Managing Authority? These questions and dilemmas prompted an analysis of the effectiveness of the appeal procedure in the field of applying for funding of environmental projects within the framework of the programme.

Therefore, the paper contains a description of general rules and conditions governing the implementation of environmental projects under the programme's Priority Axis V. *Development of infrastructure for environmental protection*. Moreover, it describes the appeal procedure within the programme applicable to competitive calls for proposals conducted in the field of the environment in an attempt to determine the degree of its effectiveness. In the paper nonreactive research methods were followed, consisting of an analysis focusing on the contents of the existing documents. The analysis was based on the literature covering the research area and the secondary data collected by the Podlaskie Voivodeship Marshal's Office in Białystok – mainly in the form of programme documents, aggregated reports on the implementation of the programme, as well as the data disclosed in accordance with art. 10§1 of the Act of 6 September 2001 on Access to Public Information (Journal of Laws of 2016 item 1764 as amended). Despite the generally deductive character of the deliberations undertaken in this paper, the analysis of detailed information was performed using inductive inference.

## Results of the research

The core objective of the programme was to increase economic growth and create new non-agricultural workplaces while preserving the natural and cultural heritage of the region. The aforementioned objective was being achieved by means of three specific objectives, including the third specific objective, *id est* the development of tourism with the use of natural and cultural heritage. With respect to the programme's assumptions, the practical

implementation of this specific objective was ensured by supporting investments in environmental infrastructure for regional or local impact (Sierak et al., 2016). The total indicative budget of the programme amounted to EUR 792.2 million, including EUR 672.5 million from the European Regional Development Fund. The programme was comprised of seven priority axes covering the scope of intervention at the regional level (table 1).

**Table 1.** Indicative financing plan for the Regional Operational Programme for Podlaskie Voivodeship 2007-2013 for the whole programming period [EUR]

Priority axis No.	Title of priority axis	% of financial resources allocated to implementation of priority axis	Financial allocation [EUR]
Priority Axis I	Increase of innovation and support of entrepreneurship in the region	23	156 965 734
Priority Axis II	Development of transport infrastructure	32	216 279 961
Priority Axis III	Tourism and culture development	15	99 263 261
Priority Axis IV	Information society	8	50 896 631
Priority Axis V	Development of infrastructure for environmental protection	11	75 455 876
Priority Axis VI	Social infrastructure development	8	50 896 631
Priority Axis VII	Technical assistance	3	22 784 877
<b>Total</b>		<b>100</b>	<b>672 542 971</b>

Source: authors' own work based on [www.rpowp.wrotapodlasia.pl](http://www.rpowp.wrotapodlasia.pl) [06-06-2017].

The priority axis, which to the greatest extent focused on the maintenance and improvement of the quality of the natural environment was Priority Axis V. *Development of infrastructure for environmental protection*. It comprised two measures: 5.1. *Development of regional infrastructure for environmental protection* and 5.2. *Development of local infrastructure for environmental protection*. The main beneficiaries of the aforementioned measures were: regional and local authorities, state administration, the State Forests National Forest Holding, national and landscape parks, non-governmental organizations, as well as entrepreneurs.

In compliance with the provisions of the Detailed Description of Priority Axes of the Regional Operational Programme for Podlaskie Voivodeship 2007-2013, under Measure 5.1 preference was given to investments related to improving solid waste management, including landfill reclamation and installations for the disposal of hazardous waste. Moreover, the measure promoted initiatives aimed at the preservation of biodiversity, ecological educa-

tion, monitoring of environmental conditions and preventing environmental threats, as well as the purchase of equipment for the services responsible for the liquidation of the consequences of natural hazards and major accidents (Snarski, Martyniuk, 2016). During the period of the implementation of the programme, within the framework of the measure 11 calls for proposals were conducted under which 54 projects were approved for implementation of a total value of PLN 231,683,876.77, including PLN 155,582,768.42 of the contribution from the programme, as shown in table 2.

**Table 2.** Project proposals selected for co-financing under Priority Axis V. *Development of infrastructure for environmental protection* of the Regional Operational Programme for Podlaskie Voivodeship 2007-2013 [PLN]

Measure	Number of applications	Total value	Eligible expenditure	Total public contribution
5.1	54	231,683,876.77	210,365,773.93	155,582,768.42
5.2	195	544,696,652.93	487,865,096.49	328,624,293.76
<b>Total for Priority Axis V</b>	<b>249</b>	<b>776,380,529.70</b>	<b>698,230,870.42</b>	<b>484,207,062.18</b>

Source: authors' own work based on the data from the Podlaskie Voivodeship Marshal's Office in Białystok of 22 March 2017, reference DEFRR-VI.1431.4.2017.

The scope of support of Measure 5.2. *Development of local infrastructure for environmental protection* covered investments focusing on the development of water and sewage management, with particular emphasis on the extension of the sewerage network and water distribution systems, providing agglomerations below 15 thousand PE (population equivalent) with sewage systems and sewage treatment plants, as well as protection of municipal water intakes. In addition, support could be granted for projects related to the development of renewable energy sources and thermo-modernisation of public buildings (Snarski, Martyniuk, 2016). In the years 2007-2015, the Managing Authority launched 14 competitive calls for proposals within the measure, while 1 grant application was classified as an individual key project and received support outside a competitive tendering procedure in the form of a direct grant. In the reference period, as many as 195 grant applications were approved for co-financing by the Managing Authority. The total amount of funding provided within the measure amounted to PLN 328,624,293.76 (table 2).

**Table 3.** Project proposals rejected under Priority Axis V. *Development of infrastructure for environmental protection* of the Regional Operational Programme for Podlaskie Voivodeship 2007-2013 [PLN]

Measure	Number of applications	Total value	Eligible expenditure	Total public contribution
5.1	43	169,333,756.12	142,640,421.53	102,788,456.24
5.2	162	968,580,567.91	792,371,777.05	490,786,191.69
<b>Total for Priority Axis V</b>	<b>205</b>	<b>1,137,914,324.03</b>	<b>935,012,198.58</b>	<b>593,574,647.93</b>

Source: authors' own work based on the data from the Podlaskie Voivodeship Marshal's Office in Białystok of 22 March 2017, reference DEFRR-VI.1431.4.2017.

Interestingly, according to the Interim Implementation Report of Regional Operational Programme for Podlaskie Voivodeship 2007-2013 for the 1st Half of 2015, Priority Axis V, as compared to other axes of the programme, had one of the lowest levels of fulfilment of obligations towards the European Union in the implementation period, *id est* 99,21%. Nevertheless, the Managing Authority rejected as many as 205 project proposals of a total value of PLN 1,137,914,324.03, as presented in table 3.

The scope of the appeal procedures within the implementation system of the EU cohesion policy in Poland, including Podlaskie Voivodeship, was regulated by the Act of 6 December 2006 on the Principles of the Development Policy Making (Journal of Laws of 2016 item 383 as amended). On this basis and in accordance with the relevant guidelines of the Minister of Regional Development, the Managing Authority of the programme specifically identified the types of legal remedies available to the applicants during the conduct of assessment of their project proposals and the appeal procedure (Suwaj, Perkowski, 2010). It is noteworthy that the appeal procedure within the programme, aimed at ensuring the possibility of verifying the accuracy of the assessment of projects, was applicable only to the projects selected through competitive calls for proposals. The procedure consisted of two stages: the pre-trial stage and the stage of the proceedings before the administrative courts.

In accordance with the rules of the programme's implementation system, in the case of a negative assessment of a project, at the pre-trial stage an applicant was entitled to lodge to the Managing Authority the following legal remedies: a protest (the first pre-trial stage) and an application for reconsideration (the second pre-trial stage). In the initial phase of the implementation of the programme, protests were dealt with by the Governor of Podlaskie Voivodeship and were lodged through the Department for Regional Operational Programme Management of the Podlaskie Voivodeship Marshal's Office. In the case of calls for proposals announced after 20 December 2008

under the provisions of the Act of 7 November 2008 on Amending Certain Acts in Connection with the Implementation of the Structural Funds and the Cohesion Fund (Journal of Laws No. 216 item 1370), the Department for Regional Operational Programme Management of the Podlaskie Voivodeship Marshal's Office was the institution responsible for considering protests, and applications for reconsideration were considered by the Department of Regional Policy of the aforementioned office.

The negative assessment of the project could involve both formal and quality assessments. If at any stage of the appeal procedure the allocation for the implementation of the measure was exhausted, the Managing Authority simply left a protest or an application for reconsideration of the case without consideration. An appeal by the applicant did not result in holding the contract procedures concerning the applicants whose projects were recommended for co-financing (Perkowski, 2010b). If the result of the re-assessment of an application for funding was positive, *id est* entitling to qualify for implementation, the project was placed on the list of positively assessed projects. This meant, however, only a conditional declaration of its co-financing by the Managing Authority (Perkowski, Martyniuk, 2017). Furthermore, if at any stage of the proceedings regarding the appeal procedure the allocation for the implementation of the measure or priority was exhausted, the Managing Authority left a legal remedy without consideration.

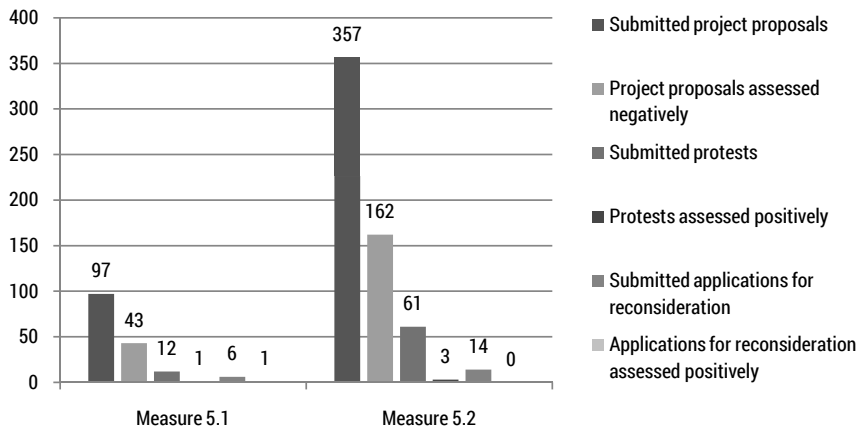
After the exhaustion of the pre-trial appeal procedure, the applicant could lodge a complaint to a competent administrative court, *id est* in the case of the programme – to the Voivodeship Administrative Court in Białystok. The possibility of lodging a complaint depended on exercising the available legal remedies at the pre-trial stage of the appeal procedure. As a result of consideration of the complaint, the court could: uphold the complaint, dismiss the complaint or discontinue the proceedings.

From the judgment before the Voivodeship Administrative Court, both the applicant and the Managing Authority could bring a cassation complaint to the Supreme Administrative Court in Warsaw. The statement by the court during the appeal indicating that the assessment of the project was carried out in a way that violated the law resulted in the need of repeating the assessment (Łacny, 2015). In such a situation, the Managing Authority was obligated to re-review the assessment procedure. The final judgment of the administrative court, involving the dismissal of complaint, rejecting the complaint or leaving the complaint without consideration, ended the appeal procedure and the procedure for the selection of projects (Kmieciak, 2015). Of great importance was the fact that the scope of the judicial review exercised by the administrative courts concerned only examining whether the assessment of the application for funding was carried out in compliance with



the law (Szubiakowski, 2009). The review did not address the quality assessment of a project according to the selection criteria approved by the Monitoring Committee of the programme.

The scope of the appeal procedure, especially in the initial phase of its implementation, put the applicants in a situation of the lack of experience, limited allocations and the lack of clear guidance on the interpretation of the applicable regulations (Perkowski, 2009). All these negative factors were reflected in the practical application of the appeal procedure by the Managing Authority in terms of setting up the system for selection of environmental projects within Priority Axis V. *Development of infrastructure for environmental protection* of the programme. Figure 1 below illustrates the effectiveness of protests and applications for reconsideration lodged under the priority axis for the whole programming period, broken down by measures.



**Figure 1.** Effectiveness of protests and applications for reconsideration lodged under Priority Axis V. *Development of infrastructure for environmental protection* of the Regional Operational Programme for Podlaskie Voivodeship 2007-2013 (breakdown by measures)

Source: authors' own work based on the data from the Podlaskie Voivodeship Marshal's Office in Białystok of 22 March 2017, reference DEFRR-VI.1431.4.2017.

According to the data presented in figure 1 above, within Measure 5.1. *Development of regional infrastructure for environmental protection* 43 project proposals (of a total value of PLN 169,333,756.12) failed to pass the formal and quality assessment thresholds. In this regard, the applicants lodged 12 protests, which resulted in the decision of the Managing Authority to include only 1 of them (of a total value of PLN 1,747,909.04) on the list of projects assessed positively. Detailed information obtained from the Podlasie Voivodeship Marshal's Office in accordance with the procedure stipulated by

the Act on Access to Public Information indicates that within the framework of 11 calls for proposals conducted in the programming period as few as 6 applications for reconsideration (of a total value of PLN 16,469,768.41) were submitted by the applicants and only 1 of them (of a total value of PLN 3,401,954.09) was positively assessed by the Managing Authority.

A slightly worse situation in terms of the efficiency of the appeal procedure was noted in the case of Measure 5.2. *Development of local infrastructure for environmental protection*. During 14 calls for proposals, the Managing Authority considered that as many as 162 projects (of a total value of PLN 968,580,567.91) did not correspond to the formal and quality assessment criteria. Within the framework of the appeal procedure, 61 protests were lodged (of a total value of PLN 379,594,526.65), of which only 3 (of a total value of PLN 3,337,575.00) were considered eligible by the Managing Authority. As far as the second pre-trial stage of the appeal procedure was concerned, the applicants submitted 14 applications for reconsideration, none of which ended in putting a project proposal on the list of projects assessed positively (figure 1).

According to the information provided by the Podlaskie Voivodeship Marshal's Office, neither of the applicants under Priority Axis V. *Development of infrastructure for environmental protection*, who initiated the pre-trial stage of the proceedings, decided to submit a complaint to the Voivodeship Administrative Court in Białystok. Therefore, it can be concluded that the judicial phase of the appeal procedure was not applicable in the case of co-financing projects in the field of environmental protection from the resources available under the programme.

## Conclusions

As a rule, the appeal procedure within the programme aimed at ensuring the possibility of verifying the accuracy of the assessment of project proposals. Hence, the main objective of the procedure, functioning in the form of specific provisions of the system of implementation of the programme, was to provide the applicants with sufficient legal protection against a non-objective conduct of assessment of their project proposals. The protection under this instrument was also applicable to environmental projects selected through competitive calls for proposals. On the basis of the results of the analysis of the appeal procedure within Priority Axis V. *Development of infrastructure for environmental protection* of the programme it can be stated that it proved to be a low effective mechanism of verification of the correctness of projects' assessment.

Taking due account of the appeal procedure, the applicants were entitled to use the mechanism of verification consisting of two stages: the pre-trial

stage and the stage of the proceedings before the administrative courts. In the case of failure of the provisions for appeal, the Managing Authority could finance subsequent projects from a reserve list. A significant disadvantage of the appeal procedure consists in the fact that even in the case of a positive outcome of the remedy, an applicant had no guarantee that his project would be involved in the distribution of the European Union funds under the programme. In such cases the project was put on the list of projects assessed positively, receiving only a conditional declaration of its co-financing (Perkowski, Martyniuk, 2017). Furthermore, an appeal by the applicant did not result in holding by the Managing Authority the contract procedures concerning the other applicants, whose projects were recommended for co-financing. In a situation where at any stage of the appeal procedure the funds for the implementation of a measure were exhausted, the Managing Authority simply left a legal remedy without consideration.

Importantly, none of the applicants under Priority Axis V. *Development of infrastructure for environmental protection* of the programme decided to exercise their right regarding the use of the judicial stage of the appeal procedure involving the proceedings before the competent administrative courts. However, there is still a degree of uncertainty in relation to the potential effectiveness of this mode of appeal for the reason that the eventual judgment would not concern the issue of the quality assessment of a project proposal, which basically constitutes the essence of the assessment process. The efficiency of the procedure of assessing applications for funding could not yet be considered to be of superior importance compared to the fairness and objectivity of the assessment itself. For these reasons, the appeal procedure in the field of applying for co-financing of environmental projects within the Regional Operational Programme for Podlaskie Voivodeship 2007-2013 was largely ineffective.

### The contribution of the authors

Sławomir Snarski – concept and objectives, literature review, research – 50%  
Marek Martyniuk – concept and objectives, literature review, research – 50%

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