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FINANCING OF PRO-ENVIRONMENTAL MEASURES FROM THE PROGRAMME EUROPEAN FUNDS FOR INFRASTRUCTURE, CLIMATE, ENVIRONMENT

Abstract

The European Union promotes the implementation of pro-environmental initiatives to improve the living conditions of citizens in the Member States by improving the condition of the natural environment. The main sources of funding for environment and climate action in Poland from the cohesion policy funds are national programmes including: European Funds for Infrastructure, Climate and Environment (FEnIKS), as well as regional programmes. The aim of this article is to demonstrate the principles of financing pro-environmental projects from the funds of the FEnIKS programme, and to show how their implementation affects environmental protection and the improvement of climate conditions in Poland. The article also deals with the issue of control of the spending of European funds.

Key words: Funding, pro-environmental measures, climate, EU funds.

JEL Classification: F36, K32

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1. Introduction

One of the policy objectives of the European Union (EU) in the Member States is the protection of the natural environment, which is why an increasing number of entities is taking advantage of the funds earmarked to support pro-environmental measures [Bylicki 2014:185-199]. It should be noted that climate policy derives from environmental policy, which focuses on improving the quality and protection of the environment, human life and resources, as well as supporting the fight against climate change [TFEU, Article 191(1)]. The European Union is at the forefront of international efforts to achieve the objectives arising from the United Nations Framework Convention on Climate Change (UNFCCC) drawn up on 9 May 1992 in New York by promoting the adoption of the Kyoto Protocol of December 1997 by its Parties and the subsequent conclusion of the Paris Agreement in December 2015 [Paris Agreement 2015; Szafran 2023: 113]. In recent years, the promotion of pro-environmental measures has also become very popular in Poland thanks to the financial support from EU funds. Subsidies for the implementation of projects supporting climate protection have been realised in the successive 2007-2013 and 2014-2020 financial perspectives, mainly under the Operational Programme Infrastructure and Environment, Regional Operational Programmes, as well as from the Cohesion Fund.

Within the current 2021-2027 financial perspective, financial support for pro-environmental measures can be obtained from the European Funds for Infrastructure, Climate, Environment Programme and the European Funds for Eastern Poland Programme, as well as from regional programmes. The FEnKS programme is the largest in the entire European Union – both in terms of allocation and the number of development priorities. It is a continuation of the two previous Operational Programmes Infrastructure and Environment [Piwowarczyk 2019: 8-14].

It is also worth mentioning the projects implemented with financial support from the LIFE Programme, which has been in operation since 1992. The LIFE Programme is the only financial instrument of the European Union dedicated solely to the co-financing of projects in the field of environmental protection, including nature conservation and human impact on climate and adaptation to climate change. The LIFE Programme - Programme for the Environment and Climate Action (2021-2027) was established by a Regulation of the European Parliament and of the Council (EU) on 29 April 2021 [Regulation 2021/783]. The implementation of the programme has been divided into two reference periods, within which the so-called Multi-Annual Work Programmes will be adopted, in which the EC defines the framework for the implementation of LIFE in a given period. Its main objective is to support the implementation of Community environmental law, to implement EU

environmental policy, and to identify and promote new solutions to environmental and climate problems. LIFE consists of two sub-programmes: the *Environment* sub-programme (environment grants) and the *Climate Actions* sub-programme (climate grants). Under the LIFE programme, the European Union supports projects in the fields of environment, nature conservation and climate. LIFE projects are mainly large-scale and multi-annual undertakings aimed at fully implementing strategic environmental or climate documents at regional or national level. Any entity, i.e. public or private bodies, actors and institutions, can become a beneficiary of the programme.

The purpose of this article is to present selected aspects of the EU support from the FEnIKS programme for the implementation of environmental protection and climate-energy transition projects. An analysis of the legal framework, both at EU and national level, for the financing of measures implemented from the FEnIKS programme will be undertaken. The research uses descriptive analysis. In view of the fact that the objective of the FEnIKS Programme is to improve the living conditions of the citizens of the Member States, in particular, by: decarbonisation of the economy, transformation towards an environmentally friendly and closed-circuit economy, as well as the construction of an efficient and resilient transport system with the lowest possible negative impact on the environment, the research problem within the framework of the article is to answer the question of how these measures are financed.

2. Funding of actions implemented through the FEnIKS Programme

The tool to ensure that pro-environmental objectives are implemented is the EU budget. The Multiannual Financial Framework (MFF) sets annual ceilings for commitment appropriations by category of expenditure and an annual ceiling for payments, ensuring that expenditure is covered by its own resources [TFEU: Article 312]. The MFF sets the framework for annual budgets and reflects the policy priorities over the adopted time horizon, and, therefore, the sectors and areas in which the Union will invest [Szafran 2021: 215]. The objective of the MFF is to ensure an orderly development of EU spending within its own resources [Ungerer 2022; Merhähriger Finanzrahmen].

It should be noted that the financial framework for 2021-2027 differs significantly from its predecessors in terms of its structure [Waldhoff 2022, Art. 312: Marginal Numbers 5-7]. It provides for five priorities in line with the new policy priorities: Research and Development ("Single Market, Innovation and Digital Economy"), Traditional Structural Policy Measures ("Cohesion, Resilience and Values"), Agriculture and Climate Action ("Natural Resources and Environment"), Home Affairs and Security Policy ("Migration and Border

Management", "Security and Defence"), Foreign Policy ("Neighbourhood and the World") and Administrative Expenditure ("European Public Administration").

In the 2021-2027 financial perspective, the document defining the rules for the implementation of the distribution of EU funds in Poland is the Partnership Agreement, which was approved by the European Commission on 30 June 2022¹. The document defines the strategic context in thematic and territorial terms, indicates the expected results and the applicable financial and implementation framework. The document is a reference for determining the detailed content of the programmes, including the European Funds for Infrastructure, Climate and Environment programme.

Each project that receives funding is under the close scrutiny of a relevant institution, which verifies, among other things, whether the funds allocated for the implementation of programmes financed with European funds are used for their intended purpose and whether all procedures laid down in the contract with the beneficiary are duly completed. The total amount of the FEnKS budget earmarked for investments and projects is almost EUR 29.3 billion. Of this, an amount of approximately EUR 24.2 billion is earmarked from the European Union Funds for the implementation of the entire programme, of which approximately EUR 11.3 billion comes from the Cohesion Fund and EUR 12.9 billion from the European Regional Development Fund. In comparison, EUR 27.4 billion was allocated for the implementation of measures under the Infrastructure and Environment Operational Programme implemented in the 2014-2020 financial perspective.

Projects selected for co-financing may be covered under the European Funds for Infrastructure, Climate, Environment 2021-2027 programme. According to Article 44(1) of the Implementation Act, projects can be selected in a: competitive or non-competitive manner [Implementation Act, Journal of Laws 2022, item 1079 as amended]. The non-competitive manner, is reserved for the projects whose applicants (due to the nature or purpose of the project) will be entities clearly identified prior to the submission of the application for funding. The list of the projects identified for the FEnKS Programme is a document, which contains a list of projects eligible for the non-competitive selection of projects, i.e. those whose applicants will be able to submit grant applications in the so-called non-competitive calls [FEnKS, Wykaz projektów zidentyfikowanych do programu

¹ In the Polish Official Journal of 11 August 2022, under item 770, the Communication of the Minister of Funds and Regional Policy of 2 August 2022 was published on the adoption by the European Commission on 30 June 2022 of the Executive Decision No. C(2022) 4640 approving the Partnership Agreement for 2021-2027 with the Republic of Poland. In accordance with the mentioned Communication, the content of the Partnership Agreement was posted on the website administered by the Ministry of Funds and Regional Policy: <https://www.funduszeuropejskie.gov.pl>.

Fundusze Europejskie na Infrastrukturę, Klimat, Środowisko]. These projects have been identified by the Managing Authority.

Conducting the call for proposals is conditioned on the rules of project selection being adopted by the competent institution and made available to potential applicants. In the case of a competitive selection procedure, the rules shall be made available in the form of a call for proposals notice at least 40 days before the planned end of the call. The rules shall be made available to potential applicants in non-competitive procedures at the latest on the day of the beginning of the call for proposals. Only a project which meets the project selection criteria can be selected for funding. Under the programme, projects are assessed against horizontal criteria and criteria specific to a given measure/type of project. These criteria are subject to approval by the Monitoring Committee of the programme, both the project selection criteria and the selection procedures must ensure compliance with the conditions set out in Article 73 of the General Regulation [Regulation (EU) 2021/1060].

Projects eligible for non-competitive selection are those that meet at least one of the following conditions:

- consist in the performance of public tasks resulting from separate regulations;
- are of strategic importance for the socio-economic development of the country, region or area covered by the implementation of the Integrated Territorial Investments, Other Territorial Instruments or the Territorial Just Transformation Plan referred to in Article 11 of the Regulation establishing the Just Transformation Fund [Regulation (EU) 2021/1056, OJ L 231, 30.06.2021, p. 1];
- will be implemented in the form of a financial instrument;
- concern technical assistance.

Projects eligible for the non-competitive selection method are recommended by the Intermediate Body², on the basis of the recommendation of the Intermediate Body, the Managing Authority decides to enter the project on the list of projects eligible for the non-competitive selection method. Detailed rules for the non-competitive way of selecting projects are regulated in the document "System of evaluation and selection of projects under the FEnIKS 2021-2027 Programme" [FEnIKS, System wyboru projektów]. As follows from the cited document, the Managing Authority will update the list of identified projects 4 times a year. The list of projects eligible for non-competitive selection includes projects such as the priority programme "Clean Air", the Energy Advisory Project, the Construction

² Intermediate Body - an entity which has been entrusted, by means of an agreement or contract concluded with the Managing Authority, with the implementation of tasks under a national programme or a regional programme, pursuant to Article 2(10) of the Implementation Act.

of the MORGI Nature Education Centre of the Babia Góra National Park or the Development of a Sustainable Transport System in Wrocław - Stage I.

It should be noted that the competitive way of project selection is the basic method of project selection in the programme. In the case of a competitive selection of projects, after each stage of the assessment the competent authority immediately publishes information on the projects selected for the next stage on its website and portal. The project selection regulations specify whether, after completion of the evaluation of all projects, a list of all the evaluated projects (ranking list) is created, indicating those that have passed the evaluation.

A project co-financing agreement is of key importance for the implementation of a project co-financed from operational programmes [Implementation Act, Art. 2(32)], as its conclusion finishes the stage of the project selection process for co-financing [Implementation Act, Art. 2(22)]. The project co-financing agreement concluded with the beneficiary by the Managing Authority or the Intermediate Body or the Implementing Authority acting on its behalf is the basis for project co-financing. Contract for project financing is a grant contract in the meaning of Article 206 para.2 of the Act of 27 August 2009 on Public Finance [consolidated text, Journal of Laws of 2023, item 1270, as amended]. It should be added that the basis for project co-financing may also be the decision on project co-financing - the decision taken by a public finance sector unit, which is the basis for project co-financing, in case when this unit is at the same time an institution granting co-financing and an applicant (Article 2 point 2 of the Implementation Act).

There are divergent positions in the doctrine on the legal nature of this contract, however, it seems that the project co-financing contract has a quasi-private law character, which is neither a typical private law institution, nor can it be fully qualified as a public law contract [Talaga 2021: 25-55]. Consequently, the way in which the co-financing agreement is performed is subject to review by both civil and administrative courts [Krzykowski 2017: 112]. It should be noted that a contract for project co-financing also has the features of an adhesion contract. The supporters of this thesis claim that one of the basic arguments is the fact that there are model contracts in force, which means that the entity applying for co-financing may accept or reject the conditions on which the EU funds are contractually made available to it - negotiations are possible to a very limited extent [Iniewski 2010: 58]. The procedure of negotiating the conditions of the contract for co-financing is provided for in the systems for implementing operational programmes. However, such negotiations still give the advantage to the Managing Authority, which is usually a party to the contract for co-financing. What is also noteworthy is the typically administrative system of proceedings

on the reimbursement of granted co-financing, subject to the cognition of administrative courts controlling the activity of administrative bodies [NSA 2017, II GSK 2920/15]. As a result, we are dealing with a project co-financing agreement of heterogeneous legal nature. As a type of subsidy agreement, it has some features of an administrative agreement, as well as some features of a civil law agreement [Patyk, Ciak 2014: 1015; Szybka 2014: 513].

According to the Detailed Description of Priorities (DPD) of the European Funds for Infrastructure, Climate, Environment 2021-2027 (FEnIKS) Programme, the maximum level of co-financing of the total eligible expenditure at project level (EU funds + national co-financing granted to the beneficiary by the relevant institution) is 79.03% [FEnIKS, SZOP]. For the effective implementation of projects co-financed from the FEnIKS programme, it is therefore necessary to comply with the conditions and procedures for the eligibility of expenditure, which are laid down in the regulations issued in Article 5 para. 1 point 2 of the Implementation Act Guidelines on eligibility of expenditure [M.P., 2022. item 1119]. This is because not every expense related to the project can be co-financed. Eligible expenditure is the cost or expense actually incurred in connection with the implementation of the project under the Operational Programme, which meets the criteria for reimbursement, as well as for settlement in accordance with the contract for co-financing. Only eligible expenditure referred to in Section 3.9.2 of the applicable *Guidelines* may be supported. Expenditure is eligible if it complies with legal regulations, as well as with the project co-financing agreement and the *Guidelines* and other procedures, which the beneficiary undertook to apply in the project co-financing agreement for co-financing the project. Eligible expenditure is also such expenditure, which was actually incurred in accordance with the principle defined in subchapter 3.1 of the *Guidelines*, in the period indicated in the project co-financing agreement, fulfils conditions set out in the Programme and the Detailed Description of Priorities, as well as, the project selection rules. The expenditure, which will be recognised as eligible, has to be necessary for the implementation of the project goals and has to be incurred in relation to the project implementation or its preparation, it also has to be made in a transparent, rational and effective way, observing the rules of obtaining the best results from given expenditures. As follows from the aforementioned *Guidelines*, all expenditure must be duly documented and accounted for in the beneficiary's application for payment. The beginning of the expenditure eligibility period is 1 January 2021, subject to the rules specified for State aid. The final date of eligibility of expenditure is 31 December 2029.

It should be emphasised that the most numerous group of beneficiaries applying for grants from the EU funds are public finance sector units obliged to apply the provisions of Public Procurement Law [Journal of Laws of 2023, item 1605 as amended]. As it results from the *Guidelines*, a beneficiary obliged to apply the Public Procurement Law carries out the procedure in line with the provisions of the Act, but is additionally obliged to observe the competitiveness principle, which is described in Subchapter 3.2. of the *Guidelines*. According to the principle of competitiveness, contracts are awarded: by contracting authorities within the meaning of the Public Procurement Law, where they do not fall under the statutory thresholds and the value of the contract exceeds PLN 50 000 net, and by other contracting authorities with respect to contracts whose value exceeds PLN 50 000 net. The implementation of the principle of competitiveness is served by the following IT tool - the Competitiveness Database. It is an online database of requests for proposals (announcements), which the beneficiary must make public in accordance with the principle of competitiveness [Baza Konkurencyjności, Fundusze Europejskie].

The beneficiary can receive EU funding:

- in the form of an advance,
- in the form of refunds.

In case of a received EU grant, each payment must be cleared. To settle an advance payment from a grant is to submit an application for a payment clearing the advance, which shows the expenses actually incurred (such as the purchase of a fixed asset financed by the grant) and/or the return of unused funds. In order to receive reimbursement of part or all of the expenses incurred, the beneficiary is obliged to submit an application for reimbursement, which must be accompanied by documents confirming that expenses were incurred under the project. Contrary to advance payments, reimbursement (of part or all expenses) takes place when the incurred expenses are eligible and included in the project's material and financial plan.

3. Environmental objectives of the FEnIKS Programme

Successfully tackling climate change requires the integration of environmental concerns and climate objectives into all EU policy areas. As the largest emissions come from the energy sector, climate policy is particularly linked to energy policy and their objectives are synergised in the successive EU climate and energy packages [Kettner, Kletzan-Slamaning 2020: 144-148]. The implementation of the FEnIKS programme is expected to ensure increased energy efficiency in housing, public buildings and businesses. For the improvement of climatic conditions, it is particularly necessary to improve energy

efficiency, where buildings are the main area of intervention (they account for 40% of energy consumption in the EU). Investments in energy infrastructure co-financed by the FEnIKS Programme are expected to improve the quality and operational security of electricity grids and the development of smart gas grids and their increased importance in a modern, green energy system. For projects using biogas in installations with a total rated thermal input of more than 2 MW or solid biomass fuels in installations with a total rated thermal input of more than 20 MW, it will be necessary to meet sustainability criteria as a source of renewable electricity generation [Directive 2018/2001].

The European Climate Law sets out a framework for achieving net zero emissions by 2050 through balancing emissions and removals of greenhouse gases across the Union and then moving towards negative emissions. The intermediate target is to reduce net emissions by at least 55% by 2030 compared to 1990 [Regulation 2021/1119, Articles 2 and 4]. It is also worth noting that work is underway to update the National Energy Policy 2040 (PEP2040) [M.P. 2021 item 264], based on three pillars – just transformation for all citizens, a new zero-emission energy system based on Renewable Energy Sources and atomic energy, as well as improved air quality. Poland's updated energy policy will take into account the fourth pillar - energy sovereignty, a particular element of which is to ensure the rapid decoupling of the national economy from fossil fuels imported from the Russian Federation.

One of the key objectives of the FEnIKS Programme is to support measures that will lead to a reduction in greenhouse gas emissions from transport while improving transport cohesion and reducing transport exclusion. It is important to support sustainable multimodal urban mobility as part of the transition towards a zero-carbon economy. The greatest investment needs are identified in the energy, transport and environment sectors [Rokicki, Bereziński, 2022: 205-213; Dziadek, Rosiński 2022: 99-114]. The FEnIKS programme targets the completion of sections of the TEN-T core network by 2030 [Regulation 1315/2013; Regulation 2021/1153]. Support will be given to projects aiming at the purchase of zero-emission bus fleets (electric BEV, hydrogen FCV), as well as low-emission fleets meeting the requirements for 'clean vehicles' as defined by Directive 2009/33/EC [Directive 2009/33], including buses powered by LNG, CNG, LPG or PHEV hybrids (plug-in).

The improvement of climatic conditions includes a number of measures dedicated to the rational shaping of the environment and management of its resources, expanding the share of green energy from renewable sources in final energy consumption, as well as

counteracting the generation of pollution by decarbonising the economy in accordance with the principle of sustainable development [Directive 2009/33]. Environmental protection undertakings are primarily of an investment nature, but they can also be non-investment measures [Kožuch 2018: 61-78].

The use of renewable energy sources is the second pillar for building a low-carbon economy, in addition to improving energy efficiency. Given the significant potential for the use of different types of renewable energy, it is important that their development takes place in a harmonious and sustainable manner, i.e. involving different RES technologies and at the same time complying with the principles of sustainable development. Support for renewable energy installations for the production of biomethane will include the construction and development of biomethane production installations (including biogas installations for the production of biomethane), together with the necessary infrastructure for introducing biomethane into gas (distribution or transmission) networks. The measure also includes support for the implementation of investment projects relating to RES installations for the production of electricity in single-family residential buildings, together with associated infrastructure (including energy storage facilities, domestic charging points for electric cars and home energy management systems).

Investments in the environment sector are intended to ensure greater resilience to climate change (including droughts and floods) and protection of the natural heritage (increased retention capacity and improved monitoring and disaster management systems). The implementation of the FEnIKS 2021-2027 Programme is expected to contribute to: improving the management of drinking water and municipal wastewater, as well as municipal waste; strengthening the protection of biodiversity and natural ecosystems and developing a monitoring system for natural resources to facilitate their conservation.

The FEnIKS Programme will also support projects for an integrated system of selective waste collection, including measures to ensure the quality of waste collected at the place of its generation, i.e. 'at source', especially with regard to the organic fraction (biowaste), hazardous waste or used electrical and electronic equipment, which can pose a significant threat to the quality of other types of selectively collected waste [Bień 2020: 9593-9606; Ulfik 2018: 351-356].

The Programme will co-finance investments that combine the principles of sustainability, aesthetics and social inclusion, in line with the requirements of the "New European Bauhaus" initiative [Official Journal of the EU C 125 2023: 56-66], in order to find affordable, inclusive, sustainable and attractive solutions to climate challenges.

When analysing the potential effects of the implementation of the Programme, it is worth mentioning that a document entitled “Environmental Impact Assessment of the Draft FEnIKS Programme” [FEnIKS, Prognoza oddziaływania na środowisko projektu Programu Fundusze Europejskie na Infrastrukturę, Klimat, Środowisko 2021-2027] was published in 2021. The aim of the analysis was to assess the effects of the project's implementation on individual components of the environment, taking into account possible variants of the draft Programme. As part of the preparation of the prognosis, the following were analysed and assessed: the existing state of the environment and potential changes to this state in the absence of the Programme assumptions.

As can be seen from the evaluation of the FEnIKS Programme, it will have a positive impact on the environment and contribute to solving a number of problems concerning the state of the environment. The greatest positive effects will be achievable in terms of climate change and adaptation to climate change and resource savings in the sense of energy savings. Importantly, due to the scale of the funding, FEnIKS will be very important in financing environmental measures implemented in Poland.

The FEnIKS programme is dedicated to, among others: local government units, entities providing public services as part of the implementation of the local government's own duties, health care institutions, cultural institutions, enterprises, owners of residential buildings, state budgetary units and public administration and non-governmental organisations.

4. Control of the disbursement of European funds

Each project that receives a grant is under close scrutiny of the relevant Managing Authority, which checks, among other things, that the funds allocated for the implementation of the financed programmes are used as intended. If it turns out that a grant or a subsidy has been taken by a beneficiary unduly or excessively, or has been used in an improper manner, the controlling institution will initiate a recovery procedure. As stated in Article 325 of the Treaty on the Functioning of the European Union, the Union and the Member States have a duty to protect the financial interests of the Union. This includes the fight against fraud and any other illegal activities affecting those interests [Krzykowski 2017:12].

It should be emphasised that the beneficiary, by signing the grant agreement, undertakes to ensure correct implementation of the project by preventing fraud. The concept of fraud should be distinguished from "irregularity". Fraud is primarily characterised by an intentional act or omission and is most often found in the financial area [Piwowarczyk

2019: 8-14]. Under Polish law, the procedures referred to in Article 2(4) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests [Official Journal of the EU 312, 23.12.1995, p. 1-4] and, consequently, the obligation to recover amounts paid in connection with irregularities are laid down in the Public Finance Act of 27 August 2009 [Journal of Laws, 2023, item 1270].

The Polish legislator has introduced a model in which EU funding is provided on the basis of an agreement, and its settlement, in the event of incorrect use of funds, takes the form of an administrative decision. Such a solution generates certain doubts. In the course of current practice, they are clarified by administrative courts [Kopeć 2020: 159-170; Bieluci, Lemańska, Siemieniako 2017: 73]

5. Conclusion

Environmental policy is at the heart of EU policy and the European Commission has identified the European Green Deal as the key driver of its growth strategy [Stryjek, 2021:111-129]. It is worth emphasising that the integration of environmental aspects into other EU policies is an important element in European policy, as reflected in the development of the EU Climate and Energy Package and the Roadmap to achieve net-zero emissions by 2050 by balancing greenhouse gas emissions and removals across the Union and then moving towards negative emissions. The European Union plays the key role in international environmental negotiations. It is a party to many global, regional or sub-regional environmental agreements.

In Poland, the environment is polluted mainly by industry, which produces huge amounts of dust, gases, sewage and solid waste. In addition, the pollution is caused by road transport, which emits car exhaust fumes into the atmosphere, and household that produce rubbish and municipal sewage, that also includes some exhaust fumes from household furnaces and central heating boilers. All this together and other sources of pollution have a very negative impact on the state of the environment.

It is therefore important to be able to financially support investments in energy infrastructure and investments in the environmental sector. The correct implementation of the objectives of the FEnIKS Programme and its effective implementation are the tasks of the Managing Authority. The Managing Authority – the minister responsible for regional development is liable for the management of the European Funds for Infrastructure, Climate, Environment 2021-2027 Programme and proper implementation of the programme - both in its entirety and at the level of individual projects.

Thanks to the funds from the FEnIKS programme, important investments for the economy and environment will be realized. The implementation of new challenges and priorities will contribute to the faster development of a modern and competitive economy pursuing the objectives of sustainable development in Poland.

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