

# ***CORRUPTION °C***

## ***Sand in the Machine of EU Funds Distribution***

***Challenges and risks of the management system  
of the European Union Funds***

***Gatis Litvins***

***Paper No. 11, 2010***

### **Summary**

The purpose of this research is to identify if corruption risks are present and where these risks can be found in the management process of EU funds in sectors of education and science as well as to highlight the most obvious problems in the management of the European Regional Development Fund and the European Social Fund. The greatest corruption risks occur at the project application evaluation stage and the area of public procurement. Potential corruption risks are also generated by the economic crisis and the current reforms in the system of education. Likewise the low rate of the acquisition of EU funds may increase corruption risks because hasty and ill-considered decisions are likely upon the approach of the deadline for the acquisition of the funds.

Some of the recommendations are to reduce the number of documents to be submitted in project tenders, introduce electronic circulation of documents and at least a *prima facie* examination of evaluators' possible relations with tender applicants, involve foreign professionals, strengthen external control over the project evaluation process, resolve the deficit of liability in public procurement and undertake additional monitoring measures, e.g. *ex ante* examination of procurement documents.

### **About the author**

Gatis Litvins is a Master of Law. Since June 2007 he is a researcher of law at the Centre for Public Policy PROVIDUS.

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## Abbreviations

CoM	– Cabinet of Ministers
CPCB	– Corruption Prevention and Combating Bureau
ERDF	– European Regional Development Fund
ESF	– European Social Fund
EU	– European Union
EU Funds MIS	– EU Funds Management Information System
MoES	– Ministry of Education and Science
MoF	– Ministry of Finance
SEDA	– State Education Development Agency



# **Sand in the Machine of EU Funds Distribution**

## ***Challenges and risks of the management system of the European Union Funds***

One of the most important goals of the European Union (hereinafter – the EU) is the equalization of the economic and social development on the whole of its territory.

To achieve these goals the EU issues regulations that are legally binding as well as not binding for member states. It has also developed several instruments stimulating the development of member states. The largest financial instruments where Latvia receives financial assistance during the 2007–2013 planning period are the EU Funds: the European Regional Development Fund (hereinafter – the ERDF), the European Social Fund (hereinafter – the ESF) and the Cohesion Fund. They are not accessible for all member states.<sup>1</sup> Member states are eligible for financial resources from the EU Funds in the event of compliance with specific criteria.

Each member state enjoys autonomy in identifying its priorities and it has to establish an administrative and legal framework for the achievement of the said priorities and the expending of resources of EU funds. EU institutions monitor over this framework.

It is important for the member state to identify purposes for expending EU funds in the National Strategic Reference Framework in an appropriate and planned way as well as to establish an effective system for the management of EU funds.<sup>2</sup> This system must ensure a purposeful and economical

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<sup>1</sup> In the course of planning the future of the ESF after 2013 a proposal has been expressed to make this Fund accessible for all EU member states because the economic crisis has influenced the social sector in all countries. The only difference among member states would be in the amount of the available resources. <http://tiny.cc/2pkfb> Last accessed: 02.07.2010.

<sup>2</sup> Management of European Union funds shall be the preparation, harmonisation and approval of the necessary planning documents, establishment of a management system of European Union funds, development of the criteria for evaluation of project applications of European Union funds, selection and approval of project applications of European Union funds, implementation, control, auditing, monitoring and evaluation of European Union funds. (Article 4 of the Law on Management of European Union Structural Funds and the Cohesion Fund).

use of funds, including the prevention of corruption risks. However, the management system must also be rational – it must prevent any abuse without posing obstacles to an effective expending of resources.

## 1. Limitations of the analysis

There are many areas for the expending of EU Funds in Latvia. Due to the restricted scale of the research study it was not possible to monitor all areas. This present research study covers only sectors of education and science without contesting the importance of other sectors. It has been determined by several reasons.

Firstly, the development of education and science is a significant prerequisite of the competitiveness of Latvia as well as the whole of the EU<sup>3</sup> on the world scale. Knowledge-based economy should be developed. The development of these sectors may give a competitive advantage over other powers of the world – the USA, China and India.

Secondly, the expending of EU funds must be considered in the context of reforms recently undertaken in Latvia in sectors of education and science. Financial resources from the EU funds have become a significant prerequisite for the quality development of these sectors.

Thirdly, upon the beginning of the research, the mass media released information about a specific case related to probable conflicts of interests in the expending of EU funds, in particular in sectors of education and science.

In sectors of education and science the financing of EU funds is accessible through the ERDF and the ESF. Therefore, the present article will highlight the most obvious problems and corruption risks in the management of these two funds.

Already in earlier PROVIDUS research studies the corruption risk has been defined as “an objective prerequisite or a set of circumstances favourable for corruption cases.”<sup>4</sup> The purpose of the present research has been to identify if corruption risks are present and where these risks can be found in the management process of EU funds in sectors of education and science, including from the viewpoint of involved persons.

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<sup>3</sup> Competitiveness in the economic, political, social and cultural sense.

<sup>4</sup> Kalniņš V., Austere L. *Ētikas jautājumi un korupcijas riski Rīgas apgabaltiesā (Ethical Issues and Corruption Risks at the Riga Regional Court)*, Centre for Public Policy PROVIDUS (2010), p. 4. <http://tiny.cc/fi5tc> Last accessed: 29.05.2010.

In the course of the research study the author interviewed several people involved in the management process of EU funds: representatives of the managing authority (Ministry of Finance), responsible institution (Ministry of Education and Science), co-operation institution (the State Education Development Agency), beneficiaries of the financing of EU funds, representatives of the Procurement Monitoring Bureau, as well as law-enforcement agencies and experts from sectors of education and science. The list of interviews is provided at the end of the article. It must be indicated that interviews No. 1–3, 5–7, 13 and 14 include conversations with several representatives of the given organisations/institutions.

The article presents views expressed in the interviews by experts on problems of the system that have come into their field of vision. An analysis has been made of separate cases, and conclusions have been drawn on the circumstances of these cases. Individual views on a specific case cannot always be subjected to generalisation. Attention has been focused on problem issues that require the reconsideration of the system in its entirety as well as in-depth research and discussions. Conclusions and proposals should not be applied only to sectors of education and research but to the entire system for managing EU funds.

## **2. Background information about EU Funds in sectors of education and science**

According to the National Strategic Reference Framework, amendments to operational programmes, the Law on Management of European Union Structural Funds and the Cohesion Fund, during the period of 2007–2013 the Ministry of Education and Science (hereinafter – the MoES) and State Education Development Agency (hereinafter – the SEDA) are responsible for the organisation of 9 open project application selections and 28 restricted project application selections for the allocation of the financing from the EU funds.

In the area of education and science the resources of EU funds may be received by research institutions, public administration agencies, institutions and companies that perform public administration functions, municipal institutions, educational institutions as well as other legal persons registered in the Republic of Latvia.

Approximately 16% of all financial resources of EU funds (LVL 3.18 billion) are allocated to science and education.

### 3. Detected problems and probable corruption risks

One of the fundamental values of the EU is the rule of law. Corruption is incompatible with the idea of a law-based state. Failure to curb corruption affects also the accessibility of resources of EU funds and their efficient spending. If a member state fails to take measures required to prevent corruption risks, the EU may not reimburse resources spent in the course of project implementation and may freeze resources of the fund in future.<sup>5</sup>

The expending of EU funds is not protected against corruption risks. The inefficiency of the management system and lack of project transparency, on the one hand, as well as the large and yet at the same time limited resources of EU funds, on the other hand, constitute a potentially favourable environment for corruption risks. In some countries an equalisation mark is put between the expending of EU funds and corruption.<sup>6</sup> In Latvia such a perception among the general public does not exist. "Until now there has been no knowledge of any scandalous criminal cases on violations in the expending of EU funds."<sup>7</sup> Such a situation may testify to the absence of violations or the inability of law enforcement agencies to detect them.

Neither should the myth about corruption in the EU fund management system be disseminated. The cultivation of such a myth in itself is a corruption risk as it may encourage project applicants to resort to corrupt methods to exert influence and provides grounds for institutions and officials to set inadequate requirements and to demand privileges, e.g., higher remuneration to minimise a risk that in reality does not exist.

However, refraining from the dissemination of the myth does not preclude the discussion of problems in the EU fund management system. Although representatives of the Ministry of Finance (hereinafter – the MoF) have indicated that the management system excludes, to a maximum degree, systemic corruption risks, still they have manifested themselves in theoretical as well as practical terms.

Interviews brought to the fore cases and those phases in the EU fund management system where corruption risks might exist.

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<sup>5</sup> See Castle, S. *Bulgaria Risks Losing Funds from EU*. The New York Times.

<http://tiny.cc/guoc7t> Last accessed: 06.05.2010.

*Romania Risks EU Funds Freeze Over Lingering Corruption*. Deutsche Welle. 12.02.2009. <http://tiny.cc/eiutn7> Last accessed: 06.05.2010.

<sup>6</sup> See Georgiev, O. *Mayor for EU Funds*. The Sofia Echo. 26.03.2010. <http://tiny.cc/rkf77q> Last accessed: 06.05.2010.

<sup>7</sup> Interviews No. 12 and No. 13.



### **3.1. Insufficient understanding of conflicts of interest**

There are two cases when an individual may find himself/herself in a conflict of interest. The first case is when the individual consciously places himself/herself in such a situation. The second case is when the individual's ignorance places the person in a situation of a conflict of interest.

The analysis of statistics on cases of administrative violations collated by the Corruption Prevention and Combating Bureau (hereinafter – the CPCB)<sup>8</sup> for the period of 2007–2009 allows concluding that cases of administrative violations concerning conflicts of interest have been initiated comparatively frequently against representatives of the system of education (principals of comprehensive schools, representatives of higher educational institutions) and representatives of local government involved in the expending of EU funds.

The said statistics testifies to the nihilistic attitude towards legal restrictions or failure to understand this regulation. It potentially creates corruption risks in the expending of EU funds.

The CPCB and other institutions should undertake explanatory work and provide training on the regulation of conflicts of interest for individuals involved in the EU funds management system.

### **3.2. Complexity of the procedure and the excessive amount of documents to be submitted**

The majority of respondents recognised the excessive bureaucracy of the procedure for expending EU funds. This conclusion ensues also from a more extensive research study on the satisfaction of beneficiaries of the funding.<sup>9</sup> The disproportionate number of required documents makes the procedure more complex, oblique and less transparent as well as obstructs monitoring and control. Other tenders for EU grants and funds are quoted in contrast as good examples.<sup>10</sup>

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<sup>8</sup> KNAB lēmumi administratīvo pārkāpumu lietās 2007., 2008. gadā un 2009. gada pirmajā pusgadā (Decisions of the CPCB on cases of administrative violations in 2007, 2008 and the first half of 2009). Available respectively: <http://tiny.cc/5pbv5>; <http://tiny.cc/1zt5z>; <http://tiny.cc/7kwep> Last accessed: 06.05.2010.

<sup>9</sup> Latvijas Fakti. Centralizētais Eiropas Savienības fondu finansējuma saņēmēju apmierinātības izvērtējums (Centralised assessment of the satisfaction rate of beneficiaries of the financing of EU funds). December 2009. <http://tiny.cc/pp7bz> Last accessed: 17.05.2010.

<sup>10</sup> Interview No. 8.

The complexity of the procedure may serve as a cover for illegal activities. It is also a cause of misunderstandings that may lead to the recognition of the ineligibility of costs. Procedures are so complicated that it is easy to make errors without additional methodological guidance.<sup>11</sup>

Several measures should be implemented to facilitate the procedure and make it more open:

- A. An assessment should be made of documents that would not be required for submission. For example, “those documents that are not required for the evaluation and which demonstrate compliance with administrative requirements, need not be submitted at the evaluation stage. They could be submitted when the decision on the approval of the project idea is taken.”<sup>12</sup>
- B. The electronic circulation of documents and a single electronic platform/system should be introduced that would make the procedure more effective and more transparent as well as facilitate monitoring and control. The amount of printed documents would decrease.

A positive development is that already now beneficiaries of the funding within the frame of activities monitored by the MoES have the right to submit project applications in the form of an electronic document, signed by a safe electronic signature and verified by the time stamp in line with regulatory enactments on filing electronic documents. Moreover, if the beneficiary of the funding desires to submit the project application in the printed format, an identical electronic version of the project application form must be annexed. Likewise project applications and accompanying documents are submitted electronically also to other tenders for funds and grants related to the EU, for example, in the EU 7<sup>th</sup> Framework Programme for the development of science and technology. This approach has proved to be an effective way for a transparent organisation of procedures and it should be put to maximum use also in the circulation of other documents.

Currently, the EU Funds Management Information System (hereinafter – the MIS) has been established. However, the *Ernst & Young Baltic* (in 2008)<sup>13</sup>

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<sup>11</sup> Libeka, M. *Projektu upuri – septiņpadsmit pašvaldības (Victims of Projects – Seventeen Local Governments)*. Latvijas Avīze, 12.03.2010.

<sup>12</sup> Interview No. 11.

<sup>13</sup> See: 2007.–2013. gadu plānošanas periodam izveidotās Eiropas Savienības struktūrfondu un Kohēzijas fonda vadības un kontroles sistēmas atbilstības novērtējums (Compliance assessment of the management and control system of the European Union Structural Funds and the Cohesion Fund established for the 2007–2013 planning period). *Ernst & Young Baltic*, 03.03.2008., pp. 276–281. Not published.

and the National Audit Office (in 2010)<sup>14</sup> detected a set of failings in the given system. At times the MIS fails to provide information of the required quality for the process of implementing EU funds. It fails to provide the maximum benefit that it can potentially give. Chapters of the MIS cannot be used as a tool for the monitoring of EU funds.

Ways should be considered how this management system could make the procedure maximum open and clear and would enable to trace the progress of the procedure without any difficulty from the start to the end. It should provide as far as possible more comprehensive information. Corruption risks could be reduced with the help of this system if it was appropriate content-wise (full information, compatible with other registers, accurate, open) as well as functionally sufficient for ensuring monitoring. The development of such a system will facilitate the introduction of the accounting standard in public and municipal institutions. Besides, solutions should be sought so that beneficiaries of funding that are outside public administration could be included in the single system.

An often-mentioned reason for lack of success until now in developing such a system, is “reluctance to make the procedure more transparent and open. Proposals on the introduction of a single electronic platform that have been expressed to date, have been rejected.”<sup>15</sup> Similar information systems for the reduction of corruption risks have been established in other sectors, e.g., construction and spatial planning.<sup>16</sup>

Interviewees recognised that the excessive regulation of specific issues alternated with lack of regulation and control. The conclusion and amendment of contracts on project implementation was one of such areas that were mentioned. “The practice of institutions in negotiating and amending contract terms is not subject to sufficient control.”<sup>17</sup>

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<sup>14</sup> See: Valsts kontroles 07.01.2010. revīzijas ziņojums Nr. 5.1-2-25/2009 (Audit Report No. 5.1-2-25/2009 of the National Audit Office), pp. 8, 11, 41, 44–45, 48, 50. <http://tiny.cc/jge0Z> Last accessed: 29.05.2010.

<sup>15</sup> Interview No. 2.

<sup>16</sup> See: MK 15.03.2010. rīkojums Nr. 147 “Par elektroniskās pārvaldes un informācijas sabiedrības attīstības prioritāro projektu sarakstu” (Cabinet Decree No. 147 of 15.03.10 “On List of Priority Projects for the Development of Electronic Administration and Information Society”). <http://tiny.cc/wnmru> Last accessed: 13.05.2010.

<sup>17</sup> Interview No. 9.

### 3.3. Project application selection and evaluation

**Quality of criteria.** Interviewees pointed out lack of the quality of selection criteria. “Not infrequently they are changed during the call for selection following objections and directions of project applicants.”<sup>18</sup> It affects the time frame for project selection and implementation as well. The project submission deadline for Activity 2.1.1.1 “Support to science and research” was prolonged twice. The first submission deadline was 14 December, while the second submission deadline was 9 February and the final submission deadline was 9 March. It cannot be excluded that these cases have objective reasons behind them, however, still the question remains if all possible measures had been taken earlier to prevent the postponement.

In this Activity “the acquisition of patents was stipulated as a performance indicator. During the project implementation it could not be achieved due to objective reasons because the patent registration procedure lasts longer. Thus Regulations of the Cabinet of Ministers (hereinafter – the CoM) were amended prescribing that the performance indicator was submitted patents.”<sup>19</sup>

Initially Subactivity 3.1.2.1.1 “Modernization of Premises and Devices for Improvement of Study Programme Quality at Higher Educational Establishments, including Provision of Education Opportunities for Individuals with Functional Disabilities” contained a criterion prescribing that the funding from the ERDF could be received by higher educational institutions and it could be invested in the infrastructure that higher educational institutions possessed or administered. As properties used by public higher educational institutions are owned by the state, amendments to the criteria were undertaken for the 2<sup>nd</sup> round of project selection providing that higher educational institutions could make investments in real estate transferred for their use for a period no less than five years after project implementation.

One of the interviewees considered evaluation criterion 3.5.4 for Activity 2.1.1.2 “Support to International Cooperation Projects in Research and Technologies (EUREKA, 7<sup>th</sup> FP, etc.)” illogical – the said criterion stipulated the following: “An analysis of alternatives and the economic analysis of the project have been made that has been substantiated by calculations and justifies the choice of the proposed alternative, and the chosen alternative has the lowest costs. “The criterion is not logical and justified for activities listed in the project call as an alternative with the lowest costs means doing

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<sup>18</sup> Interviews No. 1 and No. 8.

<sup>19</sup> Interview No. 8.

nothing at all or cooperation only with the closest neighbouring countries.”<sup>20</sup>

According to the opinion of interviewees, the criteria cannot be interpreted unambiguously, and this is confirmed by the comparatively frequent questions of applicants<sup>21</sup> to organisers of the selection and the radically divergent evaluations of one and the same application given by different evaluators. Thus, at least sometimes subjectivism prevails over an objective evaluation.

The understanding of criteria is specified also during the evaluation stage. During the first round of the project application selection for Activity 1.1.1.2 “Attraction of Human Resources to Science” one of the criteria was the evaluation of the profundity of the project implementation–related risk assessment and the plan for their reduction. Projects were evaluated with a low number of points as evaluators indicated that no sufficient analysis had been made of legal risks in relation to employment law although this requirement did not explicitly ensue from the guidelines.<sup>22</sup>

“In the evaluation an excessive focus is on the quantitative indicators rather than qualitative indicators. Compliance with formal requirements is a priority.”<sup>23</sup> As concerns the risk assessment and the plan for their reduction, a perception has developed that “evaluators seldom evaluate this assessment or it is done in a superficial manner as similar risk assessments are submitted from one project to another and until now no negative evaluation or critical comments have been received.”<sup>24</sup>

These are some of the examples that give grounds for disputing the quality of the defined criteria. A circumstance that is mentioned as the cause of such a situation is that “they are formulated by public officials who lack competence and who have no background knowledge of the sector.”<sup>25</sup> Certainly, such a statement should be perceived with due criticism. Experts of the

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<sup>20</sup> Interview No. 5.

<sup>21</sup> For example, answers to questions concerning the filing of forms and project implementation for Activity 2.1.1.1 “Support to science and research”, p. 37. [http://esfondi.izm.gov.lv/sites/default/files/root/2.1.1.1\\_aktivitate/jautajumi\\_atbildes%202.1.1.1\\_aktualizets\\_11.01.2010pdf.pdf](http://esfondi.izm.gov.lv/sites/default/files/root/2.1.1.1_aktivitate/jautajumi_atbildes%202.1.1.1_aktualizets_11.01.2010pdf.pdf) Last accessed: 29.05.2010.

<sup>22</sup> Advanced Social and Political Research Institute 05.06.2009 letter NM 01-03/ to José Manuel Silva Rodriguez, Director-General, Directorate General for Research, European Commission. Not published.

<sup>23</sup> Interview No. 2.

<sup>24</sup> Interview No. 6.

<sup>25</sup> Interviews No. 2 and No. 11.

sector are involved in the development of criteria for project evaluation and they are approved by the Monitoring Committee whose meetings are attended also by social partners and representatives of the European Commission. However, this cooperation model that deserves a positive evaluation fails to completely eliminate failings. Cooperation fails to achieve its maximum effectiveness. It should be stimulated to ensure that participants have sufficient time and resources to consider criteria and to formulate proposals. Neither can it be excluded that project implementers are not sufficiently competent to understand criteria.

**Institutional competence.** The majority of amendments to Cabinet regulations on activities concern decisions of the MoF as the managing authority of EU funds that are related to the volatile conditions for the implementation of EU funds. There is evidence of the shortsightedness of the MoF on specific issues and cooperation with the MoF cannot always be assessed as efficient. Inconsistencies result in an irreversible loss of time and resources.

“The MoF does not always understand problems of the sector, e.g., issues of the property of higher educational institutions (they are used by higher educational institutions but they are not possessed by the institutions, while criteria have been developed in a way as if the properties belonged to higher educational institutions). Initially this problem was ignored, however, after half a year the MoF had to step down from its initial opinion.”<sup>26</sup>

“There was an intention to use EU funds also for the repairs of in-service hotels in the sector of vocational education. The MoF objected as the repairs should be financed by the national budget. However, during the meeting of the Monitoring Committee in March this year the MoF changed its opinion. The MoF started work on the flat rate of indirect costs (flat ration between the direct project (implementation) costs and indirect (administrative) costs) in 2007, the rate was promised in 2008, however, it was introduced only in March 2010, by amending Cabinet Regulations No. 419 “On procedures, by which the institutions involved in the management of European Union funds ensure the preparation of planning documents and introduction of the European Union funds.” It resulted in the necessity to amend other Cabinet Regulations.”<sup>27</sup> Although the introduction of the flat rate for indirect costs depended on negotiations with the European Commission, still the length of the time spent on this case raises the question of the efficiency of the negotiation process.

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<sup>26</sup> Interview No. 4.

<sup>27</sup> Ibid.

Likewise the economic crisis has introduced corrections in a range of issues, including the issue of remuneration for employees of institutions of the EU fund management system. It cannot be maintained unambiguously that the reduction of employees' salaries results in a proportional growth of corruption risks. However, this circumstance may facilitate the appearance of such risks. Thus during the transition period additional attention should be paid to this matter.

Changes in remuneration also stimulate the exit of the qualified staff, bringing about fluctuations in the institutional competence level. The incompetence and lack of professionalism of the staff at institutions involved in management has been pointed out also in a more extensive survey as replies provided to questions of project applicants are contradictory, formal and vague.<sup>28</sup>

**Evaluators.** In specific tenders submitted project applications are not evaluated only by members of the evaluation committee but also by invited experts. However, respondents held different views concerning the quality of the work of experts and members of the commission involved in the evaluation. "At times evaluations of experts given for one and the same criterion differ significantly and they do not substantiate the evaluation they have given. In specific cases members of the evaluation commission also fail to present their arguments why their opinion differs from the evaluations given by experts."<sup>29</sup> It gives grounds to conclude that additional attention should be paid to the selection of members of the evaluation commission and experts as well as to their training for the evaluation procedure to ensure that evaluators had the same understanding of criteria and they are capable of giving the evaluation.

If the process of involving experts is conducted in an objective manner it reduces corruption risks. Additional "eyes" are supplied for the evaluation process. However, the situation when experts for the evaluation of project applications are chosen following the lowest price offer, deserves criticism.

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<sup>28</sup> Centralizētais Eiropas Savienības fondu finansējuma saņēmēju apmierinātības izvērtējums (Centralised assessment of the satisfaction rate of beneficiaries of the financing of EU funds). Latvijas Fakti, December 2009, p. 12. <http://tiny.cc/pp7bz> Last accessed: 17.05.2010.

<sup>29</sup> Interviews No.1. and No.8; Advanced Social and Political Research Institute 05.06.2009 letter NM 01-03/ to Joş Manuel Silva Rodriguez, Director-General, Directorate General for Research, European Commission. Not published.; Also the Report on Internal Audit No. 07-03/151/a/09 by the SEDA includes evidence of such trend. Not published.

Professionalism on the specific issue and objectivity should be the indicators to follow. Remuneration would then be the next issue to consider. In a situation when interests of experts are not subjected to any in-depth examination, the expert who is most interested in the outcome of the tender may offer an inadequately low price which is also the lowest, and thus acquire the opportunity to influence the evaluation process.

An in-depth examination should be made of the potential links among individuals involved in the evaluation process and project applicants. Compliance with formal requirements does not prevent risks, moreover, even these formal requirements are not always followed. There have been cases when not all of the members of the commission have signed forms on objectivity and non-disclosure of information.<sup>30</sup> The SEDA and other institutions should take active measures to identify interests of evaluators. These institutions themselves should conduct at least a *prima facie* examination. Alongside with the submission of their CVs evaluators should reveal also their interests that could potentially overlap with interests of project applicants. They should indicate potential risks and doubts that may arise concerning their objectivity. "More responsibility should be laid on evaluators."<sup>31</sup>

During project selections the evaluation process may be attended also by observers. The specific observers are established by respective Cabinet regulations. A question arises if individuals and organisations not listed in Cabinet regulations may attend the process. Currently the range of observers is not extensive. According to one of the present observers, they "expressed their desire to participate in the evaluation of project applications on their own initiative. Initially institutions were sceptical about this idea."<sup>32</sup> Likewise "at times it is difficult to find people who are not related to any of project applicants" among observers (organisations) themselves."<sup>33</sup> Thus, the possibility of expanding the body of observers should be considered and the general public should be invited to participate more actively in this process.

**Organisation of the selection.** The issue of the way of organising project selection is important from the point of evaluation. As it has already been

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<sup>30</sup> Gada kontroles ziņojums. Revīzijas iestāde, 01.07.2008.-30.06.2009. (Annual Report. Audit Authority, 01.07.2008.-30.06.2009.), p. 54. <http://tiny.cc/8ijnh> Last accessed: 12.05.2010; Ziņojums par iekšējo auditu Nr. 07-03/151/a/09 VIAA (Report on Internal Audit No. 07-03/151/a/09, SEDA). Not published.

<sup>31</sup> Interview No. 8.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.



indicated above, the Ministry of Education and Science and the State Education Development Agency are in charge of the organisation of 9 open project application selections and 28 restricted project application selections. There are noticeably more restricted tenders than the open tenders. One of the explanations might be that there is a limited range of potential beneficiaries of the funding in the sector of education and science.

Restricted selection is applied also in allocating support to the implementation of doctoral study programmes. The purpose of the subactivity is to increase the number of specialists in all thematic groups of education who have received a doctoral degree and are capable of planning, creating and implementing in production high technology products as well as products and services with a high value added, promoting the development of national economy on the basis of innovations. The project applicant may be a higher educational institution that implements one or several doctoral study programmes in any thematic group of education. Cabinet regulations provide that the Ministry of Education and Science sends an invitation to submit a project application to a restricted number of project applicants.<sup>34</sup> The Ministry of Education and Science sends the invitations on basis of its own calculations which higher educational institutions could meet the identified criteria.

The basic principle is that an open selection procedure should be organised in the distribution of the financing of EU funds and public agencies must be neutral. If special circumstances exist (e.g., there is only one candidate) the restricted selection may be organised.<sup>35</sup>

Stepping back from the selection for the specific subactivity for the support of doctoral students, it would be more appropriate from the point of openness to establish beneficiaries of the financing with the help of the open selection if it allows achieving the same aims. Thus, all institutions capable of qualifying for specific criteria, should be allowed to submit their project applications. The range of candidates is established not by the responsible authority but by the potential candidates themselves who perceive their

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<sup>34</sup> MK 21.10.2008. noteikumi Nr. 882 "Noteikumi par darbības programmas "Cilvēkresursi un nodarbinātība" papildinājuma 1.1.2.1.2. apakšaktivitāti "Atbalsts doktora studiju programmu īstenošanai"" (Cabinet Regulations No. 882 of 21.10.08 "On Amendment of Subactivity 1.1.2.1.2. "Support to Doctor's Studies" of the Operational Programme "Human Resources and Employment"), Clause 12.1.4, Latvijas Vēstnesis, 07.11.2008, No. 174.

<sup>35</sup> See Kosa, E. *Preferential Project in the 2nd Hungarian National Development Plan*. In: Košťal, C. (ed.). *Guarding Change: Civil Society as Watchdogs of EU Funds*, Slovak Governance Institute (2008), pp. 56–57.

ability to qualify for the procedure. Thus, it would be possible to eliminate any doubt that the responsible authority has restricted the range of applications without due justification. Such practice would be particularly relevant in other sectors where the range of candidates is more extensive than in sectors of education and science.

#### **3.4. Involvement of foreign professionals in the evaluation of project applications**

During interviews several respondents pointed out that it was at the project application evaluation stage that corruption risks were potentially most possible. In the area of education and science in Latvia there is a limited number of specialists who may be independent and perform the evaluation of project applications professionally. Not infrequently the evaluator and the project applicant are bound by personal relationships. "Often the quality of project applications is similar, thus not infrequently everything may be decided by a minor error or interference."<sup>36</sup> In the event of the need to assess some specific issue the range of potential evaluators is even more restricted. It is the peculiarity of small countries. "Even though no conflict of interest can be detected in the evaluation of project applications, still often it may be a violation of professional ethics."<sup>37</sup>

A conflict of interest can be detected in the first round of project application selection for Activity 1.1.1.2 "Attraction of Human Resources to Science." The initial decisions of the SEDA on the rejection of project applications were contested by 53 applicants. As a result the Ministry of Education and Science took the decision to revoke all decisions of the SEDA on the approval, conditional approval or rejection of project applications as well as to entrust the SEDA with the task of improving procedures applied in the evaluation process and to undertake a repeated evaluation of project applications submitted for the first project application selection round. It is the first case when all results of the selection were revoked and a repeated evaluation performed. The Ministry of Education and Science found that the evaluation commission that had been approved by the SEDA included persons representing research institutions whose project applications were on the list of approved project applications which was contrary to the principle of the ethics of public administration and the principle of procedural justice. Although the said persons had not participated in the evaluation of project applications submitted by the research institution they represented or where research institutions that they represented acted

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<sup>36</sup> Interview No. 11.

<sup>37</sup> Interview No. 8.

as cooperation partners, still they had evaluated projects of other research institutions – their competitors in the given selection, thus giving grounds to doubt about the objectivity of the evaluation process.<sup>38</sup>

The specific violation was eliminated not within the frame of the self-control of the system itself but due to the pressure of the rejected applicants. One of the rejected project applicants notified the European Commission and the Ministry of Education and Science about the situation that had developed.<sup>39</sup> It was requested in the letter not only to assess the specific situation but the problem of the objectivity of evaluation in EU funds was generalised indicating that foreign professionals should be involved in the evaluation of project applications for EU funds.

Likewise the interviewees also indicated the necessity of involving foreign professionals in project application evaluation. They gave the following arguments “for” and “against” this intention.

**Table 1**  
**Arguments concerning the involvement of foreign professionals**  
**in project application evaluation**

<b>FOR</b>	<b>AGAINST</b>
<ol style="list-style-type: none"> <li>1. It will ensure more objectivity and credibility for the taken decisions.</li> <li>2. The body of professionals in Latvia is exceedingly limited, it would be a rare case if the professional had no or had had no relation to the applicant. Besides there is no guarantee that the professional might not come into contact with the respective funding.</li> </ol>	<ol style="list-style-type: none"> <li>1. They will not always be able to comprehensively assess the situation in Latvia.</li> <li>2. It will not be possible to involve respective professionals in all sectors.</li> <li>3. Foreign professionals are competitors in the EU research space – they can steal an idea and they can sink an idea.</li> </ol>

<sup>38</sup> Latvijas Republikas Izglītības un zinātnes ministrija. Lēmums Nr. 332 “Par Valsts izglītības attīstības aģentūras 1.1.1.2. aktivitātē “Cilvēkresursu piesaiste zinātnei” pieņemto lēmumu atcelšanu”. 30.09.2009. (Decision of the MoES No. 332 of 30.09.09 “On Revocation of Decisions Taken by the State Education Development Agency in Activity 1.1.1.2 “Attraction of Human Resources to Science”). Not published.

<sup>39</sup> Advanced Social and Political Research Institute 05.06.2009 letter NM 01-03/ to Joşé Manuel Silva Rodriguez, Director-General, Directorate General for Research, European Commission. Not published.

<ol style="list-style-type: none"> <li>3. The expending of EU funds is not envisaged solely for the protectionist development of some member state but for the capacity building of education and science in the EU.</li> <li>4. There are ethical norms of scientists that prohibit any theft of ideas. Moreover, the ability and understanding of how the idea can be implemented in practice are more important than the idea itself.</li> <li>5. The requirement to submit the project application (at least its part) in English is not excessive as English is the language of communication in the research community. Already now in many cases the research part of the project application is filed in English.</li> <li>6. Often projects are international.</li> <li>7. Local scientists lobby their sectors.</li> <li>8. Project evaluation costs would be lower if project applications were submitted electronically.</li> </ol>	<ol style="list-style-type: none"> <li>4. Currently regulatory enactments do not allow any transfer of the performance of tasks that can be performed by public administration itself.</li> <li>5. It will incur additional costs (translation costs, fees, per diem etc.).</li> </ol>
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Views expressed in interviews concerning the involvement of foreign professionals in project evaluation are most often “in favour” of their involvement. The assessment of the opinions expressed allows concluding that “in favour” is more convincing and the implementation of this idea would contribute significantly to the reduction of corruption risks. It would make the procedure fairer, more open, efficient and would promote the trust of the general public in decisions taken by public administration. Foreign professionals could be involved as members of the commission or experts. Neither would it preclude the involvement of local professionals.

The necessity of entrusting the evaluation of project applications to qualified foreign professionals of good standing has been discussed in other EU member states as well. It would ensure more objectivity in project selection.<sup>40</sup>

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<sup>40</sup> See Kralikova, R. *The Structural Funds and the Higher Education and Research Sector. How to Fully Utilize this Relationship?* In: Košťál, C. (ed.). *Guarding Change: Civil Society as Watchdogs of EU Funds*, Slovak Governance Institute (2008).

International tenders must be announced for the involvement of foreign professionals. However, as this problem exists not only in Latvia but also in several EU member states, the solution should be sought at the EU level. Common guidelines should be developed in the EU for the exchange of professionals; a database of experts should be established etc. The establishment of such a system would be in the interests of member states as well as the EU as it would reduce corruption risks, making project selection fairer and the expending of EU funds more effective.

Conclusions that have been drawn by the CPCB concerning the above situation and the conflict of interest should be viewed critically.<sup>41</sup> The CPCB recognised that no conflict of interest could be detected in the given situation as neither evaluators nor their relatives had participated in the formulation of the submitted projects. Thus it ensues from the statement of the CPCB that the situation that persons closely related to project applicants evaluate competing project applications is acceptable. Although the respective persons had not participated in the evaluation of project applications submitted by the research institution that they represented or by a cooperation partner of their research institution, it does not prevent giving an unjustifiably low evaluation to other project applications. The CPCB has interpreted the interest of these persons too narrowly. In addition the CPCB indicated that members of the evaluation commission had not been included in lists of public officials.

### **3.5. Lack of argumentation in decisions on the rejection of project applications**

Quite a few of the interviewees drew attention to lack of argumentation in project rejections. It is not possible upon reading decisions to understand reasons for the rejection of project applications. No sufficient argumentation is presented in the decisions. Even if the applicant of a rejected project wanted to appeal the specific decision, it could not be done without requesting additional information. Thus, an obstacle is created for efficient appeals. A positive example mentioned by the interviewees is the Social Integration Fund which provides more extensive argumentation in its decisions.

In their turn, representatives and decision-makers of the MoF expressed the view during interviews that at present decisions provided sufficient

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<sup>41</sup> KNAB priekšnieka 02.11.2009. vēstule Nr.1/9546 (Letter of the Head of the CPCB No. 1/9546 in 02.11.2009).

substantiation. Thus, there is a clash of two views. To illustrate this clash see examples of decisions on the rejection of project applications by the SEDA and the Social Integration Fund (Riga planning region) on the Internet ([www.corruption-c.wikidot.com](http://www.corruption-c.wikidot.com) un [www.politika.lv](http://www.politika.lv)).<sup>42</sup>

In this respect another significant development is the judgment of the Department of Administrative Cases of the Senate of the Supreme Court,<sup>43</sup> which provides an analysis of the sufficiency of arguments at the basis of the decision taken by the administration of the Latvian Environment Protection Fund to reject the financing of the project of the society "Latvian Lakes" within the frame of the national budget programme "Latvia Environment Fund".

In this case the council of the Fund has failed to substantiate why the inclusion of the task that is in the competence of the Board of River Basins, in the applicant's project for the amount that constituted 0.76% of the project amount, makes the allocation of funding for the applicant's project absolutely impermissible.

In view of the fact that the decision lacked extensive argumentation, the court found that the decision taken by the council of the Fund violated the principle of the prohibition of arbitrariness, which is a significant procedural violation and constitutes grounds for finding the decision taken by the said institution to be illegal. The principle of the prohibition of arbitrariness requires that actions of the state have reasonable substantiation and that everyone can ascertain of the existence of this substantiation. As the substantiation of the action taken by the state is reflected in the argumentation the principle of the prohibition of arbitrariness is closely linked to the principle of justification. The said principle is included in Article 9

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<sup>42</sup> Valsts izglītības attīstības aģentūra. Lēmums Nr.05.-5.1.4./121 "Par projekta iesnieguma noraidīšanu", 29.04.2009. uz 1 lpp. (Decision of the SEDA No. 05.-5.1.4./121 of 29.04.09 "On Rejection of Project Application" on one page).

Rīgas plānošanas reģions. Lēmums Nr. 3/8 "Par Tieslietu ministrijas un Sabiedrības integrācijas fonda kopīgi izveidoto grantu shēmu "Pilsoniskās sabiedrības stiprināšanas atbalsta programma 2010" projektu konkursa Nr. 2010.LV rezultātiem", 10.05.2010 uz 4 lpp. (Decision of the Riga Planning Region No. 3/8 of 10.05.10 "On Results of Project Tender No. 2010LV for the Grant Scheme "Support Programme to Strengthening Civic Society 2010" Established Jointly by the Ministry of Justice and the Social Integration Fund" on 4 pages).

<sup>43</sup> Augstākās tiesas Senāta Administratīvo lietu departamenta 22.03.2010. spriedums lietā Nr. SKA-58/2010. (Judgment of the Department of Administrative Cases of the Senate of the Supreme Court of 22.03.10 in case No. SKA-58/2010). <http://tiny.cc/kyk7y> Last accessed: 07.05.2010.

of the Administrative Procedure Law which provides that administrative acts may be based on facts such as are necessary for the taking of a decision and on the objective and rational legal considerations arising from such facts.

For example, in another case – in Decision of the SEDA No. 05-5.1.4./121 (in 29 April 2009) “On Rejection of the Project Application” the project application has been evaluated with 8 points, however, the decision does not list any failings found in the project application. No answer has been given to the question why the project application has been rejected. Likewise in the above case court did not find any answer to this question in the decision. If the whole argumentation is not included in the decision already at the initial stage, then court will have no grounds for reviewing other objections of the institution that have not been included in the decision as its justification. If a decision without extensive argumentation is taken to court, it may be expected that it will be found to be contrary to the law.

The administrative act cannot contain only the result of legal relations. It must contain extensive argumentation that has led to the said result. Decisions on rejection must provide more substantiation, ensuring a balance between the principle of justification and the principle of the economy of public administration resources.

### **3.6. Lack of external control over the project evaluation process**

The Administrative Court exercises independent, objective and competent control over decisions and actions of public administration. However, at present applicants of rejected project applications do not seek redress in court. It has several reasons: due to the lengthy court proceedings even a positive judgment does not give any possibility of receiving the funding for project implementation. Moreover, one of the applicants pointed out in the interview that “there are cases when it would be worth going to court, however, the restraining factor is the unwillingness to “spoil” relations with the respective institutions because other project applications have also been submitted.”<sup>44</sup>

An external and independent control mechanism is not sufficiently effective and it allows institutions to be light-minded in decision-making. The appeal of the decision should suspend the conclusion of the project implementation agreement, at the same time establishing an efficient mechanism of appeal.

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<sup>44</sup> Interview No. 1.

The principle of the rule of law and the principle of the efficient use of resources of EU funds would be balanced resulting in more benefit than the instituted restrictions. The task of control may be performed by the administrative court or any other specialised institution. The control mechanism could be made more efficient in several ways:

- A. It could be prescribed that the administrative court is to review applications at shorter notice outside the general procedure. Applications could be reviewed only by one or two court instances.
- B. It could be prescribed in cases on the distribution of resources of EU funds that the project applicant or the applicant to court may request temporary regulation provided that after the court decision on the temporary regulation the project applicant can implement his/her intended activities with his/her own financial resources. In the event of a favourable court judgment, the state is to reimburse all incurred project implementation costs.
- C. Administrative review boards or quasi-courts operate in several European countries (e.g., Lithuania, the Netherlands). They are independent from public administration and consist of experts from the respective sector. Such a quasi-court should be established in Latvia as well for issues of EU funds. It could be established at least as an *ad hoc* institution. It would provide a speedy and independent review of disputes arising in relation to the expending of EU funds. Dispute resolution through such an institution would take much less time than in court (maximum within a month's time). These courts win increasingly more confidence of the general public abroad.
- D. The Ombudsman's Office should take a more active part in the monitoring of the quality of the EU fund management. It is possible that a special ombudsman could be established to review disputes as well as to provide an external assessment and proposals for the improvement of the system.

Each of these proposals has its pluses and minuses. The best option should be negotiated by discussing all the above proposals.

### **3.7. Expansion of the limits of the accessibility of information**

The accessibility and openness of information is a significant prerequisite for the reduction of corruption risks. It was pointed out during interviews



that applicants of projects rejected during the first round of the project selection for Activity 1.1.1.2 “Attraction of Human Resources to Science” did not receive part of documents. “Records of evaluation commission meetings were not issued as it is not possible to conceal names of evaluators.”<sup>45</sup>

Article 29 Section 4 of the Law on Management of European Union Structural Funds and the Cohesion Fund prescribes that information regarding persons who evaluate or have evaluated the application of the European Union fund project shall not be disclosed, except members of the evaluation committee. The information regarding the members of evaluation committee is available in the amount and according to the procedures specified in this Law and other regulatory enactments.

The inability to cover up names does not constitute legitimate grounds for failure to issue documents. After the closing of the evaluation process the argumentation must be publicly available. Such practice would create confidence in the fairness and legitimacy of the process as well as enable to more effectively protect one’s rights and interests in the event of a violation.

The content of Article 29 Section 4 should be reconsidered. Failure to fully disclose evaluators restricts the possibility of project applicants and the rest of the society to follow the evaluation process, to detect any conflict of interest and possible corruption cases. Names of evaluators should not be disclosed before and during the evaluation process. After the closing of the evaluation process they should be disclosed as the necessity to protect them against possible pressures ceases to exist. It is important to ascertain of the neutrality of evaluators.<sup>46</sup>

From the point of openness it is important that information about the results of project application selection is timely and publicly available. It enables the general public to point out potential failings and violations. Foreign experts also highlight the necessity of making the information publicly available and the desirable amount of information.<sup>47</sup>

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<sup>45</sup> Interview No. 1.

<sup>46</sup> See Muravjov, S. *Sizing Up to the Task: Monitoring of European Union Funds in Lithuania*. In: Košťal, C. (ed.). *Guarding Change: Civil Society as Watchdogs of EU Funds*, Slovak Governance Institute (2008), p. 26.

<sup>47</sup> See Kasakova, Z. *Access to Information Relating to EU Structural Funds and Implementation System in Czech Republic*. In: Košťal, C. (ed.). *Guarding Change: Civil Society as Watchdogs of EU Funds*, Slovak Governance Institute (2008), pp. 160–181.

**Table 2**  
**Amount of available information**

Information categories that should be publicly available	Actually available <sup>48</sup>
Description of the evaluation system	Yes
Information describing applicants	Yes
Information describing projects	Yes
List of approved and rejected project applications	Yes
Number of points awarded upon evaluation	No
Amount of the allocated funding	Yes
Argumentation of the approval and rejection of project applications	No
Names of evaluators	No
Contact person	Yes

Even though at present “there is no obligation to make the methodology of the assessment criteria publicly available, in some specific cases it is practiced.”<sup>49</sup> Such explanations improve the understanding of criteria and make the evaluation process more predictable. The generalisation of the obligation to make the methodology publicly available should be considered.

It would be necessary to re-examine the limits of the applicability of the status of information of restricted access to documents of EU funds. Likewise the scale of information accessibility concerning the results of the project application selection should be reconsidered.

### **3.8. Inability to fight violations in the procurement procedure**

Public procurement is an area most exposed to corruption risks, as, on the one hand, in the process of administering public financial resources public officials may be tempted to gain direct or indirect material benefit, on the other hand, bidders are interested in being awarded the procurement contract and to make more profit during the execution of the procurement contract. Violations in the area of procurement have a high latency as both involved parties – the commissioning party and the supplier are interested in con-

<sup>48</sup> Chapter “EU Structural Funds” on the websites of the MoES ([www.izm.gov.lv](http://www.izm.gov.lv)) and the SEDA ([www.viaa.gov.lv](http://www.viaa.gov.lv)).

<sup>49</sup> Interview No. 3.

cealing violations of the procurement procedure from other bidders as well as from the general public.<sup>50</sup>

The procurement for resources of EU funds is not separated from other types of public procurement. The same regulation applies to all public procurement. Potential problems and corruption risks are the same irrespective of the resources at the basis of the procurement. The alignment of the procedure and the minimisation of corruption risks in the area of public procurement in general will reduce these risks also in the expending of EU funds.

Public procurement is not a problem characteristic only for Latvia. It has been recognised to be a problem area in practically all member states where EU funds are implemented. The EU has tried through regulations to make this area more effective and transparent. Practice and statements given during interviews show that there are problems in the legal regulation as well as in its application, however, the most serious problems still ensue from the application of regulation. Legal culture lags behind the legal regulation. "There is a problem with public procurement all the time, and considerable preventive work must be undertaken to achieve a good result. Cases when the procurement has been conducted correctly are very rare."<sup>51</sup>

Problems can be found not only in the actions of project implementers (organisers of the procurement procedure) also in the actions of their supervisors. The path of legalistic nihilism is chosen instead of introducing the required amendments in the legal regulation. For example, "as concerns the involvement of tutors for doctoral theses on the basis of an enterprise agreement, the Procurement Monitoring Bureau does not say that it is not logical to conduct such procurement but recognises that procurement concerning tutors for doctoral theses must be performed separately in each specific case, thus the procurement threshold amount is not exceeded and the procurement procedure need not be organised."<sup>52</sup> Although the problem was solved, still the way how it was done, is not acceptable.

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<sup>50</sup> Korupcijas novēršanas un apkarošanas birojs. Vēstule Nr. 1-04/703 Satversmes tiesai "Par likuma "Grozījumi Publisko iepirkumu likumā" (Saeimā pieņemts 16.07.2009.) 46. un 50. pantu", 29.10.2009. (Letter of the CPCB No. 1-04/703 of 29.10.09 to the Constitutional Court "On Articles 46 and 50 of the Law on Amendments to the Public Procurement Law (adopted by the Saeima in 16.07.2009)). Not published.

<sup>51</sup> Interview No. 3.

<sup>52</sup> Interview No. 6.

Such practice gives an undesirable signal about the admissibility of a formalistic approach to the organisation of public procurement. “Often the procurement is organised formally only to comply with requirements of regulatory enactments. Procurement is organised for people who are already known.”<sup>53</sup> Often it is related to the applicability of the formal requirements of public procurement to the attraction of human resources.<sup>54</sup>

At present a range of violations has been detected in the organisation of procurement. The most frequent violations are as follows:<sup>55</sup>

- A. Procurement documentation prescribes requirements that restrict the range of bidders without due justification (procurement specifications and candidate selection regulations have not been formulated in an appropriate manner thus discriminating other bidders and failing to ensure equal treatment for all bidders).
- B. Bidders are rejected on the basis of criteria that are not included in the technical specification, and a bidder is chosen who had no “advantage” according to the technical specification for the award of the contract (e.g., on the grounds that there has been good cooperation earlier etc.).
- C. The commissioning party awards and concludes the contract with the bidder whose offer does not comply with the technical specification.
- D. Procurement is broken down into several smaller procurements to evade the application of the procurement procedure that is applicable to the total contract amount.
- E. A specific amount is established upon the conclusion of a contract with the bidder, however, in most cases additional contracts are concluded for additional assignments (which, in actual fact, are not additional assignments and which could have been planned already at the beginning of the procurement) to evade the procurement procedure with a higher threshold.
- F. Incomplete procurement documentation, e.g., records do not contain complete information (e.g., there is no argumentation for the evaluation of bids, the criteria followed in taking the decision) or records that reflect the progress of the procedure are not included at all.

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<sup>53</sup> Interviews No. 7 and No. 8.

<sup>54</sup> *Augstskolas neizpratnē, ka vieslektori “jāiepērk” kā preces (Higher Educational Institutions Mystified that Guest Lecturers Should be “Procured” like Goods)*. Diena.lv <http://tiny.cc/6sz9s> Last accessed: 24.05.2010.

<sup>55</sup> See, for example, decisions of the Procurement Monitoring Bureau No. 8-1/6613 of 18.12.09., No. 8-2/5824 of 19.10.09, No. 8-2/4622 of 11.08.09, etc.

- G. Contracts with bidders are concluded for other amounts that are higher than the amount given in the bid and in the decision of the procurement commission.
- H. Insufficient accessibility of information about the procurement.

At present there is only administrative control over the procurement process. There is no real liability for violations in the organisation of procurements that generates the feeling of all permissiveness and does not restrain from the commission of violations. Although in the formal sense there is a possibility of holding people administratively liable for violations in the area of public procurement, still due to legal problems liability prescribed by the Latvian Code of Administrative Violations cannot be applied. As a result not a single person has been held administratively liable during the last six years.<sup>56</sup>

To eliminate the detected problems, it is necessary to undertake complex measures directed towards enhancing the openness and legality of the organisation of procurement. Separate measures will not reduce the problems. Likewise the issue of liability should be considered and additional preventive monitoring measures should be undertaken (the *ex ante* examination of procurement documents). Measures that reduce monitoring and control are not permissible.<sup>57</sup> Besides, other measures should be undertaken to reduce formalism and the nihilistic approach to the organisation of the procurement procedure.

In addition explanations and training should be provided on the organisation of procurement as at present the procurement documentation is not of the required quality. A vivid example of the current practice is the demand

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<sup>56</sup> Korupcijas novēršanas un apkarošanas birojs. Vēstule Nr. 1-04/703 Satversmes tiesai "Par likuma "Grozījumi Publisko iepirkumu likumā" (Saeimā pieņemts 16.07.2009.) 46. un 50. pantu", 29.10.2009. (Letter of the CPCB No. 1-04/703 of 29.10.09 to the Constitutional Court "On Articles 46 and 50 of the Law on Amendments to the Public Procurement Law (adopted by the Saeima in 16.07.2009)). Not published.

<sup>57</sup> Latvijas Republikas Satversmes tiesa. Spriedums lietā Nr. 2009-77-01 "Par Publisko iepirkumu likuma 83.2 panta un pārejas noteikumu 12. punkta atbilstību Latvijas Republikas Satversmes 1. un 92. pantam". 19.04.2010. (Judgment of the Constitutional Court of 19.04.10. in case No. 2009-77-01 "On Compliance of Article 83.2 of the Law on Public Procurement and Clause 12 of Interim Provisions to Articles 1 and 92 of the Constitution of the Republic of Latvia). Available: <http://tiny.cc/x70q6> Last accessed: 29.05.2010.

of the SEDA that 17 local governments repay the money of the ESF as it has been paid to teachers without due justification.<sup>58</sup>

### **3.9. Ineffectiveness of control in project implementation**

The economically difficult situation has affected the capacity of project implementers as well. In the interviews respondents indicate the restricted resources of project implementers to effectively administer projects of EU funds. Resources are insufficient to achieve a maximum positive outcome. For example, a project implementer indicates that “upon the organisation of a procurement procedure for public works the procurement commission cannot afford inviting a qualified construction specialist.”<sup>59</sup>

If inconsistencies are detected in project implementation in due time, it is possible to prevent the appearance of losses. In one of the interviews the respondent expressed the view that at present several unacceptable trends could be observed. “Some ministries perceive the large number of detected inconsistencies as a negative assessment of their work. There is also evidence of particular loyalty to the national budget. Control services fail to report inapplicable costs, as they should be reimbursed from the national budget and the possibility that control will be exercised by EU institutions is comparatively small.”<sup>60</sup> Thus additional attention should be paid to the efficiency of these controls, preventing violations or reversing the opinion expressed by the said respondent. Lack of trust destroys the effectiveness of control in general.

## **4. General conclusions**

The management system of EU funds must be rational – it must prevent abuse, without obstructing the effective implementation of resources. Only by reducing failings and corruption risks it is possible to ensure an effective, fair and legal expending of resources of EU funds.

The greatest corruption risks are possible at the project application evaluation stage and the area of public procurement. Member states as well as the EU must take measures to promote the growth of openness and legality.

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<sup>58</sup> Libeka, M. *ES projekta upuri – 17 pašvaldības (Victims of Projects – Seventeen Local Governments)*. Latvijas Avīze, 12.03.2010.

<sup>59</sup> Interview No. 6.

<sup>60</sup> Interview No. 9.

In the area of public procurement corruption risks do not exceed those risks that exist in general in the expending of public funding. Improvements in this area must be comprehensive and on-going constituting a guarantee for the minimisation of risks.

Potential corruption risks are also generated by the economic crisis and the current reforms in the system of education.<sup>61</sup> Likewise the low rate of the acquisition of EU funds may increase corruption risks. A set of hasty and ill-considered decisions may be taken upon the approach of the deadline for the acquisition of EU funds.

EU funds have become the basic funding for sectors of education and science although in essence it should be additional funding for the development of specific sectors only. For example, "instead of investing resources of EU funds in the improvement and strengthening of the basic system (the completion of the implementation of the Bologna system), resources are channelled into other areas. The payment of scholarships to students of master's studies and doctoral studies can be supported, however, only if the basic system has been put in order."<sup>62</sup> Moreover, in the event of Latvia ceasing to receive funding from EU funds sectors of education and science may face a crisis.

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<sup>61</sup> During the reform process the description of the management and control system did not or does not always correspond to reality as institutional and functional changes are or were under way in several institutions. For some time institutional bylaws were not updated or have not been updated in line with the situation that had developed.

<sup>62</sup> Interview No. 10.

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## List of interviews

Interview No. 1 (representatives of the beneficiary of funding X).

Interview No. 2 (representatives of the beneficiary of funding Y).

Interview No. 3 (employees of the SEDA).

Interview No. 4 (an employee of the MoES).

Interview No. 5 (representatives of the beneficiary of funding Z).

Interview No. 6 (representatives of the beneficiary of funding W).

Interview No. 7 (employees of the MoF).

Interview No. 8 (an observer of the evaluation process).

Interview No. 9 (a participant of the formulation of regulatory enactments).

Interview No. 10 (an expert on higher education).

Interview No. 11 (a scientist, an evaluator of project applications).

Interview No. 12 (a prosecutor).

Interview No. 13 (employees of the CPCB).

Interview No. 14 (employees of the Procurement Monitoring Bureau).