

# Corruption Risks in Implementation of EU Funding



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# EXECUTIVE SUMMARY AND RECOMMENDATIONS

Seeking to contribute towards proposing universal corruption risk management practices for the EU funds implementation system, this analysis looks into the EU structural funds implementation process in Lithuania. It identifies the major corruption risk and existing mechanisms for risks management in three implementation stages.

*I. PROGRAMMING.* Undue political influence or lobby interests may affect the process of drafting priorities or measures, thus ensuring financing for particular industries or projects in the future and undermining the effectiveness of funding. Potential tools for managing these risks include:

1. More effective strategic planning, clear and open reasoning behind the selection of areas selected for funding, clear publicly accessible arguments explaining the logical connections between the selected priorities and national/regional strategies.
2. Conducting quality costs-benefit analysis and more effective assessment of the potential impact of financial injections into specific national sectors/regions and the market in general.
3. Establishing clear guidelines for selection of projects to be funded in the form of state/regional projects as opposed to open competition; a published rationale for choosing particular beneficiaries is required in these cases.
4. More engaged and effective work by the Monitoring Committee.

*II. IMPLEMENTATION.* Currently, implementing agencies responsible for the selection of beneficiaries

and monitoring projects can be established as public or budgetary institutions. However, neither of these entities offers a mechanism completely immune from undue influence from the intermediary institutions and politicians in general. Conducting public procurement in the implementation of EU funded projects was identified as the major corruption risk. The recommendations for this stage include:

1. Clear safeguards for ensuring that undue influence is managed by detaching the intermediate bodies from the implementing agencies.
2. Ensuring that the collegial managing bodies in the implementing agencies are not dominated by political figures.
3. Very clear regulations or standards defining the rules of conduct and legal status of the staff working in the EU structural funds implementation system are needed.
4. Corruption risks in public procurement could be managed better by ensuring more publicity for the public procurement documents, conducting comparative price analysis and related capacity building for the staff.

*III. REPORTING AND MONITORING.* The quality and clarity of the information published becomes crucial here for managing potential corruption risks of the human factor when conducting the evaluations. This analysis suggests that including information about the proposed and achieved objectives should be published in the accessible databases. Also, a final evaluation of economic impact would contribute towards more effective planning in the future.

# INTRODUCTION

## 1. Lithuanian system of EU structural funds: overview

Lithuania joined the EU in 2004 already having some experience of using EU funds from pre – accession assistance programs such as PHARE, ISPA and SAPARD, before the first funding period of 2004-2006.

The challenge for this period of financial support was to transfer this experience, smoothly shifting from the use of pre – accession assistance to structural funding. As many of the interviewees mentioned, the previous programming period of 2004-2006 uncovered many issues.

There was a clear lack of regulations for particular issues and strategic planning, a lack of experience in the field, insufficient capacity of the institutions engaged and some socio-economic partners were not coherently included in the planning process.

The applicants in this programming period also reported inadequate time-frames for application submissions and other administrative challenges.

All of this was taken into account when programming the 2007-2013 funding period. Apart from some structural changes (for example, there used to be a separate system for the Cohesion Fund in 2004-2006 which was later declined), this programming period also began with more legal regulations in place covering a wider range of issues, declared greater inclusion of socio – economic partners and more experienced staff members in different public institutions.

From the funding period 2007-2013, the total amount of 21 736 901 125,23 LTL of EU funds have already been distributed, with the pending amount of nearly two billion LTL yet to be paid for projects to the end of 2015. The total amount of EU structural funds and support from the Cohesion Fund for 2004-2006 funding period

was 5,942 billion LTL<sup>1</sup> (out of this, 2 billions 852 millions LTL were used from the Cohesion fund).

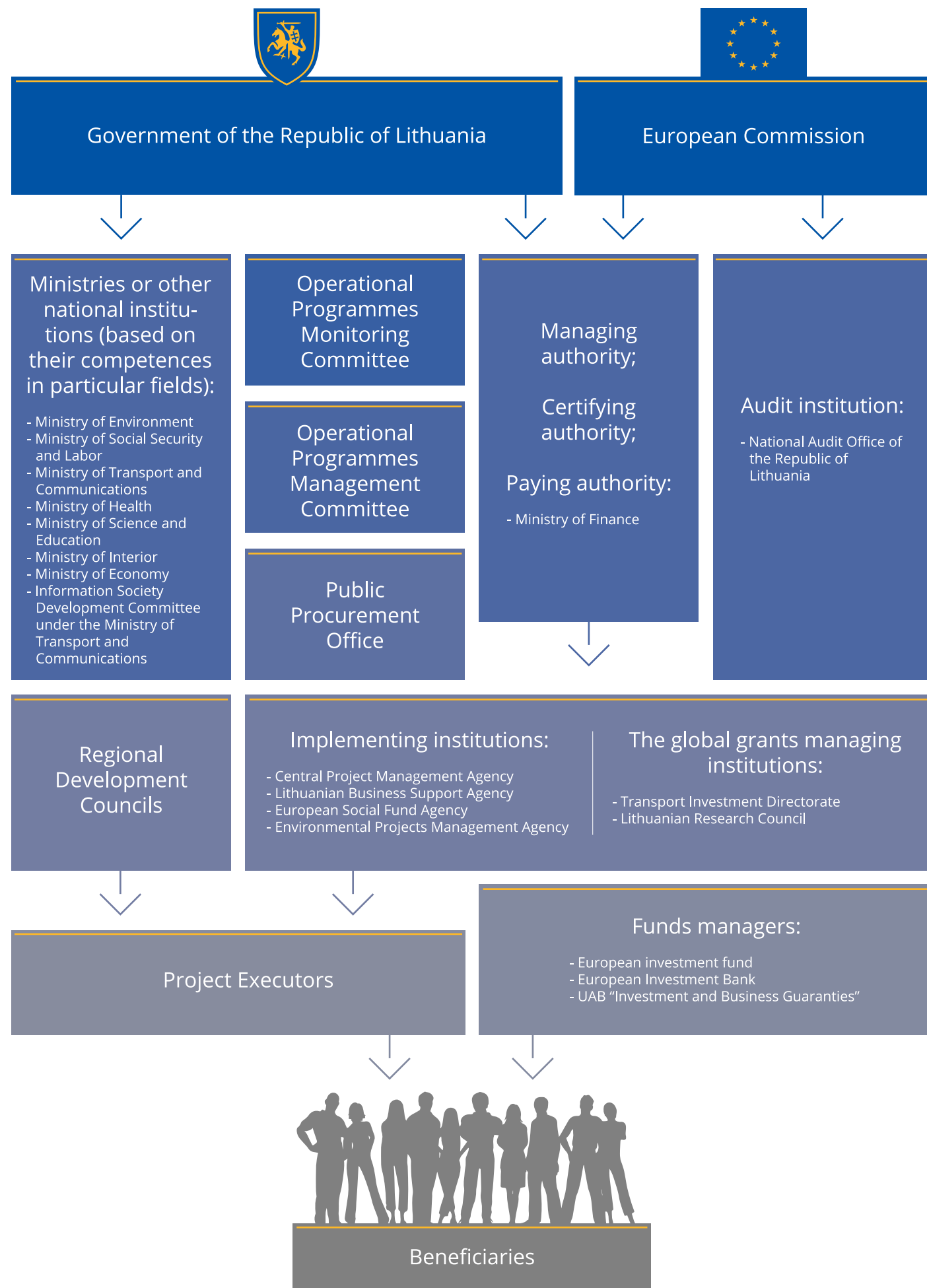
The legal base for the system of EU structural funds consists of a number of different related legal acts. Apart from the documents regulating specifically EU structural funds related issues (the form of these documents is mutual to all EU member states with the content differing where allowed by EU regulations), there are a number of other national legal acts regulating related issues.

This national legislation regulates the status of particular institutions and staff (Civil Servants Act, Labour Code, Law on Public Institutions, Law on Budgetary Institutions, decrees establishing particular agencies), provides for common regulations applied to public procurement (Law on Public Procurement, Ministry of Finances decree on public procurement for non-purchasing agencies) and other administrative procedures (for example, the Law on Public Administration defines the administrative procedures designed to handle requests made by citizens). It also provides sanctions for breaching legal acts related to the EU structural funds (Criminal Code, Code of Administrative breaches of Law).

The structure and functions of the institutions involved in the EU structural funds use for the period of 2007-2013 had been defined in the 2007 Decree of the Government of the Republic of Lithuania on the Roles and Functions of Institutions in the 2007-2013 EU structural Funds System Implementing the Structural Funds Use Strategy and Operational Programmes<sup>2</sup>. The functions of these institutions are defined in compliance with relevant EU regulations. An overview of this system may be summarized as follows:

<sup>1</sup> Litas, 1 EUR= 3,4528 EUR

<sup>2</sup> 2007 -10-17 d. No. 1139, Valstybes žinios., 2007, Nr. 114-4637. Lithuanian: „Dėl atsakomybės ir funkcijų paskirstymo tarp institucijų, įgyvendinant Lietuvos 2007–2013 metų Europos Sąjungos struktūrinės paramos panaudojimo strategiją ir veiksmų programas“



Source: www.esparama.lt, retrieved 07/07/2013

European Agricultural Fund for Rural Development (EAFRD) and EU fisheries fund are administered separately (not structural funds; National Paying Agency); Cohesion fund is now fully integrated into the EU SF managing system.

The functions of these institutions are defined in the above mentioned Decree and basically are in compliance with the European Commission regulations and rules defining the roles and functions of institutions participating in the EU funds distribution process. However, there are certain aspects of the system created in Lithuania that make it peculiar and rather complex as compared with other EU member states. These aspects will be further analysed when evaluating specific risks. Apart from these institutions, there are a number of law enforcement institutions that are related to some of the EU structural funds implementation issues as part of their competences:

- The Special Investigation Service (SIS). Anti-corruption agency accountable to the President and the Seimas of the Republic of Lithuania; develops and implements corruption prevention measures, detects and investigates corruption related crimes. Corruption prevention in the area of allocation of funds and procurement from the state

budget and the EU Structural Funds are among the organizational priorities.<sup>4</sup>

- The Financial Crimes Investigation Service. State law enforcement agency accountable to the Ministry of the Interior; purpose - detection and investigation of crimes, other violations of law against the financial system and related crimes, etc. Disclosure, investigation and prevention of criminal acts related to illegal receipt and use of the funds of financial support from the European Union and foreign countries are among the current priorities of the Service.<sup>5</sup> This is also the local OLAF contact point.
- Prosecution Service (especially the organized crime and corruption investigation department) - organizes and directs pre-trial investigations, and prosecutes criminal cases on behalf of the State.<sup>6</sup>
- Police department. Related to the issue only partially, as detecting and investigating criminal activities and other violations of the law is one of the tasks assigned to this department.<sup>7</sup>
- Within its competence level – potentially also the Customs.<sup>8</sup>

## 2. Country profile

Corruption is an important issue when evaluating any process related to the distribution of public funds, including EU funds. As for the Lithuanian context, particular attention needs to be given to the risks of nepotism, bribery (meaning the particular attention to the “human factor” in the procedures) and the corruption risks in public procurement procedures.

According to the sociological survey “Lithuanian Map on Corruption”<sup>9</sup> conducted by the Lithuanian Special Investigation Service (the national anti-corruption agency), 39 percent of business people claim that procedures of getting financial support from EU funds are partly or very corrupt and 54 percent of public officials claim the same. Also, 59 percent of business people and

<sup>3</sup> EC regulation No. 1083/2006, EC regulation No 1828/2006, Commission Implementing Regulation (EU) No 1236/2011, etc.

<sup>4</sup> Statute of the Special Investigation Service of the Republic of Lithuania, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=450104](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=450104), retrieved 07/07/2013

<sup>5</sup> Law on the Financial Crime Investigation Service. [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=435544](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=435544). retrieved 07/07/2013

<sup>6</sup> Law on the Prosecutor's Office, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=281302](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=281302), retrieved 07/07/2013

<sup>7</sup> Law on Police Activities, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=435630](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=435630), retrieved 07/07/2013

<sup>8</sup> Law on Customs, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=435714](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=435714), retrieved 07/07/2013

<sup>9</sup> Special Investigation Service of the Republic of Lithuania, Lithuanian Map of Corruption 2011, [http://www.stt.lt/documents/soc\\_tyrimai/Korupcijos\\_zemelapis.pdf](http://www.stt.lt/documents/soc_tyrimai/Korupcijos_zemelapis.pdf), retrieved in 07/07/2013



58 percent of public officials claim that receiving orders from the state (as in public procurement) is a corrupt or partly corrupt procedure. 22 percent of state officials admitted to having experienced political pressure from politicians for their private interests (20 percent – for the interests of their political parties).

According to the survey “Transparency in Public Procurement 2008”<sup>10</sup>, almost half of Lithuanian business people (48 %) admitted to having at least once decided not to participate in public procurement tenders because the winners were known in advance. According to them, the corruption risks are already apparent when preparing the qualifications (66 percent) and technical specifications (62 percent).

The recent results of the Global Corruption Barometer (2013)<sup>11</sup> show that Lithuanian residents pay more bribes than anyone else in the European Union. At the same time, petty corruption in the country has decreased as 34 percent of respondents claimed to have used bribery in 2010 while in 2012 it dropped to 26 percent. Also, Lithuania is behind the majority of EU countries when it comes to nepotism. 77 percent of respondents claim that it is important to know somebody from the public sector to get public services.

When it comes to the perception of corruption in Lithuania, there are no systemic changes according to the Corruption Perception Index. Perceptions have not changed during the last 5 years and remain more or less the same. According to the Corruption Perception Index, Lithuania was 48<sup>th</sup> out of 176 countries worldwide in 2012<sup>12</sup>. The Global Competitiveness Report 2012-2013<sup>13</sup> lists inefficient government bureaucracy and corruption among the top five most problematic factors for doing business in Lithuania.

There are national legal regulations in place covering fields of lobbying,<sup>14</sup> corruption related crimes and

sanctioning, and protection of witnesses. However, there is still a lack of effective whistle-blower protection and the enforcement of the above mentioned laws raises many challenges<sup>15</sup>. Therefore, the main focus in this analysis will be on the enforcement of existing laws only, analysing the legal basis from the perspective of corruption risk challenges.

The procedures of public procurement are regulated in a very detailed manner, and Lithuania stands out among EU countries as a country having very detailed legal regulations for procurement not falling in the scope of EU procurement directives.<sup>16</sup> Also, Lithuania is among the list of EU countries where negotiated procedure without publication can mostly be found<sup>17</sup> (along with other new member states like the Czech Republic, Estonia, Latvia, Poland, Hungary, Romania, Slovenia and Slovakia). The complexity of public procurement regulations and the frequency of this highly risky procedure presupposes that public procurement is an area of increased corruption risk.

The evaluation of proposals, the decision to finance particular projects (46% of respondents) and drafting of the conditions to grant support (including drafting requirements for applicants, requirements for concrete project activities and eligibility of expenses; 24% of respondents) are also included into areas that are perceived as being most vulnerable to corruption in the implementation of EU funds. The implementation of the project (public procurement, verification of requests for payments) is perceived as the least transparent stage by 10% of respondents. Overall, 58% of these respondents claim that the process of EU funds 2007-2013 administration is transparent. This number is slightly lower among the respondents from the potential applicants (business) group – 49%. This group seems to have a very similar perception of what the least transparent EU financial support administration stages are.<sup>18</sup>

<sup>10</sup> Special Investigation Service of the Republic of Lithuania and the Public Procurement Office of the Republic of Lithuania, Transparency in Public Procurement 2008”. Retrieved in 07/07/2013 [http://transparency.lt/media/filer\\_public/2013/02/04/ataskaita\\_stt\\_rait\\_tyrimas\\_200810doc-1.pdf](http://transparency.lt/media/filer_public/2013/02/04/ataskaita_stt_rait_tyrimas_200810doc-1.pdf)

<sup>11</sup> Transparency International, Global Corruption barometer 2013, [http://issuu.com/transparencyinternational/docs/2013\\_globalcorruptionbarometer\\_en](http://issuu.com/transparencyinternational/docs/2013_globalcorruptionbarometer_en), retrieved in 07/07/2013

<sup>12</sup> Transparency International, Corruption Perception Index 2012, <http://www.transparency.org/cpi2012/results>, retrieved in 07/07/2013

<sup>13</sup> World Economic Forum, Global Competitiveness Report 2012-2013 [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2012-13.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf), retrieved 07/07/2013

<sup>14</sup> Lithuania is one of the few EU countries that have an existing Law on Lobbying Activities in place. However, lack of oversight and control of the lobbying activities is heavily criticized. The law is available online here: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=437586](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=437586), retrieved 08/07/2013

<sup>15</sup> For a detailed overview on the country’s national integrity system, see National Integrity System, Transparency International Lithuanian Chapter. 2013. Available online: [http://transparency.lt/media/filer\\_public/2013/01/23/lietuvos\\_nacionalines\\_atparumo\\_korupcijai\\_sistemas\\_tyrimas.pdf](http://transparency.lt/media/filer_public/2013/01/23/lietuvos_nacionalines_atparumo_korupcijai_sistemas_tyrimas.pdf) retrieved 08/07/2013

<sup>16</sup> For more, see the study prepared for the European Commission by PwC, London Economics and Ecorys: Public procurement in Europe Cost and effectiveness [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/cost-effectiveness\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf), P. 105, retrieved 08/07/2013

<sup>17</sup> PwC, London Economics and Ecorys: Public procurement in Europe Cost and effectiveness [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/cost-effectiveness\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/cost-effectiveness_en.pdf), P. 30, retrieved 08/07/2013

<sup>18</sup> Ministry of Finance surveys conducted by “Spinter” research company: survey of potential EU support applicants, beneficiaries; November 2012

## METHODOLOGY

This risk assessment and prevention evaluation analysis is a part of the international project “EU Funds Watch” started at the end of 2012. The project is funded by the European Anti-Fraud Office and coordinated by Transparency International Czech Republic. Project partners include Transparency International chapters in Estonia and Hungary. The general objective of the project is to collect, analyse and exchange practices for preventing fraud and corruption in the implementation and use of EU funds in participating countries aiming to increase the overall knowledge of risks in managing EU funds.

The main goal of this evaluation task is to analyse corruption and fraud risks of the entire EU structural funds system in Lithuania focusing on the procedural issues and the preventative tools that are available. The programming period of 2007-2013 was taken for a more detailed analysis, while the 2004 – 2006 period was only taken into account from a comparative dimension. The analysis aims to offer an overview of the corruption and fraud risks in this process in Lithuania at the same time searching for what prevention tools can be used to either eliminate the detected risks or manage them.

The analysis looks into potential fraud and corruption risks arising in all stages of this process; for the purposes of this task, four main stages of the process have been distinguished:

1. Programming stage;
2. Calls for proposals;
3. Project implementation stage;
4. Reporting stage and monitoring of the results.

The triangulation of multiple research methods used to examine this issue aim to contribute to a comprehensi-

ve and innovative approach towards these highly discussed and researched topics. The risk assessment consists of two levels. First of all, common corruption and fraud risks for the entire system are analysed from an overall perspective. Afterwards, corruption and fraud risks in particular institutions are analysed along with the prevention mechanisms used to manage or eliminate these risks. If the risks are detected in any parts of this process, the national legal regulations for the particular issue are taken into account more deeply.

The research methods used in this evaluation task:

1. Analysis of existing relevant legal acts;
2. Content analysis of the secondary data;
3. Semi-structured in depth interviews with people directly working in the implementing agencies, other selected related institutions, external controlling bodies and private sector representatives who are (or were) recipients of support. The final draft of the study was also provided for public consultation and insights.

The informants for semi-structured interviews were selected from three groups:

1. “Clients”: private sector representatives either receiving support or working in consultancy companies;
2. “External supervisors and programmers”: Ministry of Finances, National Audit Office, Financial Crimes Investigation Office;
3. “Coordinators”: agencies coordinating the use of EU structural funds from the selection to reporting periods; some of the implementing agencies coordinating different kinds of EU financial support have also been interviewed for the comparative element.

# 1. CORRUPTION AND FRAUD RISKS IN THE IMPLEMENTATION OF EU STRUCTURAL FUNDING IN LITHUANIA

All stages of the EU structural funding implementation process seem to be equally vulnerable to corruption. Most of the interviewees seemed to agree with this

position, with a slight differentiation when it came to the first stage – programming. Below is an overview of the detected corruption risks in all stages.

## 1.1. Programming

*The first stage of EU structural funds implementation system in the country is programming. The main risks identified in this stage are:*

- *Lack of clear and structured public information on how the links between particular chosen funding priorities correspond with the strategies on the national/EU level/concrete area resulting in the risk of inadequate planning or undue influence to select particular spheres for financing;*
- *Lack of quality cost-benefit analysis in the programming stage;*
- *Vague or too broad regulations for selecting specific projects for state or regional financing and beneficiary lists creating space for undue influence by business and politicians; lack of publicly available structured information on these procedures;*
- *Ineffective role of the Monitoring Committee resulting in potential lack of control.*

### Process

As provided in Council regulation No. 1083/2006, operational programmes are drafted by the Member states leaving it for each member state to decide on concrete measures and consultations. In Lithuania, the Process of drafting the four Operational Programmes for 2007-2013 began with working groups (coordinated by the Ministry of Finance) engaging socio-economic partners and experts. The composition of these

working groups was approved by the Minister of Finance. After considering and consolidating the input from all of these partners, the Ministry of Finance handed the draft over to the Commission responsible for drafting the strategy and action plan for using the EU structural funds (*Decree of the Government of Republic of Lithuania no. 1351, 2005/12/14*).<sup>19</sup> After presenting the priorities and collecting final inputs, the draft of the strategy was discussed informally with the representatives of EC for final remarks, approved by the Government and presented for the EC for the final approval. Once the Operational Programmes were finalized, action plans and concrete measures (with intermediate bodies participating in the Committees for Action Plans Management) were drafted taking into account the national plan for strategic goals.

When programming at the national level is concluded, descriptions for concrete measures are drafted to be included in the annexes of the Action Plans and approved by decrees of the Government. Also, a list for potential applicants in planned (“state”) projects is drafted before the calls for proposals. This list is either drafted by the relevant ministry (in the case of state planned projects) or by the council for regional development (in the case of regional planned projects). Most of the companies/institutions in these lists are municipal, state-owned or budgetary. However, there are no restrictions as to the nature of the subjects included in these lists. The planned projects are used to implement the important tasks as defined by the Government in strategic national documents or in cases when there is only one potential contractor. As oppo-

sed to competitive projects, in calls for proposals for planned projects, only companies/institutions from these pre-drafted lists are invited to participate (by sending out direct invitations to file proposals).

### Risks

*Lack of clear rationale behind strategic and regional planning of EU funding priorities and / or measures*

Nearly all of the interviewees noted that there is already a clear risk of undue influence in this first stage by drafting programming priorities or conditions for financing favourable for particular fields. **Undue influence from politicians or even lobbyists might create prerequisites for “legal corruption”**. Even if the rest of the process is precisely organized following the regulations, the entire process might be affected from the very beginning, creating favourable preconditions to particular industries or even particular beneficiaries (in cases of monopolies). Furthermore, lack of publicly available information explaining the logic behind how particular decisions are made for financing particular priorities (and/or measures) might result in questioning the transparency of such decisions which in itself might cause a lack of trust in transparency in the whole system. Some of the interviewees went even further by saying that lobbying groups are also very active at this first stage by unofficially lobbying in favour of their/their clients’ private interests (for example, pushing to include particular priorities or measures that will later serve as a grounds to apply for funding for particular companies).

**Moreover, if there is no adequate systemic planning or if the priorities are not logically aligned with national strategies, this not only raises a risk of corruption, but also a risk of the irrational use of public funds.** For example, there might be cases where projects even oppose each other. During the interviews there were many questions raised, however, there had not been any clear or identified cases of such contradictions.

*Lack of clear criteria when selecting specific projects for state or regional financing*

During the interviews, the risk of undue influence in drafting the lists of potential applicants in state or regional projects was also identified. **There is a space for corruption with the interested institutions/companies to lobby for their inclusion in order to ensure funding when invitations for proposals in state or regional projects are issued.** The criteria that serve for selecting these particular forms of funding for particular projects are not public and therefore more transparency here would serve as a tool to increase accountability and transparency in the entire process. Again, there were dissenting opinions here as well, noting that since normally there is no business engaged in these lists, there is no chance for corruption risks; also the fact that these lists must correspond to the national/regional strategies acts as an additional safeguard<sup>20</sup>. However, an overview of all projects financed as national projects raises some questions, for example, the Ministry of Social Security and Labour had approved financing for “Devold”, UAB (a private limited liability company)<sup>21</sup> in the framework of a state project. While there might have been a reasoning and a clear procedure for this, lack of information on how such applicants ended up being included in such lists already raises many questions. This risk was also identified in the Special Investigation Service corruption risks analysis of the 2007-2013 funding period in the sphere coordinated by the Ministry of Education and Science. According to this analysis, the legal regulations granting the public administration institutions with a relatively broad discretion to plan the state projects increases the risks of corruption significantly.<sup>22</sup>

*Too broad or too narrow financing conditions creating prerequisites for unfair competition*

Once the programming on the national level is concluded, drafting financing conditions in particular fields is started. **Some of the interviewed agencies noted that this might also become target for undue**

<sup>19</sup> Government Decree on the Operational Programmes for the 2007–2013 EU Structural Assistance Strategy Implementation, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=267759](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=267759), retrieved 26/06/2013

<sup>20</sup> The Government Decree on Description of Procedures for selecting the Regional Projects to be Funded from EU funds of State Budget (Lithuanian – Dėl Europos Sąjungos fondų ir Lietuvos Respublikos Valstybės biudžeto lėšomis finansuotųjų regionų projektų atrankos tvarkos aprašo patvirtinimo), [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=452259](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=452259) (retrieved 08/07/2013) and different decrees issued by the relevant ministries on description of procedures for national projects, consolidated versions are available in the official EU financial support website: <http://>

[www.esparama.lt/teises-aktai?dateTo=&dateFrom=&tid=000bd-d5380004966&pid=000bdd5380008a38#title](http://www.esparama.lt/teises-aktai?dateTo=&dateFrom=&tid=000bd-d5380004966&pid=000bdd5380008a38#title) (retrieved 08/07/2013)

<sup>21</sup> [http://www.esparama.lt/es\\_parama\\_pletra/failai/sadm/teises\\_aktai/INVEST\\_LT/A1-380\\_SADM\\_2013-07-05.pdf](http://www.esparama.lt/es_parama_pletra/failai/sadm/teises_aktai/INVEST_LT/A1-380_SADM_2013-07-05.pdf), retrieved 08/07/2013

<sup>22</sup> Special Investigation Service. Corruption Risks Analysis of the 2007-2013 funding period in the Financing Sphere Coordinated by the Ministry of Science and Education (2010): [http://www.stt.lt/documents/korupcijos\\_rizikos\\_analze/Del\\_ES\\_lesu\\_panaudojimo\\_SMM\\_4-01-3890.pdf](http://www.stt.lt/documents/korupcijos_rizikos_analze/Del_ES_lesu_panaudojimo_SMM_4-01-3890.pdf), retrieved 08/07/2013



**influence since favourable conditions for particular applicants may be enshrined already by slightly adjusting some of the conditions to be especially fitting for particular companies.** Since some of the projects might be highly technical in nature, it might be complicated to detect these kinds of adjustments without particular expertise. However, this was evaluated as a risk that is less likely to occur. The existing prevention mechanism in this case is also related to the inclusion of different actors.

#### *Lack of quality cost-benefit analysis*

**Lack of instances where quality cost-benefit analysis is applied during the programming stage was identified as one of the major risks in this stage.** Furthermore, in some instances where the cost-benefit analysis is actually applied, it is conducted in a very formal and ineffective way.

#### **Risks management**

There are different mechanisms to manage or eliminate the risks listed above. *Ex ante* evaluations are conducted by independent experts and all procedures are coordinated with the EC. Therefore, according to some interviewees, there is no chance for undue influence at this stage at all, and the existing safeguards are enough to prevent corruption. However, the complexity of available materials presupposes that once the programming process is concluded, it is rather complicated for external parties to fully comprehend the logic behind programming. This means that it is difficult to track down the logical links between national strategies and the priorities or measures selected for particular fields.

Also, the Monitoring Committee was identified as a means of managing these risks since the role of this Committee is to control the above mentioned risks and ensure the quality and effectiveness of the entire programming stage. However, the lack of an effective role by the Monitoring Committee<sup>23</sup> was identified as

a separate risk during the interviews. The amount of material presented to the members of this Committee, highly technical (in some cases) issues covered by EU funding and the complexity of the process itself presupposes that there is a high risk that these members will overlook the above prerequisites for “legal corruption”. Hence, even though the legal regulations for the work of this Committee are formally in place, it remains unclear how much quality time is left for discussion and detailed analysis. Some of the interviewees went even further by saying that this Committee could indeed become a more active participant in the process and even engage in the evaluation of the cost-benefit analysis.

Quality inclusion of socio-economic partners was identified as another method for risk management in this stage. At the same time, the interviewees noted that this period of programming implies a less active inclusion and the partners are not as active as they could be. However, the challenge of how to ensure effective engagement with the partners actively discussing the major issues during meetings is common for many member countries. More structured information provided for the partners beforehand and a more active role of the moderator during the events were indicated as potential tools for improvement.

The Ministry of Finance is now discussing the possibility of drafting a list of criteria that could be used to define state and regional projects. This would be seen as a good example of potentially limiting the discretion of politicians when it comes to selecting these forms of funding and applicants for particular projects.

It has also been noted that the use of cost-benefit analysis is now being considered for use during the very first stage; programming. Potentially, this would increase transparency in the procedures selecting particular fields for funding. The interviewees noted that cost-benefit analysis could potentially comprise of evaluations of all stages.

## 1.2. Implementation

*The main risks identified in this stage are:*

- *Lack of effective safeguards from undue political influence applied by politicians in general and applied by the intermediary institutions to the implementing institutions;*
- *Different status of implementing institutions presupposes that there are no clear unified standards for the status of staff directly working with EU funds. This results in an ambiguous situation both in terms of declaring conflicts of interest, the “cooling off period” and safeguards protecting the staff from undue political influence;*
- *The status of existing implementing institutions means that there are not enough safeguards to make sure that the implementing institutions are immune both from undue influence from the intermediate institutions and other external actors;*
- *The organizational structure of some implementing institutions comprises of having a board which might be dominated by politicians creating environment for undue influence and political pressure;*
- *Lack of competence in the selection for funding (cases of “universal project leaders”) and inadequate projects selection time frames;*
- *Public procurement is identified as the major risk during the implementation stage.*

#### **Process**

Once programming is concluded and financing conditions are drafted, calls for proposals are issued by the relevant implementing institutions. Applicants from pre-drafted lists are directly invited to file their proposals in cases of state or regional projects while calls for proposals are open to all companies meeting the administrative requirements in competitive projects.

According to the official statistics in the internal information system of EU structural funds administering and control<sup>24</sup>, there were 1082 registered infringements from the 2007-2013 period as of 9<sup>th</sup> July 2013. In 13 of these cases registered in the internal information system of EU structural funds administering and control, potential fraud had been suspected and these cases were handed over to the Financial Crimes Investigation Service.

Most of the implementing institutions organize their work by having one project leader who is responsible to lead a particular project from the calls for proposals and selection procedures to the reporting stage, and they are assisted by other departments and staff members accordingly. For example, different people join these staff members to process the requests for payments, conduct on-site visits and so on. The principle of “four controlling eyes” is applied to reduce the risk of corruption and mistakes (at least two staff members are sent for the on-site visits, at least two people check the requests for payments, etc.). To reduce the risk of corruption here, all institutions apply a random process of assigning particular projects to different project leaders and this can be identified as a good example of reducing the risk of the “human factor”.

The legal status of the implementing agencies becomes important here as it not only influences the organizational set up of these institutions, but also determines the status of the staff working there. There is no consistent legal status for the implementing institutions in Lithuania. Some of the agencies administering EU funds are budgetary institutions established by ministries. Others have the status of public institutions and are established according to the Law on Public institutions<sup>25</sup>.

#### **Risks**

*Undue political influence from the intermediary agencies and politicians*

<sup>23</sup> Government Decree on Establishing the Monitoring Committee [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=386240&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=386240&p_query=&p_tr2=2), retrieved 08/07/2013

<sup>24</sup> This is the internal system used to manage EU funded projects (abbr. SFMIS, Lithuanian: ES struktūrinės paramos kompiuterinė informacinė valdymo ir priežiūros sistema). Official statistics have been provided by the Ministry of Finance for TI Lithuania for the purposes of this analysis

<sup>25</sup> See the Law on Public Institutions for more, available on line [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=453936](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=453936), retrieved 26/07/2013

**This analysis revealed that in cases of budgetary institutions, there seems to be a higher risk for undue political influence.** In cases where the ministry that founded a particular implementing institution is also responsible for drafting the lists of applicants in state projects and is overseeing the activities of the institution itself, it becomes very important to determine how the risks of undue political influence are managed since the ministries are in a position to apply political pressure for the implementing institution. For example, there might be a risk of cutting the annual budget, proposing a cut to staff numbers, influencing hiring decisions, etc.<sup>26</sup> The Central Projects Management Agency was mentioned by some other interviewees as an example of good balance as it was established by the Ministry of Finance while it administers funds that are subordinate to other ministries.

Also worth noting is the fact that it is sometimes not entirely clear why particular agencies are established in the first place and this presupposes questioning whether it is not in the interest of different ministries to have subordinate implementing agencies to have some political influence as to how the funds are then administered in such agencies.

*Lack of clear standards for the institutional set-up of implementing agencies and the legal status of staff working with EU funds*

According to the majority of interviewees, the status of a public institution seems to be more effective. However, it depends largely on how the internal organizational setup in such institutions with the status of a public institution is designed (*"a lot depends on the director of such institution and the organizational culture that she or he creates"*). The organizational setup and the accountability standards for such institutions are laid down in the same Law on Public Institutions. However, these regulations leave a lot of room for discretion. If there is an existing board, for example, it is unclear who should be part of it to avoid undue political influence (which may be applied by abusing the role

of the board – offering to restructure the public institution in cases when it does not operate in a favourable manner, sabotaging the work of such institutions by not agreeing to approve its financial reports, etc.). **Therefore, it should always be clear why certain people are appointed as board members and it should be made clear that board members are not all of the same political party and are professionals understanding the functioning of the EU funds system rather than only being persons of political importance**<sup>27</sup>. Some of interviewees even raised the question of whether boards are needed at all, while others discussed the possibility of assigning socio-economic partners to be part of such boards as well.

Apart from this, most of the interviewed implementing institutions noted that the public institutions are easier to administer from the perspective that they may plan their finances with more discretion. By offering more competitive salaries for the staff, these institutions are considered to be more able to be competitive in the labor market attracting competent staff and ensuring that a competitive salary system is in place. In contrast, the budgetary institutions not only have to rely on financing from the budget, but also have a clear policy of salaries to offer for their staff that can not be exceeded (following the standard rules for particular positions).

The different legal status of these institutions means that the staff working with EU funds is of different legal status. People working in budgetary institutions are either public servants (with all the guaranties and requirements from the Law on Public Service applied) or people equal to the public servants or may be solely contracted on work agreements. Most of the people working in public institutions either have the status of "equal to a public servant" or are solely contracted. This means, for example, that the provisions of the Law on the Adjustment of Public and Private Interests in the Public Service<sup>28</sup> do not apply to all of the staff administering public funds and not everybody is subject to the duty of filling in the conflict of interests

declarations (if not regulated otherwise by the internal regulations in the institution itself – which is the case in most of the Lithuanian implementing agencies) and, for example, not everybody is subject to the "cooling off period" of one year (Art. 18 of the above mentioned law). **While the very fact that these institutions determine different legal status of the staff would not be a problem in itself, the fact that different legal safeguards are applied and that it is not clear what the minimum standard is, presupposes corruption risks due to broad discretion.**

On the other hand, the set up of public institutions presupposes that since the Law on Public Service<sup>29</sup> is not necessarily applicable to persons hired, there is a risk that the people selected to work in agencies that are not budgetary institutions will be hired without an accountable competition<sup>30</sup>. Many interviewed business representatives noted that, however, the competence of people working in agencies that are public institutions does not seem to raise any questions or concerns as compared to the competence of staff working in the budgetary institutions – and vice versa (there seem to be some individual exceptions to this rule – both in budgetary and public institutions).

Both public and budgetary institutions (although individually to a different extent) identified the problem of lack of competent staff. Here, the budgetary institutions face an additional complication since they are not always able to offer competitive salaries due to public service restrictions. **This sometimes results in a lack of competent professionals or inadequate workloads and also contributes to corruption risks as poorly trained staff members are less likely to identify and report corruption threats.** Most of the interviewed implementing agencies noted that more staff members could increase the quality of their work (for example, one staff member of the Business Support Agency – approx. 42 MM LTL, 18 projects and 24 payment applications (highest rates)).

In conclusion, both budgetary and public institutions

face different kinds of problems. This does not mean, however, that unified standards for the status and guaranties for the employees working directly with EU funds should not exist; also, unified standards for safeguards ensuring immunity from undue political influence should be applied to both the public and budgetary institutions (in contrary, at this moment, many interviewees noted that the institutions that are not subordinate to ministries are *"more likely to raise more questions and feel more secure doing so"*). However, organizing all implementing agencies in one unified manner would raise particular issues. The different nature of the projects these institutions are administering presupposes that it would be extremely complicated (even though still possible) to come up with a model that would suit the needs of all. Also worth noting is the fact that, according to most interviewed agencies, there is now a positive improvement in the way the implementing agencies organize their work (*"the 'new players'<sup>32</sup> in the system usually take time to adjust and gain the necessary expertise, while the agencies that are now in the second round of funding seem to be more adapted and have much more expertise"*).

*Corruption risks in public procurement*

**Most, if not all, implementing agencies identified procurement as the most sensitive stage of EU funds implementation.** According to the statistics from the internal information system of EU structural funds, approximately 59% of all infringements were related to public procurement regulations breaches; 37% were related to the non eligibility of project costs. Most of these infringements were detected during the procedures of approving requests for payment, on-site visits and referring to the comments from the National Audit Office. Approximately 60% of all breaches of administrative EU funding procedures are public procurement regulations in nature (this corresponds to the official statistics provided by the Ministry of Finance and is not far from the EU average). This was also underlined during the interviews with external oversight institutions. Also, in the agencies, most of

<sup>26</sup> This was also identified as one of the major risks in a research "How Transparent is the Use of EU Funds in Lithuania" prepared in 2005 by TI Lithuania and "ESTEP: the European Legal, Social and Economic Projects" (Vilnius, 2005, Eugrimas). For more, see P.9

<sup>27</sup> This seems to also raise some questions in the public. For example, an article questioning the set up of the board of the European Social Fund Agency and the potential influence that the politicians may have to the work of agency. Š.

Černiauskas. "Is the Labor Party Targeting the Billions of the EU" published in the news portal delfi.lt 24th July, 2013: <http://www.delfi.lt/news/daily/lithuania/darbieciai-nusitaikė-i-es-milijardus.d?id=61909527> (retrieved 25/07/2013). („Darbiečiai“ nusitaikė į ES milijardus)

<sup>28</sup> Law on the Adjustment of Public and Private Interests in the Public Service, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=428551](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=428551), retrieved 19/06/2013

<sup>29</sup> Law on Public Service, [http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc\\_l?p\\_id=453820](http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=453820), retrieved 07/07/2013

<sup>30</sup> TI Lithuania and "ESTEP: the European Legal, Social and Economic Projects". "How Transparent is the Use of EU Funds in Lithuania" (Vilnius, 2005, Eugrimas)

<sup>31</sup> Public Policy and Management Institute, Evaluation of the EU Structural

Financial Assistance Effectiveness, Lithuania, 2013 [http://www.esparama.lt/es\\_parama\\_pletra/failai/fm/failai/Vertinimas\\_ESSP\\_Neringos/Ataskaitos\\_2011MVP/ES\\_strukturines\\_paramos\\_administravimo\\_sistemas\\_efektyvumo\\_vertinimas.pdf](http://www.esparama.lt/es_parama_pletra/failai/fm/failai/Vertinimas_ESSP_Neringos/Ataskaitos_2011MVP/ES_strukturines_paramos_administravimo_sistemas_efektyvumo_vertinimas.pdf), retrieved 12/07/2013

<sup>32</sup> New players here apply both to newly established institutions and – to some extent – new staff members



the financial corrections applied are applied because irregularities in public procurement procedures are detected. For example, the Environmental Projects Management Agency under the Ministry of Environment applied financial corrections amounting to 16 346 338,97 LTL for procurement infringements over the last 12 months (the procurement value for these corrections amount to 181 826 901,00 LTL). However, it has to be noted that these numbers do not necessarily reflect tendencies as there was one infringement of procurement of an extremely high value amounting to 15 740 386 LTL.

**The staff competence to identify particular infringements and corruption risks was identified as a separate risk by many interviewees.** Interviewees from all selected groups agreed that there is a lack of specific training for the staff that may result in such risks going unnoticed (this was also underlined specifically by the external oversight institutions). Many implementing institutions identified approving fraud and/or corruption cases for further investigation as a risky practice as until recently the procedure needed to be approved by the supervising ministry and/or other responsible state institutions (and there have been cases where internally the procedure was approved but failed to get final approval from the ministry). After recent amendments, however, the ministry only has the right to ask the implementing agency to renew the investigation of the infringement in cases where new facts arise after the investigation was concluded in the implementing agency<sup>33</sup>.

According to the interviewees, procurement is the most problematic issue for a variety of reasons. First of all, the national legislation is very complex – both the Law on Public Procurement<sup>34,35</sup> and the regulations on procurement for non-purchasing organizations (in Lithuania, even companies that are not purchasing organizations according to national laws or EU directives, are obliged to follow particular rules for procurement if implementing EU funded projects<sup>36</sup>). Second, the national context (see the chapter “Country Profile”

for more) presupposes that there are certain risks on the national level that affect the implementation of EU funds as well: public procurement seems to be one of the most corrupt procedures. A variety of particular issues have also been underlined during the interviews: lack of planning (lack of sufficient market analysis, insufficient cost-benefit analysis, lack of experience of the purchasing or non-purchasing organization staff). Apart from these, there are also cases of different deliberate infringements.

One of the most common practices of fraud in this stage is boosting the prices of the proposals. Some agencies, if suspicious of such practices, hire independent experts who evaluate the proposed prices. However, this is not always possible due to the fact that, for example, budgetary institutions might not have funds to do that (as opposed to public bodies that usually have some technical support available). Lack of competence both in the implementing agencies and external controlling bodies might also be the reason. **The staff in the implementing agencies are not always trained well enough to detect potential inflation of prices in the proposals or other corruption threats.** The interviewed representatives of the private sector also noted that even the suppliers tend to offer higher prices when asked to provide proposals for prices for particular products or services and identified increased publicity as a potential remedy.

An analysis of existing legal regulations and the data collected during the interviews also revealed that there is no effective legal prohibition to buying goods or services from companies related to the non-purchasing organizations. This poses a clear risk of nepotism which might result in higher prices and lack of quality.

Other forms of infringements that are potentially related to fraudulent or corrupt practices have also been identified during the interviews with all groups. There are many cases of setting inadequate qualification requirements for potential bidders (the requirements

can be either discriminative in nature or simply not grounded), setting inadequate technical specifications, using inappropriate methods for procurement (for example, using surveys too extensively), setting inadequate terms for applications or amending the procurement treaties too often.

**Also, the external control bodies, according to the interviewees, sometimes seem to simply lack the resources to detect and investigate all risks.** This seem to apply for both the Public Procurement Office which does not have a separate department for EU funds and oversight tenders in EU funded projects based on the internal risk assessment system, and the Financial Crimes Investigation Service (“*sometimes it seems that the Financial Crimes Investigation Service just does not have enough people*”). The Financial Crimes Investigation Service, on the other hand, points out that the problem is more extensive and that correct understanding of the contact point is crucial here in order not to overburden the Service with irrelevant (competence-wise) reports.

*Lack of competence in the selection for funding (cases of “universal project leaders”) stage*

As described above, most of the implementing institutions have one project leader who is responsible to lead a particular project from the calls for proposals and selection procedures to the reporting stage. **This presupposes that in cases of highly technical projects, these people could lack competence in specific fields and this might result in a lack of quality of project assessment.** Due to their different institutional structure, not all implementing agencies can hire external experts. While this is not a corruption risk in itself, such situations might serve as a cover for undue influence from the applicants.

*Inadequate time-frames of project selection and processing of requests for payments*

Inadequate time-frames of project funding approval was identified as a separate risk by the interviewed business representatives. They noted that this might pose many problems and even raise corruption ri-

isks. For example, even if a particular implementing agency strategically plans its calls for proposals to cover particular issues, but the terms for approving funding are inadequately long, the strategic logic is undermined. Also, this might create space for corrupt agreements between the applicants and staff evaluating the proposals in the agencies. As noted by some of the interviewees, the implementing agencies have relative discretion to internally decide on the sequence of how the requests for payments will be processed. **This means that the staff of such agencies have discretion (though somewhat limited) to prioritize some of the requests for payments for personal benefit thus creating unequal opportunities to other companies.**

### Management of risks

The implementing agencies use internal mechanisms to manage these risks. Most of them have internal regulations requiring the declaration of private interests of the staff with the requirement to notify the executive director if any conflicts of interests arise in their work. Filling in these declarations is usually part of the work contract. In cases where the staff members are obliged to fill in these declarations as civil servants (or people of equal positions) due to national regulations, they do this online in the Chief Ethics Commission electronic system. In this case, their supervisors and directors may not have access to such data. As an example of good practice to solve this problem, some institutions use “double declaring of interests” system, meaning that the staff members fill in the online forms for the national register as obliged by national laws and at the same time are required to fill in internal declarations of conflicts of interests following internal institutional regulations. This way, these declarations are accessible to their supervisors monitoring the distribution of different projects for staff members, etc.

Also, some of the implementing institutions have a clear gift policy, which may be presented as an example of good practice<sup>37</sup>. Among other reasons, as mentioned above, the staff may not be able to recognize corruption threats themselves and, therefore, clear guidelines may contribute to reducing mistakes that

<sup>33</sup> The previous practice was identified as very risky previously both by the interviewees, and by previous research; these regulations were amended 09/05/2012 (Government Decree on the Procedures of Project Administration and Financing, Lithuanian – Vyriausybės nutarimas dėl projektų administravimo ir finansavimo taisiklių patvirtinimo, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=424750, para 198.1 – 198.2 \(amended 09/05/2012\)](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=424750, para 198.1 – 198.2 (amended 09/05/2012)))

<sup>34</sup> Law on Public Procurement, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=268778](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=268778), retrieved 12/07/2013

<sup>35</sup> For a more detailed overview of how the public procurement affect the effectiveness of EU funds implementation, see: Price Water House Coopers, Tark Grunte Sutkiene. “Evaluation of the Effect of Public Procurement for the Effectiveness of EU funds Implementation”, available online [http://www.esparama.lt/es\\_parama\\_pletra/failai/fm/failai/Vertinimas\\_ESSP\\_Neringos/Ataskaitos\\_2011MVP/Viesuju\\_pirkimu\\_vertinimo\\_ataskaita\\_LT.pdf](http://www.esparama.lt/es_parama_pletra/failai/fm/failai/Vertinimas_ESSP_Neringos/Ataskaitos_2011MVP/Viesuju_pirkimu_vertinimo_ataskaita_LT.pdf), retrieved 08/07/2013

<sup>36</sup> Approved by the Decree of the Minister of Finances, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=322400&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=322400&p_query=&p_tr2=), retrieved 12/07/2013

<sup>37</sup> See annex for a more detailed overview of online data on internal regulations in implementing agencies

## 1.3. Reporting

might lead to a semblance of corruption, as well as manage actual corruption risks. Additional specific training would also contribute to managing these risks and some of the institutions underline the lack of such training as one of the challenges.

Risk management departments or at least separate positions for this exist in many implementing institutions. However, the overall analysis reveals that these are not necessary for quality risk management as risk management should be enshrined organically in all departments and internal regulations rather than being just one position with clearly defined competences.

Since there are no regulations on the “cooling off period”, there is a risk of people quitting the implementing bodies and joining the private sector and taking all the connections that they have and potentially not only having the “know-how” (which is not necessarily a risk if the process in the implementing body is well organized and the risks are managed), but also having the potential to influence staff internally or consult their old connections in the institutions. There have only been several suspicions of such practice, but the risk remains. A potential solution might come from including clauses in the work contract restricting certain positions for a particular period after leaving a job in the implementing institution, however, these should be carefully considered as such clauses are usually deemed void in the courts when dealing with cases in the private sector, arguing that such restrictions unreasonably limit the freedom to choose a workplace. Therefore, careful reasoning should be utilized and the restriction itself could not be of a broad nature.

Very few cases of abstaining from making decisions for particular projects have been noted by the implementing agencies. Due to the lack of such cases, it is complicated to draw any kind of conclusion evaluating the existing system of abstaining from decision-making in cases of conflicts of interest.

The on-site visits are conducted frequently by all implementing institutions in projects where it is possible (and the principle of “four eyes” is applied here as well) and are considered to be a form of additional control. It is obligatory – with minor exceptions – to conduct at least one on-site visit during the period of project implementation.<sup>38</sup> In some cases, however, it has been noted that the nature of the project is very technical and the staff of the implementing institutions may not be able to detect potential irregularities themselves. Due to the above mentioned financial reasons hiring external experts might be complicated and in these situations the risks persist. The procedures of approving the requests for payments are considered to be a form of constant monitoring and evaluation, however, most implementing institutions agree that this is more financial control of eligibility of expenditures than a form of overall control.

From the perspective of public procurement, the implementing agencies are also partly granted *de facto* controlling functions. By evaluating the requests for payment these agencies exercise a limited control of overseeing how procurement is conducted during the implementation of EU projects. Most of the representatives of such agencies expressed concerns that due to the complicated procurement regulations (as discussed previously in this analysis) and often very technical issues, it is highly risky to expect this control to be of maximum effectiveness. Since the external controlling body, the Public Procurement Office, does not evaluate every tender in the framework of EU projects either, it seems that more publicly available information would contribute towards reducing corruption risks here as well. Most of the interviewees agreed that, for example, making the signed public procurement agreements publicly available (excluding the confidential information) would create greater accountability.<sup>39</sup>

<sup>38</sup> Government Decree on the Procedures of Project Administration and Financing, Lithuanian – Vyriausybės nutarimas dėl projektų administravimo ir finansavimo taisyklių patvirtinimo, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=424750](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=424750), para 152-160

<sup>39</sup> It is worthwhile noting that the National anticorruption programme foresees the amendments of the Law on Public Procurement binding all state and mu-

nicipal institutions to make such agreements publicly available in cases where national budget assignments are used; a similar rule could also be applied for EU funded projects. The National Anticorruption Programme is available here: [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=402714](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=402714), see measure 29.

The reporting stage was not identified as one of increased risk (“we try to make sure that potential irregularities be spotted during earlier stages not to have problems at the last stage where it can be too late to fix anything”). The general rule is that the final report needs to be presented to the implementing agency along with the final request for payment and only if the final report is approved is the final request for payment processed.<sup>40</sup>

The final reports are prepared by the beneficiaries themselves and only rarely do the implementing institutions conduct an overall evaluation of their own. In such cases, if the project is very technical, external experts may be hired. From this perspective, it is also worth noting that the fact that usually there is no overall evaluation in the final stage means we are missing the opportunity to measure the overall impact that a particular project has on the national budget and different economic criteria. This means that financial EU interventions are not evaluated from the perspective of whether or not they were actually, for example, distorting the market in general or whether the same outcomes might have been reached without such interventions in the first place. It was noted during the interviews that it would be possible to engage the Local Tax Inspectorate and/or the Ministry of Finance, in this sense trying to connect quality cost-benefit analysis and evaluation of the impact of the project itself.

Furthermore, it is important to note, that the amount of information available publicly does not allow evaluating the success of a particular project externally (without connecting to the internal information system). **The summaries on particular projects do not include basic information of what were the initially proposed criteria and objectives and how many of these have been actually implemented during the project duration.**

<sup>40</sup> Government Decree on the Procedures of Project Administration and Financing, Lithuanian – Vyriausybės nutarimas dėl projektų administravimo ir finansavimo taisyklių patvirtinimo, [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=424750](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=424750), para 161-166

In this stage, a separate risk was identified by the interviewees. **The lack of evaluation of economic return (or not enough quality in the ones conducted) not only may lead to the irrational use of funds and distort the market, but also create an environment for corruption.** If such analyses were conducted and published, it could potentially answer many questions that are now raised as regards to the decisions of funding in particular spheres. Also, it might be useful in assessing the effectiveness of particular agencies.<sup>41</sup>

<sup>41</sup> Evaluation of effectiveness of such institutions is not a subject of this study. For more on this see Public Policy and Management Institute, Evaluation of the EU Structural Financial Assistance Effectiveness, Lithuania, 2013 [http://www.esparama.lt/es\\_parama\\_pletra/failai/fm/failai/Vertinimas\\_ESSP\\_Nerigos/Ataskaitos\\_2011MVP/ES\\_strukturines\\_paramos\\_administravimo\\_sistemas\\_efektyvumo\\_vertinimas.pdf](http://www.esparama.lt/es_parama_pletra/failai/fm/failai/Vertinimas_ESSP_Nerigos/Ataskaitos_2011MVP/ES_strukturines_paramos_administravimo_sistemas_efektyvumo_vertinimas.pdf), retrieved 12/07/2013

## 2. CORRUPTION RISKS-PREVENTION AND MANAGEMENT

After evaluating the above mentioned corruption and/or fraud risks, a list of risk prevention and management solutions may be drawn:

- The safeguards to prevent undue influence in the stage of programming include a clear description of connections and links between the national strategies and strategies/priorities for EU funding, ex ante expert consultations and inclusion of the EC in the process of approving national programming documents and working groups that include diversified public institutions. While the inclusion of the EC is obligatory, there is a lot of space for discretion when it comes to designing particular procedures for ensuring clear links for strategic planning. More effective strategic planning and clear links between national/regional strategies and programming EU funds implementation (for example Ireland and Portugal) would reduce the risks of undue influence during the national programming process. The logic behind the choice of particular priorities/measures should also be publicly available in a clear and structured manner. Finally, there should also always be clear links between planning at the regional and state levels.
- An example of good practice in the programming stage would be applying the cost-benefit analysis method and assessing the potential value of financial injections to specific national sectors/regions in the long run. Making such assessments public would contribute towards reducing the risk of undue influence from the lobby groups. This would also reduce the risk that future costs of maintenance are not taken into account when planning financing for public infrastructure projects.
- There should always be alternative analysis for the funding form of the project (state/regionally planned or open competition). Also, effective argument behind the lists of potential applicants in cases of state/regionally planned projects should be available with clear description of why these particular applicants were chosen. Also, the legal regulations for drawing the lists should be carefully reviewed ensuring that there is not too much discretion for the public institutions. An example of good practice here would be having clear criteria for such decisions.
- Ensuring a strong role for the Monitoring Committee would also decrease corruption risks in the programming stage. Organizing the work of this committee by planning enough time for quality discussion, ensuring effective moderating of the meetings and creating a composition of the committee that would comprise of experts from different fields would strengthen the role that this institution has on the national level.
- Very clear regulations or standards defining the rules of conduct and legal status of the staff working in the EU structural funds implementation system are needed. This would not only reduce the risk of mistakes that might lead to corruption, but would also reduce the threat of the semblance of corruption.
- The national context and the institutional set-up of implementing agencies presuppose that there are different risks of undue political influence in the process of EU funding even after the programming stage. The current scheme foresees different

relations between the intermediary institutions (political) and the implementing agencies. Such relations should be narrowed down as much as possible. Furthermore, in cases where the implementing agencies are public institutions, the need for the existence of a board should be reviewed. This analysis revealed that there is no necessity for such a body at all and if existing, the members of the board should be carefully selected not allowing the predominance of one political power.

- Effective inclusion of socio-economic partners (good examples: Germany, Slovakia) and experts at all stages, beginning with the programming stage, would reduce the risk of undue political influence. In Lithuania, the challenge is that there is usually a lack of interest in these processes or the partners are not engaged effectively and the process is only pro forma.
- More publicity of the project materials (using the “what’s not confidential should be public” rule) would decrease the risk of corruption at all stages. The possibility to include information about the proposed and achieved objectives should be considered for inclusion in the publicly accessible data. Apart from reducing corruption and/or fraud risks, this might also contribute to increasing the trust in the system (according to sociological surveys, people tend to perceive EU structural funds as being a corrupt procedure).
- Cost-benefit analysis would contribute towards decreasing corruption cases by drawing clear links between the evaluated benefit and the choice of funding. This would also contribute towards a

more effective spending of EU funds in the implementation stage.

- Clear and professionally drafted project selection criteria remain one of the issues identified by the interviewees. This is followed by the need to ensure adequate time-frames for project selection decisions. Analyzing the workloads assigned to staff and making sure that the workloads are objectively allocated would contribute towards the solution of this problem. Also, ensuring that relevant training is available is crucial.
- Since public procurement remains one of the stages most sensitive to corruption, the competence in public procurement of staff working in implementing agencies could be enhanced by organizing specific training. Also, the publication of procurement agreements and continuous analysis and comparison of prices tendered for implementing EU funded projects could contribute to creating an additional control system avoiding the inflation of prices or nepotism. In this regard, the procurement rules for non-purchasing organizations should be reviewed as well, ensuring that companies related to such organizations would not be allowed to bid.
- There is still potential for enhanced institutional cooperation (not only between control and oversight, but also with state registers to simplify the application procedures reducing administrative burden as in the Czech Republic, Latvia, Slovakia, etc.). As one of the controlling institutions noted, there is a clear improvement in the process with the implementing agencies more willing to cooperate, however, there is space for improvement as well.



# LIST OF INTERVIEWEES

Lithuanian Business Support Agency  
Environmental Projects Management Agency  
European Social Fund Agency  
Central Project Management Agency  
Transport Investment Directorate  
Lithuanian Research Council  
„Investment and Business Guaranties“, UAB  
National paying Agency  
Ministry of Finance  
Financial Crimes Investigation Office  
National Audit Office of Lithuania  
Small/medium business representative (beneficiary)  
Consultancy company (consulting potential beneficiaries)<sup>42</sup>

<sup>42</sup> The names of the people who were interviewed for the purpose of this research are kept for the records but will not be published

# ANNEX 1

## Internal Corruption Risk Management Mechanisms in Implementing Agencies:

### Analysis of Public Data Online

- 1. Central Project Management Agency (CPMA)**  
-Code of Ethics <http://www.cpva.lt/lt/dokumentai/agenturos-dokumentai/12/download/103.html>
- 2. Environmental Projects Management Agency (EPMA)**  
-Regulations <http://www.apva.lt/ckfinder/userfiles/files/APVA%20nuostatai%202011-08-18.doc>  
-Mission, vision and values <http://www.apva.lt/en/mission-vision-values.html>  
-Gifts policy <http://www.apva.lt/ckfinder/userfiles/files/Dovanu%20politika.pdf>
- 3. Lithuanian Business Support Agency (LBSA)**  
-Regulations <http://www.lvpa.lt/Puslapiai/Istatai.aspx>  
-Corruption prevention tools <http://www.lvpa.lt/Puslapiai/KorupcijosPrevensija.aspx>  
-Code of Conduct <http://www.lvpa.lt/Dokumentai/Korupcijos%20prevensija/id-3743.pdf>  
- Anti-corruption program and implementation plan <http://www.lvpa.lt/Dokumentai/Korupcijos%20prevensija/id-4904.pdf>
- 4. European Social Fund Agency (ESFA)**  
-Regulations [http://www.esf.lt/uploads/documents/file/agenturos/10-06-23\\_ESFA%20istatai.pdf](http://www.esf.lt/uploads/documents/file/agenturos/10-06-23_ESFA%20istatai.pdf)  
- Corruption prevention [http://www.esf.lt/lt/apie\\_agentura/apie\\_mus/vykdoma\\_korupcijos\\_prevensija](http://www.esf.lt/lt/apie_agentura/apie_mus/vykdoma_korupcijos_prevensija)
- 5. Research Council of Lithuania**  
-Regulations [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=415711](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=415711)  
-Regulations of activity [http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=369017&p\\_query=&p\\_tr2=](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=369017&p_query=&p_tr2=)
- 6. Transport Investment Directorate**  
-Code of Ethics <http://www.tid.lt/lt/darbuotoju-etikos-kodeksas>
- 7. UAB “Investicijų ir verslo garantijos” (INVEGA)**  
-Regulations [http://www.invega.lt/site/files/failai/Garantijos/INVEGOS\\_istatai\\_\\_aktuali\\_rdakcija\\_nuo\\_2012\\_01\\_18.pdf](http://www.invega.lt/site/files/failai/Garantijos/INVEGOS_istatai__aktuali_rdakcija_nuo_2012_01_18.pdf)
- 8. National Paying Agency (NPA)**  
-Trust Line <http://www.nma.lt/index.php/pasitikejimo-linija/78>  
-Regulations <http://www.nma.lt/index.php/veikla/nuostatai/286>  
-Corruption prevention <http://www.nma.lt/index.php/veikla/korupcijos-prevensija/293>  
<http://www.nma.lt/index.php/veikla/korupcijos-prevensija/teisine-atsakomybe/1443>  
-Prevention of legal acts violations <http://www.nma.lt/index.php/veikla/pazeidimai-ir-ju-prevensija/2976>