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COMMENTS TO THE GOVERNMENT BILL OF 13 JULY 2016 ON AMENDMENTS TO THE ACT ON THE REGIONAL ACCOUNTING CHAMBERS

Summary

The paper consists of two parts. The first part is devoted to discussing currently effective provisions of the Act on the Regional Accounting Chambers within organisation and operation rules of the rios (Polish abbreviation for regionalne izby obrachunkowe - regional accounting chambers) rio's college, rio's chairman, and the structure as well as tasks performed by rios. The second part presents comments to the government bill of 13 July 2016 on amendments to the Act on the Regional Accounting Chambers¹. The study has been performed as comparison between effective legal state of the Act on rio and projected amendments. Due to the fact that solutions adopted by law on the regional accounting chambers concerning supervision and control are undoubtedly innovative not only compared to European solutions but also national ones², comparison of Polish solutions with others used in European countries has intentionally been rejected. The analysis of suggested amendments has been performed in relation to their compliance with the Constitution of the Republic of Poland, principles of law and advisability.

Key words: *Regional Accounting Chamber, local authorities supervision.*

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¹ The bill can be found on the Ministry of the Interior and Administration webpage <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2016/24190,Projektu-ustawy-o-zmianie-ustawy-o-regionalnych-izbach-obrachunkowych.html> [access 10 November 2016].

² B. Cybulski, Geneza, ewolucja i istota funkcji kontrolnej regionalnych izb obrachunkowych [in:], Regionalne izby obrachunkowe. Charakterystyka ustrojowa i komentarz do ustawy (M. Stec ed.), Warsaw 2010, p. 68.

Introduction

The activity of the regional accounting chambers is based on the Act of 7 October 1992 on regional accounting chambers³. Currently, there are 16 regional accounting chambers⁴. Regarding legal situation, the regional accounting chambers are state, not governmental⁵ supervisory and control bodies over local authority units activity, and control bodies over the entities listed in Article 1, paragraph 2, of the Act on r.i.o. The chambers are also the sole authorities that have a statutory duty to lead informative, instructional and training activity⁶ in the field covered by supervision and control. The Act on r.i.o. has been subsequently amended, but no amendment has been related to the issue of r.i.o. organisation.

Regional accounting chambers, legal status – selected issues

According to Article 171, paragraph 1 of the Republic of Poland Constitution⁷ the regional accounting chambers are one of the three constitutional supervisory bodies over the activity of the local authority entities⁸. Based on the above, rio exercise supervision within financial issues.

³Consolidated text Journal of Laws from 2016, item 561. The Act on the regional accounting chambers, hereinafter referred to as - u.r.i.o. The regional accounting chambers, hereinafter referred to as - rio.

⁴ The creation of 17 regional accounting chambers was anticipated by inapplicable Regulation of the President of the Council of 9 December 1992 on the seats and territorial coverage of regional accounting chambers and detailed organisation of the chambers and the procedure (Journal of Laws from 1992, No. 94, item 463).

⁵ See M. Stec, *Prawno-ustrojowa pozycja regionalnych izb obrachunkowych w systemie władz publicznych w Polsce* [in:] *Regionalne izby obrachunkowe. Charakterystyka ustrojowa i komentarz do ustawy*, op. cit., p. 42-63. The important issue is also the position of the Constitutional Tribunal, TK), expressed in the judgement of 28 April 1999, K 3/99, where TK claimed that: The Constitution designates rio the status of the state control bodies, however independent of governmental administration. Organisational or functional subordination in relation to the Council of Ministers is not the result of the state character. The members of the college chamber in terms of the performing supervisory and control duties are independent and are the subject only to the laws – OTK ZU 1999, No. 4, item 73.

⁶ Article 1, paragraph 4 u.r.i.o.

⁷ The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws from 1997 No78, item 483 as amended) hereinafter referred to as – The Constitution RP.

⁸ The local authority units are:

1. Rio's organisation and principles of operation

1.1. The regional accounting chamber's college

According to the effective legal situation, the regional accounting chamber's college

(Article 14 u.r.i.o) is the only rio's body, comprising of the President of the Chamber as the Chamber's Chairman, and other members (Article 15, paragraph 1 u.r.i.o)⁹. Half of the members of the chamber's college consists of the members appointed amongst candidates proposed to the college by the bodies of local authorities (Article 15, paragraph 3 u.r.i.o). The chamber's college membership presents the nature of full or extra-time, and it is defined by the President of the Council, at the request of the Chamber's Chairman (Article 15, paragraph 4, u.r.i.o). The Act has designated the requirements of the candidate for the college member (Article 15, paragraph 8, u.r.i.o.) and determined that the candidates for the college members are selected through competitive process (Article 15a, paragraph 1, u.r.i.o.).

The chamber's college acts:

- in full sitting – in cases defined in Article 18, paragraph 1, u.r.i.o,
- in groups of three - responsible for issuing opinions in cases specified by laws¹⁰. The example may be issuing opinions in cases specified in Article 13, u.r.i.o or Article 246, paragraph 1 of the Act of 27 August

municipality - acting on the basis of the Act of 8 March 1990 on the municipal government (consolidated text- Journal of Laws from 2016, item 446). The Act hereinafter referred to as - u.s.g.,

district - acting on the basis of the Act of 5 June 1998 on local government district (consolidated text - Journal of Laws from 2016, item 814). The Act hereinafter referred to as – u.s.p.,

self-government of the province - acting on the basis of the Act of 5 June 1998 on the self-government of the province (consolidated text - Journal of Laws from 2016, item 486). The Act hereinafter referred to as - u.s.w.

⁹ The number of members of the chamber's college was determined in the regulation of the President of the Council of 16 July 2004 on the seats and territorial coverage of regional accounting chambers and detailed organisation of chambers, the number of college members and the procedure (Journal of Laws from 2004 No 167, item 1747).

¹⁰ Article 19, paragraph 1 and 2 u.r.i.o.

2009 on public finance¹¹. Based on Article 20, paragraph 1 u.r.i.o there is a right to appeal to the chamber's college from the adjudicating panels' resolutions within 14 days from the date of the resolution's delivery.

Based on Article 18 u.r.i.o the solely Chamber's college duties include:

- budgeting of the local authority unit and adjudication of resolutions and regulations invalidity, referred to in Article 11, paragraph 1,
- handling of appeals in defined cases in Article 20, paragraph 2,
- receiving reports of the chamber's control, information and training activity,
- approval of proposals to the budget project of the chamber and framework plan of work,
- handling of reports of the budget implementation and the annual framework plan of the chamber's work, including the control plan,
 - processing reservations to proposals enclosed in follow-up control presentations,
 - assessment of candidates for the college members,
 - election of candidate for the chamber's chairman,
 - adoption of the chamber's organisation regulations,
- passing of resolutions in the other cases, specified in the separate provisions.

1.2. The Chairman of Rio

The Chairman of rio is not recognised as the rio's body by the Act, though one possesses competences giving a legal basis to recognize the rio chairman as a rio 's organ. The rio's chairman is appointed by the President of the Council, at the request of the Minister competent in charge of Public Administration after competitive process (Article 16, paragraph 1 u.r.i.o). The candidate for the Chamber's chairman is selected, through a competitive process by the Chamber's college, from the college members and other candidates in accordance with the requirements defined in the Act (Article 16, paragraph 2 u.r.i.o). The

¹¹ Consolidated text - Journal of Laws from 2016, item 1870. The Act hereinafter referred to as - u.f.p.

term of office of the Chairman lasts for 6 years, following the date of the appointment¹². Detailed terms and conditions of the competitive process for the position of the Chamber's Chairman, in particular the tasks of the committee, the example of a competition notice, the deadline for candidates' applications, taking into account the term of office expiry date of the Chamber's Chairman, the stages of competitive process, and detailed procedure of the appeal were defined in the Regulation of the Minister of the Interior and Administration of 19 January 2004.¹³ The Chamber's Chairman directs the work of the chamber and inter alia represents the Chamber out, one is the supervisor of the Chamber's employees, as well as prepares the project of the Chamber's organisation regulations, and convokes the college sittings and also designates the adjudicating panels including the chairpersons (Article 17, paragraph 1 u.r.i.o).

1.3. The structure of Rio

The chamber's structure includes the Chamber's Chairman, the deputy Chairman (Article 16b u.r.i.o)¹⁴, the inspection department of financial management, the information department, analysis and training¹⁵, the chamber's office providing administration service (Article 26, paragraph 1 u.r.i.o) and remote units. It seems that such rio's structure ensures a proper execution of the tasks by the chamber.

1.4. The responsibilities of Rio

Tasks of the regional accounting chambers were regulated in particular in the Act on regional accounting chambers, the Act of 27 August 2009 on public finance and in the Act of 14 June 1960 and the Code of Administrative Proceedings (based on Article 229, subparagraph

¹² Article 16, paragraph 10 u.r.i.o.

¹³ Journal of Laws from 2004, No.10, item 93.

¹⁴ Based on Article 17, paragraph 3 u.r.i.o. Deputy Chairman performs the tasks and competences within the scope defined by the rio's chairman and directs the chamber's activity in the event of the rio's Chairman absence excluding cases that are Chairman exclusive.

¹⁵ The duty of the departments as well as tasks are the result of the Regulation of the President of the Council of 16 July 2004 on the seats and territorial coverage of regional accounting chambers and detailed organisation of chambers, the number of college members and the procedure (Journal of Laws from 2004 No 167, item 1747).

1 k.p.a. rio is the body competent in matters relating to complaints for the decision-making authorities in terms of the financial issues)¹⁶. However, the main legal act that fully regulates the chambers' tasks is the Act on regional accounting chambers¹⁷, that determines the rios' tasks:

- the supervision over the activity of the local authority units in terms of financial issues (Article 1, paragraph 2 u.r.i.o.). The scope of the supervision has been defined in Article 11 u.r.i.o. It depends on the authoritative activities of the competent supervisory body using accrued inspection measures¹⁸. The term 'supervision' is a wider concept than 'control', as the supervision always implicates the right to control. Whereas the right to control not linked to the supervision must be the result of the separate legal standard,
- the control of the financial management and public procurement of the entities, mentioned in Article 1, paragraph 2 u.r.i.o. The control is not linked to the supervision exercised by the rio, and therefore it is the result of the separate than supervision legal basis. The control has no authoritative nature and its essence is in particular the determination of the facts, comparison to the binding standard and indication of irregularities¹⁹. The regional accounting chambers execute the following types of control^{20, 21}:

¹⁶ Consolidated text - Journal of Laws 2016, item 23 as amended. The Act hereinafter referred to as - k.p.a.

¹⁷For more information about rio's tasks see: Sprawozdanie KRIO z działalności regionalnych izb obrachunkowych i wykonania budżetu przez jednostki samorządu terytorialnego w 2015 r., Warsaw 2016. -http://www.rio.gov.pl/html/sprawozdania_rio/2015/sprawozdanie_za_2015_r_www.pdf

¹⁸ On the concept of supervision see: e.g. H. Izdebski, *Samorząd terytorialny. Podstawy ustroju i działalności*, Warsaw 2014, p. 435 and next, E. Chojna-Duch, *Podstawy finansów publicznych i prawa finansowego*, Warsaw 2010, p. 447, L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2010, p. 319 and next.

¹⁹ On the concept of control see: e.g. E. Ura, *Prawo administracyjne*, Warsaw 2012, p. 57, J. Sługocki, *Prawo administracyjne. Podstawowe zagadnienia ustrojowe*, Warsaw 2007, p. 389, E. Ochendowski, *Prawo administracyjne. Część ogólna*, Toruń 2006, p. 414, J. Łukasiewicz, *Zarys nauki administracji*, Warsaw 2005, p. 276. Considering the control criteria see: e.g. J. Zimmermann, *Prawo administracyjne*, Warsaw 2008, p. 403. The term of control was also defined in the jurisdiction of the administrative courts in the Supreme Administrative Court, Polish NSA for short) resolution of 13 January 2014, II GPS 3/13, where NSA indicated that *the control is the determination of the facts, comparison to the binding standard of the appropriate action. The control is not*

- comprehensive checks including financial management of the local authority units,
 - problem areas checks, including selected issues in one or several of the controlled entities,
 - ad hoc inspections, taken if necessary.
- preparation of reports, analysis and opinions in cases defined by the acts (Article 1, paragraph 3 u.r.i.o.),
 - information and training activities within supervision and control (Article 1, paragraph 4 u.r.i.o.)²²,
 - formal and accounting control of the quarterly reports in respect of the local authority units budget implementation and applications in relation to granting the compensating part of the general subsidy (Article 9a u.r.i.o.),
 - preparation of the report regarding the financial management of the local authority unit (Article 10a u.r.i.o.),
 - issuing the opinions in the cases defined in Article 13, subparagraphs 1, 3-5, 8, 12 and 13 u.r.i.o.,
 - processing of the cases defined in Article 13, subparagraph 9 a u.r.i.o., that is notifications by the treasurer (the chief accountant of the budget

linked to the authoritative nature, unless it is due to the law that entitles the inspector to employ imperious measures to the entity actions inconsistent with the standard of proper operation (e.g. breach of law or regulation operation) - LEX no 1408525. The judgement is to be comprehensively divided.

²⁰ The following types of control are the result of § 4 paragraph 2 of the quoted earlier Regulation of the President of the Council of 16 July 2004 on the seats and territorial coverage of regional accounting chambers and detailed organisation of chambers, the number of college members and the procedure.

²¹ On the concept of the rio's control activity see: e.g. Sprawozdanie Sprawozdanie KRIO z działalności regionalnych izb obrachunkowych i wykonania budżetu przez jednostki samorządu terytorialnego w 2015 r., Warsaw 2016, p. 60 and the following. The report is available at http://www.rio.gov.pl/html/sprawozdania_rio/2015/sprawozdanie_za_2015_r_www.pdf.

²² On the scope of the information and training rios' activities see: e.g. Sprawozdanie KRIO z działalności regionalnych izb obrachunkowych i wykonania budżetu przez jednostki samorządu terytorialnego w 2015 r., Warsaw 2016, p. 127- 133 and J. Kot, Działalność szkoleniowa i informacyjna regionalnych izb obrachunkowych [in:] Regionalne Izby Obrachunkowe w Polsce w latach 1993 -2003 (B. Cybulski, S. Srocki (eds.)), Wrocław 2003, p. 147-160.

of the local authority unit) of making countersignature cases upon instructions given in writing by the superior, according to the separate laws,

- processing of other cases defined by separate laws (Article 1, subparagraph 10 u.r.i.o.),
- providing clarifications to the entities mentioned in Article 1, paragraph 2 u.r.i.o. in cases relating to the regulations on public finance (Article 13, subparagraph 11 u.r.i.o.).

2. Comments to the government bill on amendments to the Act on the regional Accounting Chambers

2.1. Article 1, subparagraph 1 of the government bill relates to the amendment of Article 1, subparagraph 2 u.r.i.o. by adding new subparagraph 6a

The amendment means the addition of subparagraph 6a in Article 1, paragraph 2 u.r.i.o., that results in the increase of the rio's control scope. It is due to the fact that legal entities have been inspected, where the entities mentioned in the binding Article 1, paragraph 2, subparagraphs 1-6 u.r.i.o. *individually or jointly, directly or indirectly influence, particularly by funding over 50%, ownership of more than half of shares or stock, ownership of more than half of the votes resulting from shares and stock, supervision over the management body, having the right to appoint more than half of the management or supervisory body.* The change should be perceived as positive, according to the justification to the change of the Act, it should result in a more efficient prevention from the risk of the insolvency of the local authority units, being the effect of the debt transfer to the other entities²³.

2.2. Article 1, subparagraph 2(a) of the bill relates to the amendments of Article 2, paragraph 1 u.r.i.o. that is the supervision over the regional accounting chambers activity

Article 2, paragraph 1 u.r.i.o. currently determines that the supervision over the regional accounting chambers activity is performed by the Minister competent of public administration, based on law. Article

²³ See the justification to the Act amendment on the regional accounting chambers p. 14.

1, paragraph 2(a) the bill introduces the solution, where the Minister competent of Public Administration will supervise over the regional accounting chambers activity in terms of the **rio's administrative activity**. The proposed amendment is regarded as valid as it specifies the scope of the Minister supervision over the regional accounting chambers activity, accepting the fact that the supervision relates to the administrative activity only. The project does not specify what cases are included in the term 'the rio's administrative activity'. Consequently, the scope of the Minister supervision cannot be defined. The lack of such clarification is a disadvantage, as according to Article 7 of the Republic of Poland Constitution organs of public authority shall function on the basis of, and within the limits, of the law, and the amendment gives the basis for the Minister activity, but does not specify the scope of the Minister's possibility of interference.

In this respect, the project's initiators could have used the solutions enclosed in Article 3a, paragraph 4 of the Act of 12 October 1994 on local-government appeal boards²⁴. The quoted law states inter alia that the supervision over the college administrative activity in particular consists of :

- the control of organisation and work condition of colleges, including inspection of:
 - the compliance with organisational rules,
 - the timeliness of cases handling, and backlog of the cases with particular emphasis on the matters with the administrative proceedings longer than 6 months,
 - bookkeeping and other registration instruments as well as the accuracy of the information preparation concerning the college activity.
- the annual information analysis of the college activity,
- handling of complaints considering the outside adjudication college activity,
- inspection of the compliance with the procedure and criteria of the candidates selection for the position of the college Chairman,

²⁴Consolidated text - Journal of Laws from 2015, item. 1659 as amended.

- inspection of the compliance with the procedure and criteria of the candidates selection for the position of the college members.

In this respect, it seems advisable to introduce the amendment to the project defining the scope of the competent Minister supervision over the regional accounting chambers administrative activity.

2.3. Article 1, paragraph 2(b) of the project relates to the amendment of Article 2, paragraph 4 u.r.i.o.

The effective Article 2, paragraph 4 u.r.i.o. determines that the President of the Council at the request of the competent Minister of public administration, after seeking the province council opinion, constitutes, according to the regulation, the chambers' seats, the territorial coverage of their activity, remote units seats, detailed chambers organisation, the number of the college members in each chamber and the procedure in the cases defined in the act. The amendment of paragraph 4 of Article 2 u.r.i.o. refers to two issues. Firstly – the removal of the President of the Council obligation to seek the province council opinion, in case of the regulation issue concerning the chambers' seats, the territorial coverage of the activity, remote units seats, detailed chambers organisation, the number of college members in each chamber and the procedure in cases defined in the act.

The amendment aimed at streamlining is not questionable, because the possibility of issuing opinions on legal acts referring to the local authority by the local body was guaranteed in Article 3, subparagraph 5 of the Act of 6 May 2005 on Joint Commission of Government and local government and the representatives of the Republic of Poland in the Committee of the regions of the European Union²⁵. Secondly – introduction of the new wording of Article 2, paragraph 4 u.r.i.o. according to which *the President of the Council at the request of the competent Minister of Public Administration defines according to the regulation, the chambers seats, the territorial coverage of their activity, remote units seats, detailed chambers organisation, the number of the college members in each chamber and the procedure in the cases defined in the act, taking into consideration the assurance of the efficient chambers' functioning and rational tasks performance*²⁶. However, in

²⁵ Journal of Laws from 2005 No. 759.

²⁶ The amendment's changes in Article 2, paragraph 4 u.r.i.o. have been marked in bold.

fact, the regulation is contrary to § 11 Regulation of the President of the Council of 20 June 2002 on the rules of legislative drafting²⁷. The inconsistency within the amended part of § 11 quoted above regulation relates to the fact that the act normally does not include statements unless they introduce the legal standards, particularly appeals, demands, recommendations, warnings and justifications of the formulated standards.

2.4. Article 1, subparagraph 3 introduces the new wording of Article 5 u.r.i.o.

Currently, Article 5 u.r.i.o. determines that the chambers control financial management, including the execution of tax returns and public procurements of the entities mentioned in Article 1, paragraph 2, on the basis of the compliance criteria with the law and documentation compliance with the facts (§1), and the financial management control of the local authority units in terms of the government administration tasks, performed by the units on the basis of the acts or concluded agreements, is also effectuated considering the criterion of purposefulness, diligence and economic prudence (§2).

The amendment to Article 5 u.r.i.o. depends on the change of the wording of the current paragraph 1, adding the new paragraph 2 and recognizing of the current paragraph 2 as paragraph 3 including the alteration. **The proposed wording of paragraph 1, Article 5 u.r.i.o.** *the chambers control the financial management, including the implementation of the tax liabilities and public procurements of the entities, mentioned in Article 1, paragraph 2, on the basis of the criterion of the compliance with the law and **the diligence**.* The amendment of paragraph 1 refers to the criteria of the rio's control and introduces to the rio's act the new control criterion '**the diligence**'. As a justification of the proposed amendment, it was stated that the proposed change (p. 15 of the project), *refers to the solutions relating to the scope of the control activity of the Supreme Chamber of Control*²⁸ *towards the local*

²⁷ Consolidated text- Journal of Laws from 2016, item 283.

²⁸ The Supreme Chamber of Control according to Article 202, paragraph 1, of the Constitution of the Republic of Poland is the chief organ of state audit. According to Article 203, paragraph 2 of the Constitution of the Republic of Poland: *the Supreme Chamber of Control may audit the activity of the organs of local government, communal legal persons and other communal organizational units regarding the*

authority. The amendment does not raise any concern. **The project of the act introduces to the rio's Act new paragraph 2 in Article 5 u.r.i.o.** It constitutes that the financial management units control, mentioned in Article 1, paragraph 2, subparagraphs 1-6 of the project in terms of the titles defined in Article 72²⁹ of the Act of 27 August 2009 on public finance is also performed considering the criterion of the economic prudence. It should be emphasised that the criterion of the economic prudence will be used within Article 5, paragraph 2 of the project only and the fact that the control is executed ex post and has no authoritative nature hence will not prevent from possible irregularities. **According to the project of the paragraph 3 Article 5 u.r.i.o. it has been assumed that** *the financial management control of the local authority units in terms of the government administration tasks, performed by the units on the basis of the law or concluded agreements, is also effectuated with the reference to the criterion of the purposefulness.* It also seems that the introduction of the criterion should not be questionable, as it is difficult to refuse the contracting authority the right to evaluate the purposefulness of the performed tasks financed by that body.

legality, economic prudence and diligence. The Supreme Chamber of Control acts on the basis of the Act of 23 December 1994 on the Supreme Chamber of Control (consolidated text - Journal of Laws from 2015, 1096 as amended). The Supreme Chamber of Control) hereinafter referred to as NIK, and the act NIK - u.o. NIK.

²⁹ Article 72, paragraph 1 u.f.p. Domestic public debt includes the liabilities of the public finance sector of the following:

- issued securities in the amount of receivables,
- loans and borrowings,
- deposits accepted,
- payable liabilities:
- resulting from separate laws and the binding court ruling or the final administrative decisions,
- recognized as undisputed by the competent unit (the debtor) of the financial public sector.

2. The Minister of Finance defines according to the regulation, the detailed way of the debt titles classification belonging to domestic public debt, including liabilities belonging to the debt titles, taking into account the basic subject and entity categories of debts and maturities.

2.5. Article 1, subparagraph 4 of the project introducing the new wording of Article 7, paragraph 2 u.r.i.o.

The effective Article 7 u.r.i.o. consists of two paragraphs. Paragraph 1 defines that the chambers perform the comprehensive inspections³⁰ of the financial management of the local authority units at least once every four years. In turn, according to paragraph 2 the chambers may perform the checks of:

- the entities mentioned in Article 1, paragraph 2, subparagraphs 6 and 7 - at the request of the local authority units or their unions,
- the entities mentioned in Article 1, paragraph 2, subparagraphs 1-6 - at the request of the government administration bodies, agencies or target funds in case of the transfer of the public funds to those entities.
- the amendment of Article 7, paragraph 2 u.r.i.o. referring to the writing of the new wording of Article 7, paragraph 2 u.r.i.o. is the result of the project introduction of the paragraph 6a to Article 1, subparagraph 2 u.r.i.o. increasing the scope of the rio's control. On the basis of the amended paragraph 2 of Article 7 u.r.i.o. rio will be able to control the entities of the added paragraph 6a, but at the request of the local authority units or their unions, or at the request of the government administration body, agencies, or target funds in case of the transfer of the public funds to those entities.

The amendment is not questionable and it is intentional.

2.6. Article 1, subparagraph 5 of the project introducing the new wording of Article 7a, paragraph 1 and 2 u.r.i.o.

After the amendment of paragraph 1 of Article 7a u.r.i.o. receives the wording the chamber's Chairman or the person authorised by the chairman, informs the manager of the inspected unit, about the scope and the date of the control, and in case of the entities control, mentioned in Article 1, paragraph 2, subparagraphs 6, 6a and 7, also the competent

³⁰ The legislator has not specified the scope of 'the comprehensive checks' of financial management of the local authority units, but resolutions of the National Council of RIO seem to meet the goal e.g. The Resolution No 2/2011 the National Council of RIO of 17 March 2011 on the comprehensive control framework of the financial management of the local government units - www.rio.gov.pl/modules/Uploader/upload/uchw_krrio_2_2011.pdf

executive body of the local authority unit. The notices about the comprehensive control date are effectuated not later than 7 days before the checks due date. The amendment of paragraph 1, of Article 7a u.r.i.o. is the result of the project introduction of paragraph 6a to Article 1, subparagraph 2 u.r.i.o. increasing the scope of the rio's control. In turn, paragraph 2 of Article 7a u.r.i.o. currently defines that the manager of the inspected unit is obliged to ensure the necessary conditions to the efficient conduct of the control.

The amendment of Article 7a, paragraph 2 u.r.i.o. receives the wording the manager of the inspected unit is obliged to ensure the necessary conditions to the efficient conduct of the control, and in particular present at once the required documents and materials and provide timely explanations.

The amendment of paragraph 2 refers to the sample listing of the statutory obligations incumbent on the manager of the controlled unit such as: immediate presentation of the required documents and materials and timely explanations. The amendment should be evaluated as positive, however the scope may be perceived as too narrow. In the respect of the introduced amendments it should be noticed that the efficient procedure of the control checks also depends on ensuring the conditions to its implementation. The inspectors should have no problem in obtaining oral explanations of the controlled unit employees, gathering the documents that are the basis to the preparation of the control report as well as keeping the documents safe, preventing from their loss or unauthorized access. It is very unfortunate that the project does not recognize *expressis verbis*, meaning that it is the duty of the inspected unit manager to provide the separate rooms for the auditors in order to ensure the efficient procedure of the control, including the possibility to secure the inspection documents against unauthorized access.

2.7. Article 1, subparagraph 6 of the project refers to the amendments in Article 8 u.r.i.o. in terms of the auditors' competences inspecting the financial economy.

Currently, the effective Article 8 u.r.i.o. consists of three paragraphs. Paragraph 1 of Article 8 u.r.i.o. defines that due to the inspection the auditors have a right to:

- request all necessary information concerning the controlled unit activity, in particular their financial economy within budget and financial management,

- the access to the premises and rooms of the controlled units,
- the documents inspection connected to cash handling, including monitoring of cash register,
- the control of the documents relating to the material resources management,
- documentation inspection with the reference to the financial management of the controlled unit;
- documents and other evidence security,
- inspection of the individual tax documents of the entities bearing the public financial charges for the local authority units,
- the access to personal data concerning the qualifications and salaries of the local government employees,
- preparing or commissioning the preparation of documents copies and extracts necessary for inspection.

In turn, according to paragraph 2 of Article 8 u.r.i.o. performing the tasks as the result of paragraph 1, subparagraph 7, the inspectors bound to the chamber secrecy, mentioned in Article 293 of the Act of 29 August 1997 - The Tax Ordinance Act (Journal of Laws from 2015 item 613, as amended). Based on paragraph 3 of Article 8 u.r.i.o. the controlled unit employees are obliged to provide oral or written explanations in cases referring to the inspection in terms of the official duties they perform.

The project alters the effective Article 8, paragraph 3 u.r.i.o. by introducing the new wording in paragraph 1, subparagraphs: **1, 8 and 9 by adding new subparagraph 1a and introducing the new wording of paragraph 3**. The amendment gives the inspectors competences for the request of the necessary information concerning the activity of the controlled units, in particular their financial management within budget implementation, including transfer of information by electronic media (subparagraph 1)³¹, the access to personal data referring to the qualifications and salaries of the local government employees (subparagraph 8 according to the project) and preparing or commissioning the preparation of the necessary for the inspection documents copies and extracts, including the electronic media

³¹ Such authorization is entitled to NIK based on Article 29, paragraph 1, subparagraph 1 u.o. NIK.

(subparagraph 9 according to the project). In turn, the added subparagraph 1a gives the inspectors the right to request the access to the database, with the preservation of confidential information protected by law regulations.

According to the amended paragraph 3 in the control related cases, the inspected unit employees are obliged to timely oral or written explanations to the auditors within the official duties they perform, and also preparing the necessary for the inspection copies and extracts.

The proposed project amendments should be evaluated as positive, because they provide inspectors with competences enabling efficient conduct of the checks as well as evidence of the control activity in order to determine the actual data.

2.8. Article 1, subparagraph 7 of the project adding in Article 9 u.r.i.o. new paragraph 6

The amendment of Article 9 u.r.i.o. means adding to Article 9 u.r.i.o. new paragraph 6. The projected paragraph 6 denotes that in case of failing to notify the chamber within the deadlines provided in paragraphs 3³² and 5³³, regarding the execution of proposals, as well as in case of lack of the introduction of the reasonable cause of proposals failure; the rio's chairman may inform about this fact the competent supervisory body that controls the unit.

The change is not questionable and it is intentional, as each controlled entity, based on Article 9, paragraph 3 u.r.i.o. is obliged to inform rio about the execution of follow-up control proposals or reasons of proposals failure within 30 days of the presentation follow-up delivery. After the deadline set in paragraphs 3 and 5 the chamber's chairman will have a possibility to inform the body supervising the unit about the breach of law by the controller in order to rectify the illegal status.

³² According to Article 9, paragraph 3 the effective u.r.i.o., the controlled unit is obliged to inform the chamber about the proposals execution or the reasons of proposals failure within 30 days of delivery. There is a right to submit objections to the chamber's college regarding the post-control proposals.

³³ According to Article 9, paragraph 5 the effective u.r.i.o. the deadline mentioned in paragraph 3, is suspended for the duration of the objections consideration in relation to the follow-up control confidential proposals.

2.9. Article 1, paragraph 8 of the project introducing the new wording of Article 9a u.r.i.o.

Currently, based on Article 9a u.r.i.o. the chambers control in terms of the quarterly formal and accounting reports of the local authority units regarding the budget implementation and the applications for the concession of the compensating part of the general subsidy.

The amendment of Article 9a u.r.i.o means the removal of the term 'quarterly' of the currently binding standard. Consequently, due to the amendment, rio will be obliged to control not only quarterly but also monthly reports of the local authority units of the budget implementation. Though the amendment is intentional, it may result in the excessive chambers' burden by the investigation of the local government units monthly reports.

2.10. Article 1, subparagraph 9 of the project introducing the new wording to Article 10a, paragraph 5 u.r.i.o.

According to Article 10a, paragraph 1 u.r.i.o. the chamber presents the report regarding the financial management condition of the unit, based on the supervisory, control and opinion activity results, if needed it presents systematic irregularities or risks of statutory tasks non-performance to the local authority units. In turn, based on paragraph 5 of Article 10 u.r.i.o. *the report is announced in the computerized system*³⁴.

The amendment of paragraph 5 adds to the effective wording, the fact that the report except for the announcement in the computerized system is also transmitted to the Province Governor competent, Minister competent of the Public Finance and the Minister competent of the Public Administration.

The amendment is justified as the report information may be used by the above organs.

2.11. Article 1 subparagraph 10 of the project adding the new Article 10b to the Act on rio

The project proposes introduction of the new Article 10b to the Act on rio, in the form of the new wording: Article 10b.1. In the event of

³⁴ Article 10a u.r.i.o. was introduced to the Act on rio in 2003. If there are filed objections to the report, it is announced in the computerized system after objections consideration by rio's college (Article 10a, paragraph 4).

a justified suspicion of the offence, or misconduct, the chamber informs the body competent to prosecute the offences or crime, and informs about the fact the manager of the controlled unit and the body competent that supervises the unit.

- The body competent to prosecute the offences or crime, is obliged to inform the regional accounting chamber about the proceeding results.
- In the event of disclosure of the acts other than those referred to in paragraph 1, for which the statutory liability is stipulated, the chamber informs about this fact the organs competent; provision of paragraph 2 is applied accordingly .'

The introduction of the new Article 10 to u.r.i.o. is intentional and justified, as so far in u.r.i.o. there has not been a provision that would impose the obligation to the chambers in relation to the statutory tasks performance, the obligation to inform the bodies competent about the suspicion of the offences or crime or the disclosure of other irregularities.

2.12. Article 1, subparagraph 11 of the project refers to Article 11 u.r.i.o.

Article 11 u.r.i.o. refers to the scope of the rio's supervision. The Article has been numerously amended, as that way the legislator has clarified the term 'financial matters' of Article 171, paragraph 2 of the Constitution of the Republic of Poland. Currently, Article 11 u.r.i.o. consists of five paragraphs.

Paragraph 1 constitutes – Within the supervisory activity the objective competence of the regional accounting chambers includes resolutions and regulations taken by the local government units bodies in cases:

- the procedure of passing the budget or the budget changes;
- budgeting and the budget alterations;
- undertaking legal obligations affecting public debt amount of the local authority unit and providing loans;
- 4 procedure and the scope of the subsidy requirements of the local government unit budget;
- taxes and local fees, according to the Act provisions - The Tax Ordinance;
- a discharge;
- the long term financial forecast and its alterations.

According to paragraph 2 'In the event of the budget resolution failure by the body of the local government to the date of 31 January of the financial year, the chamber determines the unit's budget by the end of February of the financial year in terms of the own tasks as well as tasks assigned.'

In turn, based on paragraph 2a the chamber constitutes the local authority unit budget in terms of the own tasks and tasks assigned, also in case of no compliance with the rules by the unit defined in Articles 242-244 of the Act of 27 August 2009 on public finance (Journal of Laws from 2013, item 885, as amended).

According to paragraph 3 in the event of the insignificant violation of the law in the resolution or regulation, the chamber does not annul the resolution or regulation, but confines itself to inform that the resolution or regulation have been announced with the breach of the law.

In turn, paragraph 4 constitutes that 'the paragraphs provisions 1-3 are applied accordingly to the unions of the local government units.'

The amendment of Article 11 u.r.i.o. means:

- the change of the effective Article 11, paragraph 1, subparagraph 3 by further increasing the rio's supervision of the local government unit bodies resolutions and regulations in terms of the grants guarantees,
- admission of the new wording of Article 11, paragraph 1, subparagraph 5, stating that resolutions and regulations of the local government units in terms of taxes and fees are the subject to the supervision,
- adding subparagraph 5a to Article 11, paragraph 1 u.r.i.o. according to which, the resolutions and regulations of the bodies of the local government units in terms of the procedure and scope of the advantage granting, concerning receivables payment that are the budget income of the local authority units, are the subject of the rio's supervision.,
- repeal of paragraph 3, that constituted that In the event of the insignificant violation of law in the resolution or regulation, the chamber does not annul the resolution or regulation, but confines itself to inform that the resolution or regulation have been announced with the breach of the law. The repeal of paragraph 3 is aimed at streamlining, as these types of penalties can be found in the law of the local government. (Article 91, paragraph 4 u.s.g., Article 79, paragraph 4 u.s.p. and Article 82, paragraph 5 u.s.w.).

The proposed amendments should be positively evaluated, as they cause the local government units resolutions and regulations to be also supervised in terms of the securities granted and resolutions and regulations of the above organs in cases of the advantage granting concerning receivable payment constituting the income of the local government units budget.

2.13. Article 1, subparagraph 12 of the project refers to the amendment in Article 12 u.r.i.o. by adding the new paragraph 5

Currently the effective Article 12 u.r.i.o. defines the supervisory procedures in order to find the budget resolution, integrally or partially void. The proceeding consists of two phases. In the first phase, the chamber indicates the irregularities and the way and the deadline of their removal (Article 12, paragraph 1 u.r.i.o.). If the organ competent will not remove the irregularities in a given way within the deadline, the rio decides about the resolution invalidity, integrally or partially. (Article 12, paragraph 2 u.r.i.o.).

The amendment of Article 12 u.r.i.o. refers to adding of paragraph 5, the resolutions of the body of the local government unit amending the budget resolution have been subjected to the mode specified in Article 12, paragraphs 1-4 u.r.i.o. The change should be evaluated as positive, due to the fact that if the budget resolution is under the rio's supervision, rio should also control the resolution of the local government unit body that amends the budget resolution.

2.14. Article 1, subparagraph 13 of the project relates to the adding of the new Article 12a u.r.i.o. constituting the rio's procedure in case of the acceptance of the resolution regarding the long term financial forecast or its amendments of the local government unit body, as integrally or partially invalid

In the new Article 12a, the legislators proposed the proceeding in case of the acceptance of the resolution regarding the long term financial forecast or its amendments of the local government unit body, as integrally or partially invalid. The solution is identical to the regulation enclosed in Article 21 u.r.i.o. The introduction of Article 12a increases the scope of the rio's supervision.

2.15. Article 1, subparagraph 14 of the project refers to the introduction of the new wording of Article 13, subparagraphs 8 and 9 u.r.i.o.

Currently, the effective subparagraphs 8 and 9 of Article 13 u.r.i.o. read as follows:

- subparagraph 8 issuing the opinions regarding the audit committee's of the local authority bodies applications concerning a discharge³⁵ and opinions with the regard to the commune council resolution on not granting a discharge to the mayor ,
- subparagraph 9 the examination of cases regarding the notices by the treasurer (the chief accountant of the local government unit budget) about the cases of the countersignature at the written request of the superior, according to the separate laws.³⁶.

The amendment implements new wording of both the above subparagraphs:

- subparagraph 8 issuing of the opinions regarding the audit committee's applications of the local authority bodies in case of a discharge³⁷ and opinions in case of the resolution of the local authority unit body with the reference to the not granting a discharge to the county and province management board and the mayor (the mayor of the town, the president of the town) – the amendment is intentional, as previously subparagraph 8 read that rio's tasks were the issuing of the opinions regarding the audit committee's applications of the local authority unit bodies with the reference to a discharge and opinions regarding the resolution of the commune council concerning non granting a discharge to the mayor. None of the mentioned

³⁵ More on a discharge see inter alia A. Borodo, *Samorząd terytorialny. System prawno finansowy*, Warsaw 2012, p. 230 and following. More on the vote of acceptance see e.g. E. Czołpińska, *Co to jest absolutorium i jakie jest jego znaczenie* [in:] *Finanse samorządowe. 580 pytań i odpowiedzi* (C. Kosikowski, J. M. Salachna(eds.)), Warsaw 2012, p. 681.

³⁶ On the subject see: J. M. Salachna komentarz do art. 13 u.r.i.o. [in:] *Regionalne Izby Obrachunkowe. Charakterystyka ustrojowa ...*, op. cit. p. 432 - 435.

³⁷ More on a discharge see: inter alia A. Borodo, *Samorząd terytorialny. System prawno finansowy*, Warsaw 2012, p. 230 and the following. On the vote of acceptance see: e.g. E. Czołpińska, *Co to jest absolutorium i jakie jest jego znaczenie* [in:] *Finanse samorządowe. 580 pytań i odpowiedzi* (C. Kosikowski, J. M. Salachna(eds.)), Warsaw 2012, p. 681.

subparagraphs of Article 13 u.r.i.o. defines expressis verbis, that rio issue opinions in cases of the approval resolution, undertaken by the county management board or the province local government.

- subparagraph 9 the issuing of the opinions in cases regarding the treasurer's notices (the chief accountant of the local government unit budget) about the cases of the countersignature at the written request of the superior, according to the separate laws ³⁸ - due to the amendment, rio will not 'investigate the case by the separate committees', but it will issue the opinion in cases of the local government units treasurer's notices. Consequently, the opinion will be issued by the adjudicating panel and there will be the right to appeal to the chamber's college of its opinion. Both amendments should be regarded as intentional.

2.16. Article 1, subparagraph 15 of the project refers to the amendments in Article 15 u.r.i.o.

The effective Article 15 u.r.i.o. refers to the issue of the college, the nature of the college membership, the independence of the college members and the requirements that should be met by the college member candidates, and finally it should define the cases of the college member revocation. The amendment of Article 15 u.r.i.o. means:

- the introduction to paragraph 8 the new subparagraph 6 as follows has not been punished with the ban against the function connected with public funds administration, mentioned in Article 31, paragraph 1, subparagraph 4 of the Act of 17 December 2004 on infringement of the legislation on public finance (Journal of Laws from 2013 item 168³⁸),
- adding the new paragraph 8a as a person employed in the regional accounting chamber, whose body is the college, cannot be a non-permanent college member',
- giving paragraph 9 the new wording of subparagraph 2 loss of at least one of the conditions defined in paragraphs 8 and 8a,
- adding in paragraph 9 the new subparagraph 4 as follows 'retirement age.',

³⁸ On the subject see: J. M. Salachna Commentary to Article 13 u.r.i.o. [in:] Regionalne Izby Obrachunkowe. Charakterystyka ustrojowa ..., op. cit. p. 432 - 435.

- adding the new paragraph 9a as follows in justified cases, the function of the college member may be served by the person who reaches the retirement age, with the consent of the President of the Council,
- adding the new wording to paragraph 10 the President of the Council at the request of the Chamber's chairman dismisses the college member in cases defined in paragraph 9. The Article's provisions 16a, paragraphs 3-4 are used accordingly.

The proposed amendments in terms of the introduction of the new subparagraph 6 to paragraph 8 of Article 15 u.r.i.o., adding the new paragraph 8a and introduction of the new wording to paragraph 10 are not questionable. The provisions change is intentional, as a person punished according to subparagraph 6, should not be the college member.

The introduction of the ban on the employment of the college official additionally as the non- permanent college member in the chamber, is regarded as a positive solution, as it was stated in the project, the solution is supposed to ensure full independence of the college member, what might be difficult in the event of the business related relations to rio's chairman³⁹.

However, it is not clear what was the purpose of paragraph 10 amendment, as the amended paragraph 10 presents the same wording as before.

2.17. Article 1, subparagraph 16 of the project refers to the amendment of Article 16 u.r.i.o. in terms of the procedure for the rio's chairman election

Article 1, subparagraph 16 of the project, introduces the amendments in the competition proceedings for the position of the chamber's chairman in terms of the committee responsible for the competition, its members, and the body appointing the committee. Currently, the rio's chairman is appointed after the competition by the President of the Council at the request of the Minister competent of the Administration can be assumed that the competition is carried out by the competition committee consisting of three college members, and its member cannot be the person entering the competition for the position of the rio's chairman. The head of the competition committee within 7 days presents to the chamber's college the list of the candidates or a candidate for the

³⁹ The project justification p. 19.

chamber's chairman. The chamber's college selects the candidate for the position of the chamber's chairman, by absolute majority in secret balloting, in the presence of at least half of the board. The college chairman transfers the resolution to the Minister competent of the Public Administration (Article 16, paragraph 7 u.r.i.o.). The detailed requirements for the competition procedure for the position of the chamber's chairman, in particular the competition committee responsibilities, the example of the competition notice, deadline for candidates entries, taking into consideration the chamber's chairman term of office expiry date, the stages of the competition proceedings and the detailed procedure of the appeal, referred to the paragraph 9 u.r.i.o. were included in the Regulation of the Minister of the Interior and Administration of 19 January 2004 on detailed arrangements of the competition proceedings for the position of the Chairman of the Regional Accounting Chamber⁴⁰.

The government project institutes the complete change in terms of the regional accounting chairman procedure (e.g. Article 16, paragraphs 7, 8, 9 and 11 of the project) and it introduces the principle of the chamber's chairman function maximum for the two consecutive terms of office (Article 16, paragraph 4 of the project) and exceptionally once the possibility to enter the competition for the position of the chairman to a person who once performed as the chairman in two consecutive terms of office (Article 16, paragraph 5 of the project). Although Article 16, paragraph 1 of the project constitutes, as the current regulations, that the President of the Council appoints the chamber's chairman after conducting the competition, but further solutions are different than current ones. **In terms of the rio's Chairman selection procedure in the project, it has been adopted that the President of the Council** ⁴¹:

- announces the competition for the position of the chamber's Chairman (Article 16, paragraph 7 of the project),
- appoints the selection board, consisting of 5 people (Article 16, paragraph 8 of the project) including the one representative of the President of the Council, the Minister competent of the Administration, Minister competent of the Public Finance, National

⁴⁰ Journal of Laws from 2004, No. 10, item 93.

⁴¹ In the description the paragraphs 7, 10, 12, 13, 14, 15 of the project have been omitted.

Committee of the Regional Accounting Chambers⁴² and local government body appointed by the Joint Central Government and Local Government Committee (Article 16, paragraph 9 of the project) and one appoints and dismisses the President of the selection board amongst its members (Article 16, paragraph 11 of the project),

- by regulation, specifies the detailed conditions of the competition procedure (Article 16, paragraph 16 of the project).

The legislators justify the change with the fact that it will potentially eliminate possible irregularities while selecting the rio's chairman. It seems that the amendment itself does not give such guarantees but makes the rio's chairman selection procedure clearer.

2.18. Article 1, subparagraph 17 of the project refers to the amendments in Article 16a u.r.i.o.

Currently, based on Article 16a, paragraph 1 u.r.i.o. the dismissal of the rio's chairman refers to the cases, as follows in Article 15, paragraph 9 u.r.i.o.:

- submission of the post resignation,
- loss of at least one of the conditions defined in Article 15, paragraph 8 u.r.i.o.⁴³,
- the statement of the repeated breach of law during duties performance or the tasks completion avoidance.

Article 1, subparagraph 17 of the project introduces the paragraph 1a to Article 16a u.r.i.o. constituting that *the chamber's chairman and the*

⁴² The Joint Central Government and Local Government committee acts based on Article 25a u.r.i.o.

⁴³ According to the effective Article 15, paragraph 8 u.r.i.o. the college member may become a person who:

- has a full legal capacity;
- has Polish citizenship and full public rights;
- graduated from legal studies, administration, economy, or has the academic degree in one of the studies;
- has at least four years work record in the units linked to the local government functioning or public finance;
- has not been sentenced by a final court judgement for the offence committed intentionally.

deputy may be dismissed in case of the blatant failure to comply with duties.

Summing up, after the entering into force the Act on rio, the chairman's dismissal takes place in the event of 'the blatant failure to comply with duties' (Article 16a, paragraph 1a u.r.i.o in the wording defined by Article 1, subparagraph 17 of the current project), or in case of the statement of the repeated breach of law during duties performance or the tasks completion performance (Article 15, paragraph 9, subparagraph 3 u.r.i.o.).

The proposed solution in the project is questionable as far as the purposefulness is concerned. It seems that the proposed in the project legal basis concerning the dismissal of the chairman in the event of 'the blatant failure to comply with duties *generally remains within effective solutions enclosed in Article 15, paragraph 9, subparagraph 3 u.r.i.o.* The suggested amendment in Article 16a u.r.i.o. also introduces the criterion of 'the blatant violation of law' what may lead to the interpretation doubts if the law violation is 'the blatant breach' or not. Summing up the effective solution enclosed in Article 16a a.r.i.o. is better than the proposed amendment.

Moreover, editorially the change is introduced incorrectly. As the justification to the project (p. 21) it has been stated that the introduction of paragraph 1a in the Act, in Article 16a u.r.i.o. *has the complementary nature compared to the general appeal reasons defined in Article 15, paragraph 9.* In such case it seems that both examples of rio's chairman dismissal should be harmonized in Article 16a, paragraph 1, subparagraph 1 u.r.i.o.

The amendment of Article 16a u.r.i.o. except for the changes mentioned above, also introduces amendments that refer to the following issues⁴⁴:

- introducing the new wording of paragraph 3 – the regulation constitutes as it used to be that the decision of the appeal may be moved to the Administrative Court, and filing an appeal holds the repeal. The regulation introduces two exceptions to the above rule, that are the result of the added paragraphs 3a and 3b
- adding of paragraph 3a – introducing the immediate decisions enforceability regarding the case appeal, in a situation when the

⁴⁴ In description the issue of the new wording to paragraph 7 has been omitted.

appeal has been made after sentencing the rio's chairman by a final court judgement for the offence committed intentionally, or when the chairman was sentenced with the prohibition of the function connected with the public funds administration, mentioned to in Article 31, paragraph 1, subparagraph 4 of the Act of 17 December 2004 on liability for violation of the public finance discipline⁴⁵,

- adding paragraph 3b –in which the President of the Council has the possibility of the immediate enforceability of the decision regarding the rio's chairman dismissal, if it is necessary to ensure the tasks performance in the regional accounting chamber, or when the dismissal was the result of the specific cause defined in Article 15, paragraph 9, subparagraph 3 u.r.i.o. that is the statement of the repeated breach of law during duties performance or the tasks completion avoidance,
- adding the new wording of paragraph 5 in the event of the chamber's chairman dismissal or after his death, the President of the Council announces the competition for the position of the chamber's chairman within 14 days from the date of dismissal or death. The regulation of Article 16 is applied as follows.

The amendment introduced by added paragraph 3a of the project to the effective Article 16 u.r.i.o. is not questionable. However, new paragraph 3b of the project raises some concern, according to which the President of the Council's decision about the rio's chairman dismissal may have the immediate enforceability if 'it is necessary to ensure the tasks performance in the regional accounting chamber'. The wording should be regarded as faulty, with the reference to the quoted earlier § 11 of the President of the Council Regulation on the rules of legislative drafting.

2.19. Article 1, subparagraph 18 of the project refers to the amendments in Article 17 u.r.i.o.

Currently, the rights and responsibilities of the chamber's chairman are regulated by Article 17 u.r.i.o. Based on Article 17, paragraph 1, subparagraph 5) the rio's chairman applies to the President of the Council with the requests for the appointment or dismissal of the chairman's

⁴⁵ Consolidated text - Journal of Laws from 2013, item 168 as amended.

deputy and appointment, dismissal or change of the college member nature of employment. According to Article 17, paragraph 2 u.r.i.o. the chamber's chairman also performs other tasks provided by law, and non-claimed for the chamber's college, the adjudicating panel in cases of the breach of the public finance and the judging panel. In turn, the chairman's deputy tasks are regulated by Article 17, paragraph 3 u.r.i.o. According to the quoted regulation, the chambers chairman's deputy :

- performs the tasks and rights defined by the chamber's chairman;
- directs the chamber's activity in the absence of the chamber's chairman, excluding cases, reserved for the own chairman's jurisdiction.

The amendment of the above regulations means:

- **adding the new wording of subparagraph 5, paragraph 1, Article 17, that** the rio's chairman applies to the President of the Council with the requests for the appointment or dismissal of the chairman's deputy and the appointment or dismissal or change of the college member employment nature.
- **adding the new wording to paragraph 2 , Article 17 u.r.i.o.** the chamber's chairman also performs other tasks provided by law, and non- claimed for the chamber's college or the judging panels.
- **adding in paragraph 3 new subparagraph 3 as follows:** directs the chamber's activity in the event of the chairman's death, as well as in the cases referred to in Article 16a, paragraph 3a and 3b.

The amendments are intentional. The proposed amendment of Article 17, paragraph 1, subparagraph 5 is aimed at streamlining. In turn, the amendment of Article 17, paragraph 2 u.r.i.o. is performed due to the fact that the adjudicating panel dealing with the cases of violation of public finance discipline, from the date of 1 July 2005 is neither the rio's body nor a part of the chamber's structure⁴⁶ and therefore keeping the chairman's competences in this respect is unreasonable.

⁴⁶ According to Article 14 u.r.i.o. as amended in Journal of Laws from 1992 No. 85, item 428 the chamber's bodies were: 1) the chamber's college, 2) the adjudicating panel in the cases of the budget management violation. Next, based on Article 1, subparagraph 10 of the Act of 24 July 2003 on the amendment of the Act on the regional accounting chambers, the Act on the formation of wages in the State budgetary sphere and on amendments to certain laws.(Journal of Laws from 2003 No 149, item

Adding of the new subparagraph 3 is supposed to grant the competences to the rio chairman's deputy in order to direct the chamber in the event of the chairman's death or the immediate decision enforceability of the President of the Council regarding the rio's chairman dismissal.

2.20. Article 1, subparagraph 19 of the project in terms of the cancellation of the subparagraph 5c in Article 18, paragraph 1 u.r.i.o.

Currently, the effective Article 18, paragraph 1, subparagraph 5c u.r.i.o. constitutes that the candidate selection for the position of the chamber's chairman is the sole competence of the chamber's college.

The repeal of paragraph 5c is the result of the new solution adoption, that the selection board appointed by the President of the Council, selects the best candidate for the position of the rio's chairman. The amendment is aimed at streamlining.

2.21. Article 1, subparagraph 20 of the project refers to the amendment of the paragraph 3 of Article 19 u.r.i.o.

Currently, paragraph 3 of Article 19 u.r.i.o. constitutes 'In the cases referred to in Article 13, subparagraph 8, and in the case of the resolution of the municipal council on non granting a discharge to the commune

1454) Article 14, subparagraph 2 u.r.i.o. reads as follows 'the adjudicating panel dealing with the cases of the public finance discipline violation.' Next amendment of Article 14 u.r.i.o. was based on Article 196, subparagraph 1 of the Act of 17 December 2004 on the liability of the public finance discipline violation (consolidated text - Journal of Laws from 2013, item 168 as amended The Act hereinafter referred to as - u.o.n.d.f.p.), where Article 14 reads as follows 'The chamber's college is the college body'. The amendment of Article 14 a.r.i.o. was effective from the date of 1 July 2005, and the adjudicating panels act on the basis of the Act on a the public finance discipline violation. According to Article 42, paragraph 1 u.o.n.d.f.p. the judging bodies in cases of the public finance discipline violation, of First Instance are the adjudicating panels in cases of the public finance discipline violation, hereinafter referred to as ' the adjudicating panels'. According to Article 46 u.o.n.d.f.p. the adjudicating panels are: 1) the joint adjudicating panel; 2) inter- Ministerial judging committees at: a) the Minister competent for the public finance, b) The Minister competent of the public administration, c) the Minister of Justice; 3) the judging committee at the Head of the Chancellery of the President of the Council; 4) the regional judging committees at the regional accounting chambers.

head (the mayor, the President of a city), the chambers issue an opinion within 14 days.'

The amendment introduces the following wording of the paragraph 3 in cases referred to in Article 13, subparagraph 8, the chambers issue an opinion within 14 days.

The regulation change of the wording is aimed at streamlining, according to the amendments introduced by Article 1, subparagraph 14 of the project in Article 13, subparagraphs 8 and 9 u.r.i.o.

2.22. Article 1, subparagraph 21 of the project refers to the amendment in paragraphs 2 and 3 of Article 23 u.r.i.o. and adding the new paragraph 4

Currently, Article 23 u.r.i.o. constitutes *2. The chamber's chairman, the chairman's deputy and the other college members, the regional accounting chamber employees cannot be the members of the local government units or self-government appeals boards, or be employed in units, mentioned in Article 1, paragraph 2.*

3. Tasks performance for units, referred to in Article 1, paragraph 2, based on civil law contract, cannot be entrusted to the chamber's chairman, the chairman's deputy and other college members.'

The amendment introduces in both quoted above paragraphs, the alteration in the change of wording 'units, referred to in Article 1, paragraph 2 'for the wording 'entities, referred to in Article 1, paragraph 2'. The amendment is supposed to harmonize the statutory terms. The above regulations have anti-corruption nature⁴⁷.

The project introduces the new paragraph 4 to the Act, that includes the prohibitions exceptions established in paragraphs 2 and 3. The proposed paragraph 4 constitutes *the President of the Council may give a written consent to the chamber's chairman, the chairman's deputy, and other college members, being the exception to the prohibitions defined in paragraphs 2 and 3, in the situation when the membership, employment or other paid employment will be performed to the entities not being the subject to the supervisory or control chamber's activity, which the*

⁴⁷ The project justification p. 22. The prohibitions of the anti-corruption nature can be found regarding the local authority and inter alia refer to the councillors, the mayor, the district board members or the self-government province as well as the local authority units treasurers- see: A. Wierzbica, *Ograniczenia antykorupcyjne w samorządzie terytorialnym*, Warsaw 2008.

persons are the members, and it will be in accordance with the laws of other acts. The remaining regional accounting chambers employees are given the written consent by the chamber's chairman, based on the rules defined in the first sentence.

2.23. Article 1, subparagraph 22 of the project refers to the amendments in paragraph 1 of Article 25a u.r.i.o.

Currently, based on Article 25a, paragraph 1 u.r.i.o. the chambers' chairmen and one by one representative selected by the chambers' colleges create the National Council of the Regional Accounting Chambers⁴⁸, with the following responsibilities:

- representing the chambers in front of the prime and central authorities,
- presentation of the applications concerning the amendments in the law regulating the communal financial economy to the Minister competent of the public administration,
- presenting the budget related applications to the state budget project including partially the chambers to the competent authority,
- dissemination of the chambers' achievements and experience,
- coordination of plans and training programmes for the chambers' employees,
- coordination of plans and control programmes,
- annual reports to the 'Sejm' and the 'Senate' within the period until 30 June, regarding the chambers' activity and budget implementation by the local authority units.

The amendment of Article 25a u.r.i.o. is intentional, aimed at streamlining, and relies on:

- adding the new wording to subparagraph 2, which now reads as follows: the presentation of the applications to the Minister competent of the public administration concerning the amendments of the rules regulating the chambers' functioning, tasks, organisation and activity as well as issuing opinions of the acts in terms of the above points.'

⁴⁸The National Council of the Regional Accounting Chambers has operated since 1998. The activity is regulated by the regulations of the National Council of Regional Clearing Chambers (KR RIO) constituting the Annex to the Resolution no 5/98 of the National Council of the Regional Accounting Chambers of 20 February 1998 - The resolution and other documents of the KR RIO are available at www.rio.gov.pl/modules.php?op=modload&name=HTML&file=index&page=krrio_index.

- adding the new subparagraph 2a as follows the presentation of the public applications concerning the amendments of the rules regulating the commune financial economy.

The amendments are intentional and not questionable, as they indicate the functional jurisdiction of the Ministers, to whom the National Council of RIO is obliged to present the proposals, performing the statutory duties.

2.24. Article 1, subparagraph 23 of the project refers to the amendment of Article 27 u.r.i.o.

The amendment introduces the new wording of Article 27 u.r.i.o. constituting 'Who fails to comply with the obligation of control, in particular by not presenting the necessary for control documents, is a subject to the fine (paragraph 1) and 'Who fails to inform or declares incorrectly about the follow-up control proposals implementation, is the subject to the fine (paragraph 2). The amendment is considered as justified, as it explains the cases when the fine may be applied.

2.25. Article 3 of the project

The project of Article 3 also constitutes that the employment based on the current law including the chairmen' deputies and the permanent college members remains unaltered (subparagraph 1), while non-headcount college staff appointed by the current law, will perform their functions until appointing non-headcount college staff for the 6 year term (subparagraph 2).

In the context of Article 3, subparagraph 1 of the project, the solution adopted in Article 3, subparagraph 2 of the project should be negatively assessed, as according to the law u.r.i.o., the college members regardless of the membership nature, in the rio college are appointed for the same 6 year term , and therefore should perform own functions until the end of the term.

Conclusions

Generally speaking, the amendments project should be positively evaluated. While a positive assessment cannot be granted to the proposed amendments in Article 2, paragraph 1 u.r.i.o. and Article 3 of the project. Doubts are raised concerning the proposed amendment of Article 9a u.r.i.o. by overloading rio with the obligation of investigating the

monthly reports of the local authority units. It is a pity that the following amendments have not recognized the rio's chairman as a rio's body, and Article 14 u.r.i.o. has not been amended in this respect, and statutory there was no possibility of an appeal to the Administrative Court regarding the resolution of the regional accounting chamber college, concerning rejecting the reported objections of the proposals included in the rio's follow-up control presentation⁴⁹. Taking into consideration the fact that in the rio's follow-up control presentation issued on the control results, the sources and the irregularities causes are shown, as well as the scale, people responsible and the conclusions for the improvement of the investigated activity⁵⁰. It should also be noticed that the rio's control is performed by means of the undefined criteria; it is intentional to grant a right to appeal to the Administrative Court regarding the rio's college resolution. The fact that the control has no authority nature is not essential here, but the conclusions included in the follow-up control presentation have such nature, and their verification should be performed by the Administrative Court.

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⁴⁹ According to u.r.i.o. there is a right to appeal to the chamber's college concerning the conclusions enclosed in the post-control presentation (Article 9, paragraph 3 u.r.i.o.), and the filing basis for the claims may only be the allegation of violation of law by incorrect law application or misinterpretation (Article 9, paragraph 3 u.r.i.o.). According to the effective Administrative Court standing, there is no right to appeal to the Administrative Court, concerning the regional accounting chamber college resolution regarding the investigation of objections to the proposals enclosed in the follow-up control presentation - NSA order of 26 October 2011, II GSK 2111/11, LEX no 1070236.

⁵⁰ Article 9, paragraph 2 u.r.i.o.

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- [9.] The Act of 8 March 1990 on the municipal government (consolidated text - Journal of Laws from 2016, item 446).
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