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State funds in the light of Polish Financial Law

This paper presents a comparative analysis of state special funds in Poland, focusing on their legal dimensions within the framework of financial law. State special funds play a vital role in the allocation and management of public resources, serving as targeted financial mechanisms to address specific needs and promote socio-economic development. However, there is limited comparative research examining the legal frameworks and operational aspects of these funds in different jurisdictions. This study aims to fill this gap by conducting a comprehensive analysis of state special funds in Poland, providing valuable insights into their legal frameworks, objectives, structures, and operational mechanisms. The research objectives of this study include examining the legal frameworks governing state special funds in both countries, analyzing their objectives and operational mechanisms, identifying similarities and differences, and assessing their effectiveness and challenges. By achieving these objectives, this study aims to contribute to the enhancement of financial law practices in both jurisdictions and provide knowledge for improving the legal frameworks and operational efficiency of state special funds.

Keywords: state special fund; public fund, public finance, off-budget fund.

Introduction

It should be noted at the beginning of the presentation of research issues that the term state special fund is translated into Polish language as a “*fundusz celowy*”. In principle, the name does not raise any doubts, it has already taken root in the legal literature on the subject, legal regulations, and jurisprudence. One can approach it in terms of linguistic analysis and insist that the word fund (pol. *fundusz*)** would be sufficient, because by its very nature it means raising funds for a specific purpose. In English, it must be admitted that there is some confusion due to the multitude of terms in relation to the institution we are examining in this article – for example earmarked funds, manual reserves, funds commitments, encumbrances, state funds, state special fund, public fund, off-budget-fund or extra-budgetary fund and probably more. The ambiguity of terms in English and other languages is dictated by the fact that the general image of special-purpose funds is often presented in the context of all kinds of funds that operated many years ago and operate now and have nothing to do with the institution of state special-purpose funds (pol. *fundusz celowy*) in terms of financial law and public finance. In this broad approach, the prototype is charitable funds, which in principle exist probably for every legal system. In such a broad approach to special purpose funds, it should be recognized that their beginning took place earlier than certain budgetary rules of states or cities were worked out. Here it is important to mention, that in the Islamic world, “*waqf*” funds were formed, which in Arabic means “property” withdrawn from civil circulation and transferred by the state for religious or charitable purposes (Kuran, 2001; 15; Budiman, 2014; 22) [1, 2]. Subsequently, these funds began to be endowed with various functions, among them social, economic, political, ideological and other functions can be distinguished.

Furthermore, the term “state special fund” encompasses a range of financial mechanisms and institutions that go beyond the concept of a traditional fund. These funds are established by legislation and operate under specific legal frameworks, distinguishing them from other financial instruments or entities. They serve as dedicated channels for collecting, managing, and allocating public resources for specific purposes, such as infrastructure development, social welfare programs, or economic stimulus initiatives. The inclusion of the term “special” also highlights the distinctive nature of these funds. They are designed to address particular societal needs or strategic priorities, often requiring separate financial structures and mechanisms to ensure their effective implementation. The adjective “special” underscores the targeted nature of the funds, indicat-

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** A fund is a pool of money that is allocated for a specific purpose. A fund can be established for many different purposes: a city government setting aside money to build a new civic center, a college setting aside money to award a scholarship, or an insurance company that sets aside money to pay its customers' claims. Investopedia: source: <https://www.investopedia.com/terms/f/fund.asp> (accessed: 29.06.2023)

ing that they are not part of the regular budgetary process but rather represent a specific subset of public financial resources. Moreover, by using the term “state special fund” this study acknowledges the legal and regulatory context in which these funds operate. They are subject to specific rules and regulations, governing their establishment, operation, reporting, and accountability. Understanding and comparing the legal frameworks surrounding state special funds in different jurisdictions is crucial for identifying best practices, addressing challenges, and fostering effective governance of these financial mechanisms.

The literature on the subject states that the allocation of funds outside the state budget was gradual and that their creation was necessary for the state to be able to use its financial resources more effectively. The main objective of public funds is the implementation of public tasks and their financing out of the state budget or regional and local authority budgets. The essence of a public fund lies in the fact that individual public tasks are performed through their financing from separate budgets. In the broad sense, the financial aspect of financing such tasks lies in the fact that the fund* is supplied with specific sources of public revenues for expenses with a specific purpose. A link appears here between certain revenues and expenditures with specific goals (Dirk-Jan, 2004) [3].

As with budgets, public funds perform a redistributive and control function. The redistributive function manifests itself, on the one hand, in the collection of revenues and their redistribution to specific social groups or individual sectors of the economy. In turn, the control function should in general allow for constant monitoring of the specific processes occurring within certain social groups or sectors of the economy (Sedova, 2007; 34) [4].

The second justification for the creation of state special funds (especially off-budgetary funds) is their exemption from general budget rules and restrictive budget regulations. The legislator intentionally provided for the establishment of these financial law institutions to operate independently from the state budget or the budgets of local government units. By doing so, the objective was to grant them certain flexibilities and autonomy in managing financial resources. The exclusion of off-budget funds from the traditional budgetary process allows for more efficient and streamlined decision-making regarding the allocation and utilization of funds. It enables specific sectors or initiatives to receive dedicated funding without being subject to the same constraints as the regular budgetary framework. It is important to acknowledge that the motivations behind the creation of off-budgetary funds may extend beyond purely financial considerations. Political factors and bypassing certain budget constraints (Lotko, 2021; 215; Gabor, 2007; 19) [5, 6] can also play a role in their establishment, although they are beyond the scope of analysis in this scientific article.

It is worth emphasizing that these funds should not be confused with special legal persons that act on behalf of the state and carry out its tasks, while in political terms, their main purpose was to remove them from the legal regulation of public finance.

The Legal Status of State Special Funds in Poland

The broad interpretation of the institution of a fund can be observed in the economic interpretation of the state budget which should be regarded as a state fund tasked with the collection and spending of funds for public purposes. The process of financing public tasks is referred to as funding [Polish: *funduszowanie*] both in relation to budgets and separate public funds. It should be noted that, as a rule, legal specialists define a budget as a financial plan designed to control the collection and spending of public funds. In turn, the basic budgetary principle is the principle of non-funding [Polish: *niefunduszowanie*] (the principle of material unity, the principle of universality) (Bitner, 2016, Salachna, 2008, Kosikowski, 2008) [7, 8, 9]. It is a demand that the budget is organized as one pool of public resources, which are allocated to the entire budget expenditure. This means that the creation of a public fund is an exception to the non-funding principle. In other words, non-compliance with this principle is the principle governing the functioning of public funds in Poland.

It should be added, too, that the creation of public funds is also in violation of two fundamental budgetary principles – the principle of universality and the principle of material unity. The principle of universality of the state budget means the necessity to include in the budget all financial relations; whereas in the case of public funds, the flow of public funds occurs, in general, outside the state budget. In turn, the restrictive understanding of the principle of formal unity consists in the acceptance of one financial plan in order to im-

* Translation from Polish language – Fund – 1. “money collected for a specific purpose; also: an institution established to manage such money,” 2. “someone’s financial resources,” Słownik PWN Online, source: <https://sjp.pwn.pl/sjp/fundusz; 2558714.html> (accessed: 29.06.2023)

plement the state's financial management, which is also contrary to the concept of public funds (Szolno-Koguc, 2007; 79) [10].

Various forms of funding can be distinguished within the theory of public finance (e.g. net funding and gross funding), mostly as a result of the limited financial resources of the state. The variety of public funds and methods of funding are a manifestation of striving to achieve efficiency in the management of the state's public finances. Secondly, the creation and use of public funds result not only in the implementation of the principle of legality (the principle of legalism, the principle of legal regulations, the principle of the rule of law) in the sphere of public finance, but also in the implementation of control over the function of finance. The downside of funding is the limitation, to a certain extent, of the implementation of tasks realized by funding (the stiffening of the budgetary management) or the positive discrimination of these tasks in relation to tasks implemented with funds from the state budget. The inefficiency of funding is also apparent when a public fund requires additional sources of financing to finance expenses for specific tasks (Masniak, 2014; 389) [11]. This, in turn, may result in the legislator's issuing a ban on the creation of public funds or creating new public funds – something that took place in Poland in the past (this applies also to other countries). Pursuant to the act on public finance of 1998, activity-based funds were defined as statutory funds created prior to the date of entry into force of the act, the incomes of which come from public revenues, and the expenditures of which are intended for the implementation of specified tasks. It should be noted that new activity-based funds were created after the entry into force of this act. The prohibition on the creation was ineffective, as activity-based funds are also created by statute. There may also be other reasons for the eradication of activity-based funds and the prohibitions on the creation of new activity-based funds apart from the broadly understood effectiveness of public finances.

Currently, the general issues concerning public funds in Polish financial law are regulated in the act on public finance of August 27, 2009 (act on public finance 2009). It should be noted that the Polish legislator refers to public funds as activity-based funds. The key to this interpretation of this legal institution is that its essence is the place where the funds for a specific purpose are collected and spent. Therefore, the use of the adjectival phrase “activity-based”, when referring to funds, becomes unnecessary. However, one should not dismiss the use of the term activity-based, if only for the reason that this term often occurs in the relevant literature and in practice. Regardless of differences of opinion on the terms “activity-based fund” and “state special fund”, one must agree that the main focus should be placed on the concept of the fund. Every fund has a material aspect (as a rule, the allocation of funds) and an organizational aspect, i.e. clearly set rules regulating the collection and spending of funds for a specific purpose. In general, these two elements together allow us to develop a certain definition of the public fund which was omitted in the act on public finance. The state special fund should be defined as a form of organization of public funds which is characterized by the intentional linking of statutory sources of income with the financing of the costs of a given state task (Niedzielska, 2022) [12].

The public nature and the subjective separateness of funds are expressed in article 1 of the act on public finance in which the legislator states that the act defines the scope and principles of the operation of activity-based funds. It should be noted that the detailed regulations and financial management of public funds are defined in the acts under which the funds are created (Kosikowski, 2011) [13]. It is impossible to find clarification in the act on public finance, if a new activity-based fund is created under a new act which defines the specific principles of its operation, ones which are contrary to the general provisions of the act on public finance.

The general principles of financial management of public funds have been regulated in article 29 of the act on public finance. A particularly important limitation on the scope of the creation of funds is that the legislator only allows for funds to be created at the state level and only on the basis of a separate act. The creation of public funds on the basis of other legislative acts is prohibited. In practice, this means that for a new public fund to be created, a certain political compromise must be reached, both in relation to the idea of the new fund and the rules of its operation.

Another restriction on the operation of public funds is defining its incomes which can only be sourced from public resources. On the other hand, the costs of funds are allocated to the implementation of specific state tasks. It should be noted here that the objectives of the legislator are for the financial management of public funds to be based on a plan of the incomes and costs of the implementation of specific state tasks. Referring to public resources as the incomes of the fund implies also the prohibition of financing funds from other sources.

Pursuant to the provisions of the act on public finance, state activity-based funds have no legal personality. The prohibition on funds having legal personality, which resulted from later changes in the regulations in the sphere of public finance, meant that certain funds lost their legal personality on the day the act on public finance came into force. Currently, in legal terms, according to the will of the legislator, a state activity-based fund is a separate bank account controlled by a minister appointed to the task, or by another body specified in this act.

State activity-based funds do not include funds of which the only source of income, excluding interest from the bank account and donations, is a subsidy from the state budget.

The basis of the financial management of state activity-based funds is the annual financial plan. The financial plans of these funds, in turn, are annexes to the budget bill. In practice, this means the period of the annual financial plan of a fund is equivalent to the state budget year. The act does not specify the minimum content of such a financial plan. In practice, financial plans of state activity-based funds are defined individually for each fund, in which the following are outlined: the initial and final state of financial resources, receivables and liabilities, own revenues, subsidies from the state budget and other public finance sector entities, task implementation costs (including wages and wage-derived premiums), and tasks financed from the fund's resources. The financial plans of budgetary management institutions and state-owned legal persons are defined individually for each body and include a description of the initial and final state of current assets and the total amount of financial resources, receivables and liabilities, own revenues, subsidies from the state budget, and the task implementation costs (Lipiec-Warzecha, 2011) [14].

Regional and local authorities may be granted loans from the resources of state activity-based funds if the act which creates a given fund provides for this. The costs of a state activity-based fund may be covered only by the available financial resources, including current revenues, including subsidies from the state budget and residual funds from previous periods.

Changes may be made to the financial plan of state activity-based funds, consisting in increasing projected revenues and costs accordingly; however, changes to the financial plan of state activity-based funds may not result in an increase of subsidies from the state budget.

If a state activity-based budget has payable liabilities, including credits and loans, then an increase in revenues is primarily allocated to their repayment.

Changes to the amounts of revenues and costs of state activity-based funds included in the financial plan are made by the minister or the body administering the fund, after obtaining the consent of the Minister of Finance and the opinion of the parliamentary budget committee.

Depending on the level at which public funds are managed, they may be classified as state or regional (regional and local authority) funds. Federal funds also exist in federal states. It should be added that under the current provisions of the act on public finance, only state public funds are permitted. Other funds, on the one hand, will not be regarded as public funds in terms of this act, but, on the other hand (which is not excluded), they will be subject to the provisions of this act.

Due to the sources of funding, funds may have mandatory payments – for example, taxes and public fees; the opposite will be voluntary payments, constituting voluntary contributions from private legal entities and natural persons. Due to the type of activity, state special purpose funds can be broadly divided into: related to social insurance; related to the social functions of the state; privatization; related to the security and defense of the country; related to science, culture and physical culture (Niedzinska, 2022) [12].

Polish literature on public finance applies a division based on rationality and complementarity. Taking into account budgetary resources, the most significant is the division of state special funds based on the criterion of their relationship with the state budget. Three types of funds can be distinguished based on this criterion: autonomous state funds, state funds associated with the budget, and in-budget state funds. In the case of autonomous state public funds, no financing from the state budget occurs. In principle, this means that the financial plan of such a fund should be balanced or have a surplus of collected revenues in relation to the expenses of the implementation of specific tasks. In turn, state funds are associated with the state budget by receiving subsidies, because, for various reasons, the financial resources allocated by the legislator do not cover all their expenses, which prevents them from implementing their designated tasks. In-budget funds are not state activity-based funds within the definition of the act on public finance. They do not exist as a separate fund, and they resemble an activity-based state fund in construction only – the amount of expenditures for a specific task is dependent on the amount of income from a specific source (Masniak, 2014; 390) [11].

Conclusions

The findings highlight the significance of these funds as targeted financial mechanisms for the allocation and management of public finances, aiming to address specific needs and promote socio-economic development. The study reveals that Poland recognizes the importance of state special funds in their legal frameworks. These funds are governed by specific legislation and regulations, outlining their objectives, structures, and operational mechanisms. They serve as dedicated financial instruments to support various sectors, such as social welfare, healthcare, education, infrastructure development, and environmental protection. The legal frameworks provide guidelines for revenue collection, allocation mechanisms, budgeting procedures, and reporting requirements, promoting sound financial management and governance.

To enhance the practices surrounding state special funds, several policy recommendations emerge from the research. Establishing clear and comprehensive legal frameworks with transparent governance mechanisms can foster effective management and utilization of financial resources. Strengthening coordination mechanisms among different funds and government entities is crucial to avoid duplication of efforts and optimize resource allocation. Regular evaluations and impact assessments are essential to ensure the efficiency and effectiveness of state special funds in achieving their objectives.

Further research and collaboration in this area are encouraged to continue advancing the understanding and practices surrounding state special funds, fostering an exchange of knowledge and experiences between different jurisdictions. By learning from each other's successes and challenges, policymakers and practitioners can work towards optimizing the functioning of state special funds and ensuring their positive impact on public finance management.

References

- 1 Kuran, Timur (July 21, 2001). The Provision of Public Goods Under Islamic Law: Origins, Contributions, and Limitations of the Waqf System USC CLEO Research Paper No. C01-13. Retrieved from SSRN: <https://ssrn.com/abstract=276378>.
- 2 Budiman, Mochammad Arif, (June 2014). The Significance of WAQF for Economic Development (2014). *Jurnal Equilibrium*, Vol. 2, No.1, pp 19-34. Retrieved from SSRN: <https://ssrn.com/abstract=2995473>.
- 3 Dirk-Jan, Kraan (2004). Off-budget and Tax Expenditures. *OECD Journal on Budgeting*, (124). OECD.
- 4 Sedova, M.L. (2007). State off-budget funds and budgetary legislation of the Russian Federation. *Finance and credit*. Retrieved from <http://cyberleninka.ru/article/n/gosudarstvennye-vnebyudzhetnye-fondy-i-byudzhetnoe-zakonodatelstvo-rossiyskoy-federatsii>
- 5 Lotko, E. (2021). The Role of Fiscal Expenditure Rules in Maintaining the Financial Stability of the State, Białystok Legal Studies, Vol. 26, No. 5 (Special issue). Retrieved from chrome-extension://efaidnbmnnnibpajpcglclefindmkaj/http://bsp.uwb.edu.pl/wp-content/uploads/2021/12/213_bsp-26-5.pdf.
- 6 Kiss, G. (2007). One-off and off-budget items: An alternative approach, (19) MNB Conference Volume. *Journal of Laws Vol. 1*, issue 1, 2022, item 1634.
- 7 Bitner, M. (2016). *Prawne instrumenty ograniczania deficytu budżetowego i długu publicznego jednostek samorządu terytorialnego*. Warszawa. Retrieved from Lex Omega.
- 8 Salachna, J.M. (2008). *Odpowiedzialność za nieprzestrzeganie procedury tworzenia i wykonywania budżetu jednostki samorządu terytorialnego*, Oficyna. Retrieved from Lex Omega 2023.
- 9 Kosikowski, C. (2008). *Finanse publiczne. Komentarz*, 4th ed., LexisNexis. Retrieved from Lex Omega 2023.
- 10 Szolno-Koguc, J. (2007). *Funkcjonowanie funduszy celowych w Polsce w świetle zasad racjonalnego gospodarowania środkami publicznymi*. (79) Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej.
- 11 Maśniak, D. (2014). "Fundusz publiczny jako uzupełniająca forma instytucjonalna finansów publicznych" [in:] A. Drwiłło (ed.), *Podstawy finansów i prawa finansowego*, (389) LexisNexis.
- 12 Niedzińska, I. (2022). Status ustrojowy funduszy celowych. Zarys systemu, published: PPP 2022/9/52-66, Lex Omega 2023.
- 13 Kosikowski, C. (2011). *Ustawa o finansach publicznych. Komentarz*, 2nd ed.: Lexis Nexis. Retrieved from Lex Omega 2023.
- 14 Lipiec-Warzecha, L. (2011). *Ustawa o finansach publicznych. Komentarz ABC 2011*. Retrieved from Lex Omega 2023.

Эдвардас Юхнявичюс

Польша қаржы заңнамасы аясында мемлекеттік қорлар

Мақалада Польшадағы мемлекеттік арнайы қорлардың қаржылық құқық шеңберіндегі құқықтық аспектілеріне баса назар аударып отырып, салыстырмалы талдау берілген. Мемлекеттік арнайы қорлар нақты қажеттіліктерді қанағаттандыру және әлеуметтік-экономикалық дамуға ықпал ету үшін мақсатты қаржылық тетіктер ретінде әрекет ете отырып, мемлекеттік ресурстарды бөлу мен басқаруда маңызды рөл атқарады. Дегенмен, әртүрлі юрисдикциялардағы осы қорлардың құқықтық базасы мен операциялық аспектілерін зерттейтін салыстырмалы зерттеулердің саны шектеулі. Бұл зерттеу Польшадағы мемлекеттік арнайы қорларға жан-жақты талдау жүргізу, олардың құқықтық базасы, мақсаттары, құрылымдары мен жұмыс істеу тетіктері туралы құнды ақпарат беру арқылы осы олқылықтың орнын толтыруға бағытталған. Зерттеудің мақсаты — екі елдегі мемлекеттік арнайы қорлардың қызметін реттейтін құқықтық негіздерді зерделеу, олардың мақсаттары мен жұмыс істеу механизмдерін талдауды, ұқсастықтар мен айырмашылықтарды анықтауды, олардың тиімділігі мен проблемаларын бағалауды қамтиды. Осы мақсаттарға қол жеткізе отырып, бұл зерттеу екі юрисдикциядағы қаржылық құқық практикасын жетілдіруге үлес қосуға және мемлекеттік арнайы қорлардың құқықтық базасы мен операциялық тиімділігін жақсарту үшін білім беруге арналған.

Кілт сөздер: мемлекеттік арнайы қор, қоғамдық қор, мемлекеттік қаржы, бюджеттен тыс қор.

Эдвардас Юхнявичюс

Государственные фонды в свете польского финансового законодательства

В статье представлен сравнительный анализ государственных специальных фондов в Польше с акцентом на их правовые аспекты в рамках финансового права. Государственные специальные фонды играют жизненно важную роль в распределении государственных ресурсов и управлении ими, выступая в качестве целевых финансовых механизмов для удовлетворения конкретных потребностей и содействия социально-экономическому развитию. Однако существует ограниченное количество сравнительных исследований, изучающих правовую базу и операционные аспекты этих фондов в различных юрисдикциях. Данное исследование направлено на восполнение этого пробела путем проведения всестороннего анализа государственных специальных фондов в Польше, предоставляя ценную информацию об их правовой базе, целях, структурах и механизмах функционирования. Исследовательские цели данного исследования включают изучение правовых рамок, регулирующих деятельность государственных специальных фондов в обеих странах, анализ их целей и механизмов функционирования, выявление сходств и различий, а также оценку их эффективности и проблем. Достигая этих целей, настоящее исследование призвано внести вклад в совершенствование практики финансового права в обеих юрисдикциях и предоставить знания для улучшения правовой базы и операционной эффективности государственных специальных фондов.

Ключевые слова: государственный специальный фонд, общественный фонд, государственные финансы, внебюджетный фонд.