

OFF-BUDGET SPENDING OR PRIVATISATION OF PUBLIC TASKS AND THEIR IMPLEMENTATION, AS FORMS OF SUPPORTING ENTREPRENEURS IN POLAND. REFLECTIONS ON THE FUNCTIONING OF THE POLISH DEVELOPMENT FUND

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Abstract. One of the reasons for the current deepening destruction of public finance is the legally inappropriate and economically irrational spending of public funds on the implementation of public tasks. In the Polish legal-financial system, two methods of spending public money have long been known. The first one is related to the redistribution of public money in connection with the execution of budgetary expenditures subject to the directive principle, i.e. those that are primarily executed by public finance sector units within the framework of the budget economy. An alternative way of allocating public money for public tasks is off-budget spending (debudgetisation), where tasks are implemented by public finance entities that conduct non-budgetary economic activities or by entities related to this sector. A new phenomenon, which is also related to the spending of public funds on public tasks, is the privatisation of public tasks and the privatisation of their implementation by private entities, i.e. ones that operate completely outside the public finance sector. One of the institutions that, over the last five years, seems to have brought together all these processes and influenced the condition of public finance is the Polish Development Fund, which has been operating since 2019 as a joint-stock company. It appears that this entity is currently the most effective legal-financial instrument through which the state provides support to Polish entrepreneurs. The main purpose of this article is to answer two related questions. Firstly, does the activity of the fund in question constitute an example of off-budget spending and is it a legally admissible form of public funding for private-sector economic activity? Or, secondly, has the Polish Development Fund been established to privatise public tasks or privatise their implementation?

Keywords: Polish Development Fund; off-budget spending (debudgetisation); privatisation of public tasks; entrepreneur; state budget.

1. INTRODUCTORY REMARKS

The public finance crisis has been deepening in Poland since 2020. Reflected in the simultaneous increase in three indicators: the public finance

sector deficit,¹ state budget deficit² and, above all, the state public debt of nearly PLN 2 billion,³ it has raised numerous questions about the causes of this state of affairs,⁴ as well as the prospects of ending or at least mitigating it. It seems that one of the reasons for the deepening destruction of public finances is the legally inappropriate and economically irrational redistribution of public funds for the implementation of public tasks.⁵ Generally speaking, there exist two ways of spending public funds. The first one is related to spending public money on the implementation of budgetary activities subject to the directive principle, i.e. those that are primarily executed by public finance sector units within the framework of the budget economy. An alternative is off-budget public spending, i.e. where tasks are implemented by public sector finance entities, which, however are conducting purely non-budgetary economic activities.⁶ A third method related to the spending of public funds, which is new to public finance, is the privatisation of public tasks and the privatisation of their implementation by private entities, i.e. those that operate completely outside the public finance sector.

¹ The deficit of the public finance sector, mainly general government and local government institutions (EDP), which is one of the elements of the Maastricht fiscal criterion, amounted to PLN 2,185.8 billion at the end of the second quarter of 2025, which meant an increase of PLN 62.2 billion (+2.9%) in the second quarter of 2025, and an increase of PLN 173.4 billion (+8.6%) compared to the end of 2024, see <https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych> [accessed: 07.10.2025].

² Estimated data on the execution of the state budget in 2025. In the period from January to August 2025, the estimated execution of the state budget was: revenues of PLN 362 778.8 million; expenditures of PLN 534 797.9 million; deficit of PLN 172 019.1 million, which means that the deficit will reach approximately 4.6% of GDP at the end of the budget year, see <https://www.gov.pl/web/finanse/szacunkowe-wykonanie-budzetu-panstwa-w-2024-r> [accessed: 07.10.2025]. The planned deficit for 2026 is as much as 6.4% of GDP.

³ The State Public Debt (SPD), including the debt of the public finance sector after consolidation at the end of the second quarter of 2025, was PLN 1 769.6 billion, which meant an increase of PLN 56.3 billion (+3.3%) in the second quarter of 2025, and an increase of PLN 158.0 billion (+9.8%) compared to the end of 2024, see <https://www.gov.pl/web/finanse/zadluzenie-sektora-finansow-publicznych> [accessed: 07.10.2025].

⁴ In September 2025, two rating agencies, first Fitch and then Moody's, lowered Poland's rating outlook for 2026 from stable to negative. Such appraisals have a very strong influence on the assessment of Poland's solvency in the international arena, see. <https://www.bankier.pl/wiadomosc/Polska-na-krawedzi-kryzysu-fiskalnego-Agencje-groza-palcem-rzadowi-9012835.html> [accessed: 07.10.2025].

⁵ The issue of the increasingly shrinking revenue, primarily of the state budget, but also of the budgets of local government units, and the related gap in all state taxes, constitutes a separate problem that goes beyond the scope of this article.

⁶ The best example of off-budget spending is the method of financing defence expenditures – see the analysis of data from the Ministry of National Defence on armaments in 2022-2025, <https://dziennikzbroyny.pl/aktualnosci/news,1,12101,aktualnosci-z-polski,wydatki-na-obronnosc-polski-w-latach-2022-2025-wedlug-mon> [accessed: 09.10.2025].

The Polish Development Fund (PDF) has been operating outside the public finance sector as a joint-stock company since 2019. It is currently one of the most effective legal and financial instruments through which the state provides financial support to small, medium and large entrepreneurs.

The main purpose of this article is to answer two related questions. Firstly, does the activity of the PDF constitute an example of off-budget spending and is it a legally admissible form of public funding for private-sector economic activity? Or has this entity been established to privatise public tasks or their implementation? The study was conducted using theoretical-legal and dogmatic-legal methods.

2. OFF-BUDGET SPENDING AND PRIVATISATION OF PUBLIC FUNDS AND THEIR EXPENDITURE

2.1. Off-budget spending

Off-budget spending (or debudgetisation) in legal-financial literature is understood as segregating public receipts and expenditures from the budget of a public law units in such a way that, while remaining outside the budget, they still constitute a component of public finance [Stankiewicz 2007, 13, 17-19, 26; Szolno-Koguc 2022, 559-52; Kuca 2022, s. 320]. A distinction can be made between off-budget spending of state finances and, more broadly, off-budget spending of public finances. Both phenomena essentially concern the same process of earmarking public funds. i.e. receipts and expenditures, outside the state or local government budget while maintaining their public character as they are allocated to public purposes or tasks [Łapińska 2024, 212]. In the literature, one can also find views according to which the concept of off-budget spending includes the possibility of transferring the responsibility for the execution of a given budget task to a private entity [ibid., 215].

Off-budget activities are *stricto* related to the principle of completeness, i.e. a method of financing public finance sector units referred to as gross budgeting, from which it constitutes an exception.⁷ This phenomenon is also an exception to two other principles of managing public funds. One is the principle of openness and transparency [Stankiewicz 2007, 38],⁸

⁷ Article 11(1) of the Act of 27 August 2009 on Public Finances (Journal of Laws of 2024, item 1530 as amended) [hereinafter: Public Finances Act]. The cited provisions regulate the principle of completeness in its classical form (the gross method), which requires that the budget include all state revenues and expenditures. In particular, it requires that the budget include the full amounts of revenues earned by specific state bodies and the full amounts of expenditure incurred by these bodies. For more details, see Sochacka-Krysiak 1994, 47.

⁸ See Articles 33-40 of Public Finances Act. In the literature on the subject, a thesis has been formulated that the better the conditions for implementing the principle of transparency of public finance, the lower the level of off-budget activity, and conversely, the greater the transparency, the lower the off-budget activity.

and the other is the principle of material unity, also known as the principle of non-funding, which prohibits financing of public expenses from specifically identified sources of income (Article 42(1) of Public Finances Act). Off-budget spending has developed vigorously in Poland over the last two decades. On the one hand, it allows for faster implementation of specific economic or political goals, and on the other hand, it enables more efficient and flexible satisfaction of social or, more broadly, public needs. It should be emphasised, however, that off-budget spending has the undoubtedly negative effect of taking substantial amounts of public funds out of the control not only of the Minister of Finance, but also of the parliament.⁹ Thus, although this institution can play a significant positive role in stabilising public finance, its abuse may lead to the weakening of the importance of the state budget as the central financial plan and dangerously limit the exercise of control not only over the collection but also over the spending of public funds by entities which conduct extra-budgetary economic activity within the state finance sector [Kuca 2022, 322-23]¹⁰ or whose activity is completely external to this sector, i.e. it involves transferring public funds, in the form of subsidies or otherwise, to entities which implement public tasks but operate completely outside the public finance sector [ibid., 328-29].¹¹

2.2. Privatisation of public tasks

The second focus of this paper is the privatisation of public tasks, a phenomenon that is rarely discussed in legal-financial literature. Because this term, similarly to the concept of off-budget activity, is not defined by law, to determine its meaning, one must refer to the literature of the subject, in this case in the area of administrative law. According to one of the oldest definitions, off-budget activity should be understood as all methods of refraining from performing tasks by public administration entities which operate under public law [Biernat 1994, 5].¹² For years, the literature has been distinguishing between the privatisation of tasks *sensu stricto* and *sensu largo*

⁹ This view of the phenomenon under discussion has remained unchanged in legal-financial literature for many decades, cf. Weralski 1982, 27ff; Guziejewska 2016, 127.

¹⁰ Current examples of public finance sector units that operate entirely outside the budget include state special purpose funds, executive agencies, and budget economy institutions. In addition to revenue from their own activities, these entities also obtain revenues from public funds in the form of contributions (Social Insurance Fund), subsidies (State Fund for the Rehabilitation of Disabled Persons) or grants (National Science Centre or the Sports Centre in Spała).

¹¹ These entities currently include the State Forests and the Polish Development Fund. For many years, the Bank Guarantee Fund (BFG), which has been a unit of the public finance sector since 2021, also operated outside the public finance sector.

¹² For an overview of other theoretical-legal definitions of this phenomenon, see Cwalińska 2019, 28-29.

. In the former sense, privatisation consists in the state resigning from both the execution of specific tasks and the responsibility for them.¹³ In the latter sense, the state or another public law entity remains responsible for the implementation of these tasks, but entrusts their execution to private entities and merely takes on the role of an organiser [Biernat 1994, 25-30]. With regard to the latter, broader approach, the contemporary literature rightly raises the objection that privatisation of public tasks understood in this way may foster a false belief in society that the state is executing a given task, while in fact the task is mainly, or at least to a significant extent, executed by a private entity. This, in turn, may violate legal certainty and also undermine the rights and freedoms of citizens, for example in terms of access to legal remedies. This is due to the fact that a private law entity performing a public task is not a state body and therefore does not have the right to issue decisions that are subject to judicial review under administrative court procedure [Serafin 2017, 139-40].¹⁴

It seems that a term close to, but not equivalent to, the privatisation of public tasks is the privatisation of public purposes. This phenomenon, however, due to the different scopes of meaning of the concepts of public purpose and public task, falls outside the framework of the present study [Tomaszewski 2023, 7-19].

2.3. Privatisation of implementation of public tasks

Slightly different outcomes are produced by partial or complete privatisation of the implementation of public tasks.¹⁵ In this case, public law entities entrust private entities with the performance of specific public tasks with the use of instruments governed by private law, but these tasks do not cease to be treated as public and remain within the sphere of interest of the state or local government units.¹⁶ Regardless of whether privatisation concerns all or only part of the execution of public tasks, liability for their implementation is, one can say, double. The first type of liability, which can be described as general and systemic, e.g. constitutional or statutory, is borne by public law

¹³ One of the first examples of privatisation of public tasks *sensu stricto* that took place after the political changes in Poland in 1989 was the privatisation of notary public services and the administration (and use) of employee allotment gardens [Biernat 1994, 7-8]. Another example of such a gradual privatisation of a public task that has already been completed is the privatisation of municipal services [Habuda 2002, 392].

¹⁴ See a similar position presented by: Hetko and Możdżeń-Marcinkowski 2023, 96-117.

¹⁵ The distinction between these two concepts has also been emphasised by Cwalińska 2019, 29. Similar positions have been expressed by Izdebski and Kulesza 2004, 377.

¹⁶ The best instances of this situation are education, higher education, and health care. Tasks in these areas are performed both by public entities belonging to the public finance sector with budgetary ties to the state or local government units, and by private entities.

entities, in particular the state. This is because a public task may result from the spheres of *imperium* or *dominium*¹⁷ that belong exclusively to the state. The second type of liability rests with private entities implementing specific public tasks. In this case, the type and scope of liability depends on the form of executing the tasks, which is typical for (civil and commercial) private law [Biernat 1994, 6-7, 10]. The two phenomena may intertwine in practice, for example, if the state retains the possibility of controlling the activities of private entities performing public tasks [ibid., 6-7].

The consequence of public law entities maintaining this general liability for public tasks is the obligation or possibility of providing private entities, regardless of their organisational-legal form, with assistance in the form of transfers of public funds from the state or local government budgets, usually in the form of earmarked subsidies [ibid., 9].

Concluding the discussion on the privatisation of public tasks, it should be recalled that it is the exclusive domain of the legislator to establish the catalogue of such tasks. Therefore, firstly, only the legislator can decide on the nature of a given task and whether its execution can be privatised at all. Secondly, such a procedure must comply with the Constitution of the Republic of Poland, its principles, and the social and economic values it upholds [Cwalińska 2019, 29].

3. THE LEGAL FRAMEWORK GOVERNING THE OPERATION OF THE POLISH DEVELOPMENT FUND

The PDF was established as a State Treasury joint-stock company with a registered office in Warsaw in 2019 under the provisions of the Act on the System of Development Institutions.¹⁸ The very first article of this act indicates very generally that the purpose of the Fund is to finance entrepreneurs (Article 1(3) a.s.d.i.). In accordance with the legislator's intention, expressed in the next article of the discussed act, the PDF, together with other entities of different legal and political provenance, constitutes a system

¹⁷ The imperial functions of the state concern the regulation of financial and economic relations. Such regulation is carried out through legal provisions enacted by public authorities, but enforced by both public authorities and public administration authorities, often acting on behalf of the State Treasury. A manifestation of the imperial function of the state is the granting of concessions. The second function of the state, *dominium*, referred to in Article 216(2) and, above all, Article 218 of the Constitution of the Republic of Poland, is associated with the institution of the State Treasury, i.e. public economic activity carried out by the state related to the ownership of state property. The functions of *dominium* encompass, among others, all kinds of shares and stocks of the State Treasury in commercial law companies [Bosek 2016, 1505].

¹⁸ See: Article 1(2) of the Act of 4 July 2019 on the system of development institutions (Journal of Laws of 2024, item 923 as amended) [hereinafter: a.s.d.i.].

of development institutions. This system includes the Polish Development Bank, the Polish Agency for Enterprise Development, the Export Credit Insurance Corporation Joint-Stock Company, the Polish Investment and Trade Agency Joint-Stock Company, and the Industrial Development Agency Joint-Stock Company (Article 2(1) a.s.d.i.). The above-mentioned entities are referred to in the Act as development institutions and, acting within the scope of their tasks as defined by the relevant legal provisions or statutes, they are to coordinate their activities in providing support or services to entrepreneurs (Article 2(3) a.s.d.i.).¹⁹

Even a cursory analysis of the entities that are part of the system of development institutions indicates that all of them operated within the legal system, whereas the PDF constitutes a complete *novum*. The act in question is therefore a constitutive act for the PDF. For these reasons, a somewhat surprising solution is the provision according to which all the development institutions are to use the name “Polish Development Fund Group” (PDF Group), i.e. a name associated with the new entity.²⁰ It should be added that both the establishment of the PDF and the PDF Group were linked to the implementation of the Commission Regulation (EU) declaring certain categories of aid compatible with the internal market in application of art. 107 and 108 of the Treaty on the Functioning of the European Union (TFUE).²¹ It follows from the explanatory memorandum to a.s.d.i. that, according to the drafters’ intention, the PDF Group is to be a platform, modelled on solutions functioning in other EU member states, for cooperation between the main institutions which operate on the basis of market instruments and engage in non-sovereign activities, but under the supervision of the state.²² However, it is difficult not to get the impression that the real intention of the legislator was, firstly, to create a new entity, namely the Polish Development Fund, and secondly, to create a legal space for its operation, i.e. the PDF Group. This point seems to be confirmed by the fact that the entire Chapter 3 of the Act on the System of Development Institutions regulates the principles of operation of the PDF.

¹⁹ The particular tasks to be fulfilled by the system of development institutions or the PDF Group are described in justification of the draft act on public procurement from 2019. Print No. 992, www.isap.gov.pl [accessed: 07.10.2025].

²⁰ Chapter 2 of this Act is devoted entirely to the organisational structure and strategy of the PDF Group.

²¹ Annex 1 to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 TFEU, OJ L 187, 26.06.2014, p. 1, as amended. Pursuant to the provisions of the aforementioned regulation, and more specifically Annex 1, EU Member States are obliged to provide financing to entrepreneurs, in particular micro-entrepreneurs and small and medium-sized enterprises, who meet the conditions set out in Annex 1 to the Commission Regulation. See also justification for the project a.s.d.i. from 2019. Print No. 992, p. 3.

²² See: justification for the project a.s.d.i. from 2019. Print No. 992, p. 2-3, 7.

In light of the subject matter of this article, detailed consideration will be given to the provisions regulating one of the Fund's tasks: the financing of entrepreneurs (Article 11(2) point 4 a.s.d.i.). The explanatory memorandum to a.s.d.i. states that, in accordance with the assumptions of the proponent of the draft act, the purpose of establishing the PDF as a State Treasury joint-stock company was to "create a pro-development institution with high investment potential and professional ownership supervision. The Polish Development Fund plays an important role, among others, in investment policy [...], and its operation will be focused on commercial activities, not on performing *strictae* public tasks."²³ It should be added though that in another place of this memorandum, the author of the draft legislation clearly stated and justified why some of the PDF's activities may bear the hallmarks of implementing public tasks.²⁴

The PDF therefore operates as a commercial law company, but what should be clearly emphasised is that it uses public funds to finance some of its tasks, including those related to supporting entrepreneurs, which is discussed in more detail later in the present article. Given its statutory activity profile, the PDF keeps separate records for tasks financed from public funds and for tasks carried out as part of its business activity, and is obliged to correctly allocate revenues and costs based on objectively justified methods (Article 11(4) a.s.d.i.). To sum up, the PDF must comply with the provisions of the Accounting Act and, due to its organisational and legal form, it must act in accordance with the Commercial Companies Code (Article 11(4-5) a.s.d.i.).

4. SOURCES OF FINANCING FOR THE POLISH DEVELOPMENT FUND

Pursuant to the detailed provisions of a.s.d.i., the PDF conducts business activities in its own name and on its own account, in accordance with the principles of good commercial practice, striving to achieve a market rate of return on invested capital in the long term (Article 11(1) a.s.d.i.). The provisions cited above make it clear that the PDF, acting as a commercial law company, conducts public economic activities and derives revenue from them. However, its own activity is not the sole source of financing for the Fund. A much more important and reliable way of financing its activities is using money transferred from the state budget. One method of obtaining this money is through an earmarked subsidy within the meaning of the Act on Public-Private Partnership, which may be granted to the Fund by the minister responsible for regional development, upon a justified request of the President of the PDF, for the execution of tasks related to the preparation or implementation of projects under a public-private partnership within the

²³ See: justification for the project a.s.d.i. from 2019. Print No. 992, p. 4.

²⁴ See: *ibid.*, p. 22.

meaning of the act of 19 December 2008 r. on Public-Private Partnership²⁵ (Article 17(1 and 2) a.s.d.i.). The revenues of the Fund may also include other earmarked subsidies from the state budget and funds from the European Union budget, as well as other non-repayable funds from foreign sources, and interest on them, unless separate provisions or agreements regarding the transfer or use of these funds provide otherwise. These types of subsidies may be used to finance or subsidise the administrative costs of financing entrepreneurs from public funds (Article 18(1 and 2) a.s.d.i.). An important limitation is that the subsidies in question cannot be higher than the necessary actual direct and indirect costs incurred by the PDF, nor can they cover the activities conducted by the Fund (Article 18(3)(1-2) a.s.d.i.). Another source of revenue for the PDF are Treasury securities transferred to the fund by the Minister of Finance. The Minister may perform such a transfer only in response to a justified request from the President of the PDF and only if this is necessary to carry out the fund's tasks and the money is intended to increase the share capital of this institution (see detailed solutions Article 19 a.s.d.i.). At this point, it should be explained that, pursuant to art. 95 (1) of the Public Finance Act, a Treasury security is a security in which the State Treasury declares that it is a debtor of the entity that owns such a security and undertakes to provide it with a specific monetary or non-monetary benefit [Woroniecki 2024, 36-37].

An extremely important source of financial support for the PDF are sureties or guarantees for the repayment of liabilities arising from loans taken out or bonds issued by the PDF. They are provided by the Council of Ministers on behalf of the State Treasury, at the request of the Minister of Finance. Funds from the issue of bonds or loans referred to above may only be used to implement investment projects that have been undertaken in order to execute PDF's tasks. (Article 20(1 and 2) a.s.d.i.).

In view of the substantial financial support the PDF receives to conduct its activities, the legislator has included in the final provisions of a.s.d.i., legal regulations that constitute a calculation of state budget costs. According to the 2019 provisions, they were to be as follows. In the years 2019–2028, the maximum limit of state budget expenditure resulting from the financial impact of the Act was to be PLN 300,000,000, including: 1) year 2019 – PLN 0; 2) year 2020 – PLN 0; 3) year 2021 – PLN 0; 4) year 2022 – PLN 0; 5) year 2023 – PLN 0; 6) year 2024 – PLN 0; 7) year 2025 – PLN 0; 8) year 2026 – PLN 50 000 000; 9) year 2027 – PLN 100 000 000; 10) year 2028 – PLN 150 000 000 (Article 42(1) a.s.d.i.).

The Act also adds a provision that if the maximum expenditure limit specified above for a given budget year is exceeded or is at risk of being

²⁵ Journal of Laws of 2019, item 1445.

exceeded, a corrective mechanism will be applied, which consists in limiting the amount of State Treasury guarantees and sureties granted to the PDF and issuing bonds in order to increase the fund's share capital. The body responsible for monitoring the use of the expenditure limit is the Minister of Finance (Article 42(2 and 3) a.s.d.i.).

Because the catalogue of the PDF's tasks grew as a result of the outbreak of the COVID-19 pandemic and then Russia's aggression against Ukraine, the planned budget spending limits were adjusted by law in 2023. The current version of the provisions is as follows. In the years 2020-2029, the maximum limit of state budget expenditure resulting from the financial consequences of the Act is PLN 67 482 549 000, including: 1) year 2020 – PLN 6 700 000 000; 2) year 2021 – PLN 3 000 000 000; 3) year 2022 – PLN 1 000 000 000; 4) year 2023 – PLN 500 000 000; 5) year 2024 – PLN 0; 6) year 2025 – PLN 34 662 332 000; 7) year 2026 – PLN 388 313 000; 8) year 2027 – PLN 19 075 154 000; 9) year 2028 – PLN 2 091 750 000; 10) year 2029 – PLN 6 700 000 000.²⁶

A comparison of the two versions shows, firstly, that the period of subsidisation of the PDF from the state budget was extended, and secondly, that the financial burden on the state budget has become significantly heavier.

5. FORMS OF FINANCIAL SUPPORT FOR ENTREPRENEURS PROVIDED BY THE POLISH DEVELOPMENT FUND

One of the most important tasks entrusted to the PDF is the provision of multi-faceted financial support for small and medium-sized enterprises [Woroniecki 2024, 32].²⁷ Providing financial support to entrepreneurs may constitute a form of public aid, as the Council of Ministers has received an optional delegation to issue a regulation that will specify the detailed conditions for granting such aid. (Article 12(3) a.s.d.i.).²⁸ However, to date, no such regulation has been issued. According to the Act, the PDF may provide financial support by (Article 13(1 and 3) a.s.d.i.): 1) taking up or acquiring shares, stocks, subscription warrants, bonds, receivables and joining partnerships; 2) granting promises, loans, guarantees and sureties; 3) creating and co-creating capital funds and joining them.²⁹

²⁶ See Article 42(1) as amended by Article 1 of the Act of 6 March 2025, Journal of Laws of 2025, item 352, amending the Act on the Revenue and Customs Enforcement as of 21 March 2025.

²⁷ See also justification for the project a.s.d.i. from 2019. Print No. 992, p.17.

²⁸ See: justification for the project a.s.d.i. from 2019. Print No. 992, p. 18.

²⁹ This provision applies to funds within the meaning of Article 101(1)(3) of the Act of 27 May 2004 on investment funds and management of alternative investment funds, Journal of Laws of 2018, item 1355 as amended in connection with Article 13(2) and (3) a.s.d.i. in the 2019

Generally speaking, capital funds are the main tool through which the PDF provides financial support to entrepreneurs, among others, by taking up or acquiring shares or stocks of capital funds.³⁰

PDF selects a capital fund, an entity managing a capital fund or persons managing a capital fund or persons managing such an entity, through an open tender (Article 15(1) a.s.d.i.). When conducting a tender process, the Fund is obliged to comply with the principles of transparency, competitiveness, proportionality and non-discriminatory treatment of bidders, and also to prevent conflicts of interest (Article 15(4) a.s.d.i.).

Moreover, the provisions of the Act oblige the PDF to provide financing on the basis of an agreement concluded with the selected capital fund or the selected entity or persons managing such a capital fund or such an entity. The contract should specify in particular: 1) the purpose, amount and form of financing provided; 2) the consequences of non-performance or improper performance of the contract; 3) detailed conditions and procedure for the repayment and settlement of the financial support (Article 16 a.s.d.i.). The agreement concluded between the PDF and the beneficiary of financial support from public funds is of course a civil law agreement, which means that any potential disputes between the PDF and the entrepreneurs who are beneficiaries of the funds transferred on the basis of such agreements should be resolved by civil courts.

One of the most spectacular forms of support for entrepreneurs that the PDF provided during the Covid-19 epidemic were the financial subsidies companies received upon their request as part of the implementation of the government programs “Financial Shield 2.0 of the Polish Fund for the Development of Small and Medium-Sized Enterprises”³¹ and a twin program for large companies. Subsidies were provided to those entrepreneurs who met the requirements specified in Chapter 3.1 of the Financial Shield 2.0 regulations, where it was indicated that the program covered entrepreneurs within the meaning of Act of 6 March 2018 – Entrepreneurs’ Law.³² The direct basis for the transfer of these funds were civil contracts concluded by the PDF with entrepreneurs. The main purpose of this solution was to ensure liquidity and financial stability during a period of serious economic disruption caused by the effects of the COVID-19 pandemic. The funding was partially non-repayable.

version.

³⁰ See detailed solutions in Article 14 and 15 a.s.d.i. For more information on the activities of investment funds, see Woroniecki 2024, 34 and the literature cited therein.

³¹ See: Article 21 a u.s.i.r. and the Regulations for applying for participation in the government program, “Financial Shield 2.0 of the Polish Fund for the Development of Small and Medium-Sized Enterprises” <https://pfr.pl/document/50>, hereinafter referred to as: Financial Shield 2.0, [accessed: 09.10.2025].

³² Journal of Laws of 2019, item 1292 as amended.

The funds obtained under the Financial Shield 2.0 could only be used to cover current operating costs, including employee remuneration costs. The PDF had the right to verify the data provided by entrepreneurs and refuse to grant subsidies if they failed to meet the regulatory requirements.³³

It follows from the explanatory memorandum to s.d.i. that some of the PDF's tasks may have a public character and therefore a legal basis must be provided for the fund to be granted earmarked subsidies under Act of Public Finance which requires a specific legal basis for granting subsidies from the state budget (budgetary authority to grant subsidies).³⁴ In accordance with the provisions of a.s.d.i., the need to finance such tasks means that the revenues of the PDF may include the above-mentioned earmarked subsidies from the state budget and funds from the European Union budget as well as other funds from foreign sources, which are not subject to repayment.³⁵ Therefore, if the PDF provides financial support to entrepreneurs in the form of subsidies, then matters that are not regulated by the provisions of a.s.d.i., namely, the rules for settlement and repayment of improperly used or unused subsidies (Article 18(1-4) a.s.d.i.), shall be governed by the provisions of art. 150-152 of the Public Finance Act (Article 18(6) a.s.d.i.). Since an earmarked subsidy is a transfer of public funds that is repayable, any disputes between the fund and the subsidy beneficiaries caused by misconduct, such as improper spending, are, of course, subject to the jurisdiction of administrative courts.

6. THE LEGAL-FINANCIAL STATUS OF THE POLISH DEVELOPMENT FUND IN THE LIGHT OF THE PROVISIONS OF THE PUBLIC FINANCE ACT

As an entity that operates as a joint-stock company of the State Treasury, the PDF is obviously not part of the public finance sector (Article 9(14) of the Public Finance Act). The term "fund" used in the name of this entity is just as misleading as in the case of the Bank Guarantee Fund or the COVID-19 Counteracting Fund [Szołno-Koguc 2023, 548-49; Kucia-Guściora and Münnich 2024, 369-70]. While the former has never been a state special purpose fund, it has been a public finance sector unit since 2021,

³³ See para. 3 of the Financial Shield and the justification of the judgment of the District Court in Warsaw of 12 March 2024, ref. no. I C 679/23, Lex no. 3724138.

³⁴ See: Article 126 of the Public Finance Act. It follows from the above-mentioned provisions that subsidies are funds from the state budget, local government budgets and state earmarked funds that are subject to special settlement rules and are allocated on the basis of this Act, separate acts or international agreements, to the financing or co-financing of the implementation of public tasks.

³⁵ See: Article 18(1) a.s.d.i. and justification of the draft act on public procurement from 2019. Print No. 992, p. 22.

while the latter used to be a state special purpose fund, but for a very short time.³⁶ In the case of the PDF, the legislator never intended it to be a special-purpose fund, because it has operated outside the public finance sector from the very beginning. This does not mean, however, that it has no significance for the condition of public finances, i.e. the process of collecting and spending public funds, and thus for the level of the public finance deficit, the state budget deficit, and finally the level of the state public debt. On the contrary, since the PDF can obtain various types of money transfers in the form of earmarked subsidies from various parts of the budget, as well as guarantees and sureties granted by the Council of Ministers, it is subject to the Public Finance Act as an entity that does not belong to the public final sector but uses public funds or has these funds at its disposal (Article 4(1)(2) of Act of Public Finance). Analyses illustrating the indirect impact of the PDF on underestimating the budget deficit have already been published in the literature on the subject [Kuca 2022, 329]. In recent years, in order to avoid exceeding the prudential threshold, some liabilities have been transferred outside the public sector, including via the PDF. Unfortunately, as the cited literature rightly points out, servicing liabilities incurred by the PDB and the Polish Development Bank, even though their repayment is guaranteed by the State Treasury, costs more than servicing debt incurred directly by the State Treasury. These expenses affect the amount of the State Treasury debt, but, as they are excluded from the Budget Act, they are beyond the control of the Sejm [ibid.].

The lasting connection between the PDF and the state budget is evidenced by the 2025 decision of the Minister of State Assets to increase the Fund's share capital to PLN 12 122 029 143. Earlier, on 30 December 2024, the Ministry of Finance had transferred to the fund, treasury bonds with a total nominal value of PLN 1 billion.³⁷

7. QUID EST MODUS OPERATIONIS PDF?

So what process should the functioning of the PDF be linked to? Is it an instrument for off-budget use of public funds? Or is it rather an entity created for the purpose of privatising public tasks and their implementation. Or, perhaps, are we dealing with a completely new phenomenon that escapes these categorisations?

It seems that in the case of the PDF, we are dealing with classic off-budget financing of public tasks (external debudgetisation). Firstly, the PDF

³⁶ Article 75 of the Act of 16 April 2020 on specific support instruments in connection with the spread of the SARS-CoV-2 virus, Journal of Laws of 2020, item 695 as amended.

³⁷ See <https://pfr.pl/arttykul/pfr-z-wyzszym-kapitalem-zakladowym-skarb-panstwa-finalizujedokapitalizowanie-spolki> [accessed: 08.10.2025].

undoubtedly executes public tasks, for example those related to the provision of aid as part of the implementation of the Financial Shield. In connection with this task, but also with other tasks, it receives public revenues in the form of direct transfers from the state budget, transferred to it in the form of earmarked subsidies, funds from the issue of securities, and guarantees and sureties granted by the Council of Ministers. Taking into account the fact that the PDF can also generate its own revenue from its business activities, it is undoubtedly an entity that operates on the border between the public finance sector and the private sector, and is very well secured financially with money coming from the state budget.

In the case law, however, there is a relatively uniform line of jurisprudence according to which the PDF is an entity whose activities fall within the scope of meaning of the concept of privatisation of public tasks as an entity that has no administrative powers and executes public tasks by managing public funds.³⁸ With regard to this standpoint presented by the judiciary, however, one has to agree with the view expressed in a commentary to a resolution of the Supreme Administrative Court of 2022, stating that in the case of the PDF, if at all, one can speak not so much of privatisation of public tasks *per se*, but rather of privatisation of their implementation [Hetko and Możdżeń-Marcinkowski 2023, 105-106].³⁹ As already explained above, in the case of privatisation of public tasks, public law entities completely relinquish the liability for them, and in the case of privatisation of the implementation of public tasks, this liability continues to exist and is borne by both public entities – as evidenced by the provision of a permanent and secure system of financing from public funds to the Polish Development Fund – and private entities performing public tasks. However, since the latter entities use forms of activity governed by private law, they are not subject to the jurisdiction of administrative courts, but civil courts.⁴⁰

³⁸ See the resolution of the Supreme Administrative Court of 29 June 2022, ref. no. I GSK 1134/22, the view that PFD is a tool for privatization of public tasks has been criticized in the literature in the gloss by Hetko and Możdżeń-Marcinkowski 2023, 105-106. The same position was taken by the Supreme Administrative Court in subsequent decisions, see, among others, decisions of: 18 May 2025, ref. no. I GSK 587/25; Lex no. 3882800; 16 July 2025, ref. no. I GSK 880/25, Lex no. 3906309 and in the judgment of 15 November 2024, ref. no. I GSK 595/23, Lex no. 3823460.

³⁹ The authors of the quoted commentary have explicitly pointed out that “Since the PDF makes decisions of an authoritative nature and manages public funds, it is functionally an administration authority in this respect and its activities must be subject to the control of administration authorities, and the information related to these activities is public.” While sharing the authors’ deep irritation with the normative ambiguities related to the functioning of the PDF, the present author believes that their assessment defies logical reasoning since the same entity cannot be both a commercial company and an administrative body in any dimension, functional or otherwise.

⁴⁰ At the same time, it should be remembered that for non-repayable financial subsidies issued by the PDF upon entrepreneurs’ applications, the applicable legal framework failed

CONCLUSIONS

A rational legislator has discretion in shaping the legal system, including the authority to create new legal structures. The PDF is undoubtedly such a new solution. It was established in a period of relative stabilisation of public finances, as a private law entity whose main task was to provide financial support primarily to Polish small and medium-sized entrepreneurs with a relatively small involvement of public funds. Unfortunately, the first period of the fund's operation coincided with a very difficult economic and social situation in Poland caused by the outbreak of the COVID-19 epidemic, which began in March 2020, and then by the war in Ukraine which started in February 2022. Relatively quickly, the PDF has become one of the main legal-financial entities operating at the intersection of public finance law and private law. It seems that despite numerous critical opinions, which among others regarded the negative impact of the fund's off-budget activity on the state budget,⁴¹ the PDF has been, however, the first successful attempt to privatise the implementation of public tasks while actively using public funds. The extremely difficult situation of public finance and the need to provide financial support to Polish entrepreneurs means that the government, which pursues a financial policy that is part of state policy, is caught in the proverbial trap between Scylla and Charybdis. The liquidation of the PDF may reduce the extra-budgetary deficit and perhaps reduce the public debt in the long run, but the lack of support for entrepreneurs from public funds may cause serious economic and social problems for Poland.

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to establish an adequate standardised procedure for appealing decisions in which the subsidy was refused, see para. 4(7) of the Regulations of the Financial Shield program of the Polish Development Fund for Large Companies. See the judgment of the District Court in Warsaw of 12 March 2024, ref. no. I C 679/23, Lex no. 3724138.

⁴¹ See: https://www.ifp.org.pl/kosztowny_niekonstytucyjny_rownolegly_budzet/ [accessed: 08.10.2025].

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