

# THE FINANCIAL AND LEGAL NATURE OF QUASI-GRANTS TRANSFERRED TO POLISH LOCAL GOVERNMENT UNITS FROM STATE GOVERNMENT EARMARKED FUNDS\*

Dr. habil. Anna Ostrowska, University Professor

University of Łomża, Poland  
e-mail: [aostrowska@al.edu.pl](mailto:aostrowska@al.edu.pl); <https://orcid.org/0000-0001-8380-9005>

**Abstract.** In the field of public finance, earmarked funds are regarded as a versatile instrument for funding public tasks, and an important complement to the traditional budgetary system. They were deliberately and extensively implemented in Poland during the COVID-19 pandemic crisis in 2020, as well as the refugee crisis in 2022. The funds earmarked by the state government, which were created at Bank Gospodarstwa Krajowego at that time, proved to be an efficient and prompt approach in tackling the crisis and promoting local development. These funds were directed towards local investments by local governments, who were amongst their beneficiaries. This development was aided by allocating part of the COVID-19 Response Fund to investment expenses as freely designated by local authorities. Given their prior experience with using European Union funds, Polish local governments efficiently and promptly adjusted their financial management from the budget economy to the fund economy. Local governments have obtained earmarked funds which have become a significant source for funding local investments. However, these funds lack unambiguous regulation in Polish public finance law. This paper aims to illustrate the role of state government earmarked funds, which are established outside the public finance sector in Poland, in creating the budget economy for local governments. An additional aim is to determine the legal and financial characteristics of the resources within these funds in the light of the regulations outlined in the Polish public finance law.

**Keywords:** local government; legal regulations; public finance; special means

## INTRODUCTION

The global COVID-19 pandemic that swept Europe in 2020 initiated revolutionary changes not only in social and economic relations, but also significantly changed the role, structure and instruments of public finance. As a result of the pandemic crisis, as well as subsequent crises (refugee,

---

\* The publication was co-funded by the state budget under the program of the Minister of Education and Science under the name "Excellent Science", project number DNK/SP/549676/2022, co-financing amount PLN 44,000, total value of the project PLN 81,000 (Poland).

energy), the Keynesian theory returned with double power in the public finances of European countries, justifying the use of numerous transfers of public funds to the economy in times of crisis, even at the expense of an increase in public debt. John Maynard Keynes's theory of public finance, applied after the great economic crisis of 1929-1933, is referred to in the literature as the "Keynesian revolution" [Owsiak 1997, 39-41; Chojna-Duch 2002, 21; Ziółkowska 2000, 33]. This revolution basically continues to this day, and the pandemic crisis (2020) and the refugee crisis (2022) that took place in Poland again confirmed the positive dimension of the theory of state interventionism. The quick and decisive reaction of the state authorities to these crises in the form of central transfers was in fact the realization of the theory of J.M. Keynes, who has repeatedly warned that "a fall in employment and income, once started, might proceed to extreme lengths" [Keynes 1936]. The above warning from Keynes was, among others, the basis for the large-scale use of financial transfers by the Polish central government, not only to entities from the enterprise sector, but also to units of the local government sector, which in fact did not lead to a decrease in employment and income. However, while the almost immediate use of financial intervention instruments should be assessed positively (which was not necessarily the case in the last century), separate assessments and analyzes require new legal forms of transferring crisis public funds to various entities, including local government units (LGU).

Both in the first year of the epidemic (2020) and in the following years, in the income structure of Polish LGUs, apart from the classic and hitherto existing transfer income, such as the general subsidy and earmarked grants, the so-called "financial resources" began to appear on a larger scale. The legal status of these "financial resources" remains ambiguous under public finance law to this day. This ambiguous status is possessed by the "financial resources" from the COVID-19 Response Fund and the Ukraine Aid Fund. Despite being legally included in the budgets of local government units, and a positive impact on the result of the implementation of these budgets due to their significant amounts, they "escape" the definition of public resources and thus the rigors of managing these funds specified in the public finance law. The legislator did not regulate the legal status of these "financial resources", both in terms of revenues and budgetary expenditures of local governments, which meant that the main interpretations in this respect were made by regional accounting chambers and the Ministry of Finance.

The aim of the article is to answer the following two research questions – Q1: What is the legal and financial nature of special-purpose funds created by the Polish legislator at Bank Gospodarstwa Krajowego?; Q2: What is the legal, financial and budgetary nature of the revenues of Polish local

government units defined as the so-called “financial resources” or “co-financing”, received by them from earmarked funds of Bank Gospodarstwa Krajowego?

The analysis providing answers to the two above research questions will strive to prove the following research hypothesis – H: The quasi-grant forms of financing local government units used in Poland during the pandemic and refugee crises, although they are an effective instrument for improving the economic condition of local government budgets, are not anchored in international and national regulations of local government budget management. In the future, however, these forms may become a new mechanism of reducing the revenue independence of local governments, which will lead to the definition of a completely new role and function that the local government will perform in the sphere of public tasks.

The analysis leading to the proof of the above hypothesis was carried out on the example of “financial resources” transferred to Polish local government units from special-purpose funds located at Bank Gospodarstwa Krajowego during the pandemic crisis in 2020 and during the refugee crisis in 2022.

These “financial resources” are referred to in the article as “quasi-grants” in order to compare them with the earmarked grants that are classic type of revenue of local governments in every democratic state ruled by law. Verification of the above research hypothesis was carried out using the dogmatic and historical method, based on French, English and Polish literature on public and local government finance. The analysis also uses the comparative-legal method consisting in comparing the features of the above quasi-grants with the features of a classic earmarked grants, which is a standard source of revenue for local government units.

## 1. ORIGIN AND ESSENCE OF SUBSIDY TRANSFERS

The evolution of the nature and terminology used to designate subsidy and grant transfers is an important issue in the light of the contemporary increase in the popularity of these transfers as sources of financing the tasks of local government units. The etymological meaning of the term “grant” does not correspond to the current nature of this budgetary instrument. In medieval Latin, the word *dotatio* meant providing someone with material goods, a dowry, making someone rich and dowry [Menge and Kopia 1988, 173; Kopaliński 1983, 103]. When we observe the current prevalence of grant in the public finance system, it may seem surprising that this word is etymologically related to private law rather than public law. It was only further semantic development of this word that led to its association primarily with

financial support for given entities from public funds, and nowadays also with a commonly used instrument for making budget expenditures within the public finance sector, as well as outside this sector.

According to the dictionary of the Polish language, a “subsidy” (“grant”) is a non-returnable financial aid granted to an institution, organization, enterprise (less often a person) in order to support a specific activity [Szymczak 1978, 438]. The dictionary definition of a “subsidy” (“grant”), emphasizing its aid nature, turns out to be similar to the state aid regime currently prevailing in the European Union Member States, which applies to some subsidies (if they are granted to enterprises). A quite accurate element of this definition is also the indication that the subsidy is granted to support a specific activity, although this feature was most fully implemented by public subsidies used in previous epochs. For example, in Spain and Venice in the 15th century, subsidies were given to ship owners. In the 17th and 18th centuries, subsidies were known in England to finance the cultivation of cereals and the fishing of whales and herring. In the countries of the German-speaking zone, subsidies were often used to stimulate the development of crafts [Chojna-Duch 1988, 16]. A certain analogy to this type of subsidy can be found in the subsidies used in Poland during the communist regime until the early 1990s, which were a form of “state subsidy to the prices of goods and services” provided by state and cooperative enterprises [Kurowski 1982, 99-101].

The contemporary universality and diversity of subsidies and quasi-subsidies in the structure of public finance coincides with the views of the doctrine of financial law, which assign these transfers an important role among public financial instruments. As L. Kurowski pointed out in 1982, “expenditures providing a subsidized entity with funds to cover its expenses appear in practice under very different names – subsidies, grants, allowances, financial support etc. Different names usually hide the same content. It’s better not to be fooled and use only the name grant” [ibid.].

With regard to subsidy and granting forms of financing local governments, the literature emphasizes that these forms significantly affect the economic status of local governments. The central government can influence the economy by transferring public funds to local governments. The level of central government transfers determines the type of statutory duties assigned to the local authorities. Proportion of government transfers in the budgets of Polish municipalities continued to increase in recent years. The observed increase constitutes a complex problem. Higher government subsidies resulted from legislative factors as well as the economic status of municipalities [Wichowska 2022, 133-48]. Income from grants and subsidies is also considered in the light of decentralization of public finances. The debate on fiscal decentralization is usually revived at times of economic

hardship because the consequences of some economic crises are first experienced at the local level, and they are transferred to the central level over time [Oates 2008].

In addition, subsidies and grants transferred to local government units from state earmarked funds located in Bank Gospodarstwa Krajowego do not fit into the assumptions of most public finance theories, with the exception of the Keynesian theory of state interventionism. Guided, for example, by the normative theory of public goods, the premise for the introduction of further subsidies should be the existence of *market failures*, becoming an argument for the economic legitimacy of the state to publicly provide specific public goods. According to this theory, the type of provision of public goods should be decided by its consumers, because they “know best” what they need [Buchanan and Musgrave 2005, 126-27]. On the other hand, according to public choice theory, very often political decisions emerge from something other than market failures. Public choice is an explanation of the reasons for state activity and, at the same time, it is a theory of government failures [Kargol-Wasiluk 2011, 289-91; Buchanan 1984, 11]. In the sphere of Polish public subsidies, there are indeed other (than market failures) reasons for introducing public subsidy. However, in the case of the discussed quasi-grants used in crisis periods in significant amounts by the state for the benefit of local government units, it should have been stated that this public choice was made by the state (legislator), as it was required by the crisis situation.

In modern public finance systems, however, transfers, which do not have the character of a classic public special-purpose subsidy are more and more often used, despite the fact that their source of financing is in fact public funds originating most often from public debt titles. An example is the “financial sources” (quasi-grants) transferred to Polish local government units from statutory earmarked funds located in Bank Gospodarstwa Krajowego. It is also characteristic that the above-mentioned quasi-grants quite often are not of a competitive nature, are not subject to the classical rules of public subsidy settlement, and are also granted to local governments for a generally formulated purpose, for example for investment expenditures. It should be noted that, to some extent, the above features of quasi-grants derive from the theory of non-equivalence (free of charge) of subsidies, which was promoted in the science of public finance.

In the Polish public finance literature, it was indicated that “the benefits associated with the transfer of subsidies are not material in nature. They may consist in a whole range of behaviors of third parties, which behaviors are desirable from the point of view of the public interest represented by the subsidizing or subsidizing entity, but they do not lead to mutual financial gain” [Dębowska-Romanowska 1993, 44]. The above

(non-equivalent) perception of subsidies in the study of financial law was influenced not only by the conditions of the previous communist system, but also by the adoption of French solutions in many areas of Polish public finance. It was in the French public finance science that it was proclaimed that most subsidies granted from public funds are not equivalent. For example, P.J. Gaudemet and J. Molinier pointed out that “subsidies given to the municipality for water supply, family and unemployment benefits, cinematography grants or financial assistance to the government of another country are expenses in the form of a ‘gift’, unrelated to any direct benefit from the recipient to the spender. Often, however, the granting of a subsidy is conditional on the fulfillment of certain economic, administrative or political requirements that result in the dependence of the entity receiving the subsidy on the authority making the donation; then there is an indirect mutual performance” [Gaudemet and Molinier 2000, 58].

At the same time, the French public finance theoreticians mentioned above emphasized that the open, ostentatious nature of the donation act may be an inconvenience. So often the course of action is chosen in such a way that expenses require reciprocal performance. They further point out that this mutual exchange is often not immediate and explicit, but merely political. An interesting example of ‘avoiding’ the equivalence of public spending and simultaneously achieving political and economic goals, cited by these authors, is the case of the red dye in the trousers of French soldiers. “Even the red color of the trousers of French soldiers at the beginning of the century was not dictated by military considerations, but by the desire to keep the production of garance red dye in the south of France” [ibid.]. Thus, despite the lack of a clear mutual benefit, public expenditure (including subsidies) is always made in order to achieve the political and economic objectives of the state or local government, and therefore they are always equivalent in general terms.

However, in the case of contemporary quasi-grants transferred to Polish local government units from earmarked funds located outside the state budget system (outside the public finance system), a significant problem is primarily that these transfers are not subject to the regulations of public finance law, which is justified to some extent in crisis periods, but should not assume a permanent and standard character.

## 2. QUASI-GRANTS IN LOCAL GOVERNMENT FINANCIAL LAW

Subsidy transfers as a form of financing local government are regulated both in international law and in the Constitution of Poland of 2 April 1997. Article 9(7) of the European Charter of Local Self-Government states: “As far as possible, grants to local authorities shall not be earmarked

for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.”<sup>1</sup> In the official commentary to the Charter, its signatories explain that from the point of view of the independence of local communities, the preferred form of supporting these communities is a general grant, or even a sector-specific grant, rather than grants earmarked for specific projects, specific project grants.<sup>2</sup> The regulation of the Polish Constitution, providing for subsidies and grants as a forms of revenue for local government units, does not, however, formulate the above preference for general subsidies. Article 167(2) of the Constitution of the Republic of Poland states: The revenues of units of local government shall consist of their own revenues as well as general subsidies and specific grants from the State Budget.<sup>3</sup>

Therefore, the provisions of the above acts do not provide for funds similar to subsidies or grants (quasi-grants) in the catalog of revenues of local government units. However, the Polish Constitution also provides that the sources of revenues for units of local self-government shall be specified by statute, which means that other revenues (including quasi-grants) may appear in the catalog of local government revenues, provided that the legislator so decides.

In addition, the Polish Constitution does not indicate proportions in the structure of income of local government units, which means that it is the legislator who decides which of the elements of this structure (own income, general subsidy or earmarked grants) will prevail over the others. To a certain extent, giving the legislator the power to determine the sources of local government revenue is consistent with the global tendency to reduce the decentralization of public finance through various forms and instruments. Instruments that influence both the expenditures and revenues of local governments have been implemented in European and global economic practice. Some governments have intervened directly by changing the level of transfers from the central budget to local budgets or by forcing territorial governments to rely on their own revenues to cover the costs of their statutory operations [Nelson 2012, 44S–63S].

Polish legislation providing for transferring grants and subsidies from public budgets or public funds is not terminologically consistent. Public

---

<sup>1</sup> European Charter of Local Self-Government, Strasbourg, 15.10.1985, Council of Europe, European Treaty Series No. 122, <https://rm.coe.int/168007a088> [accessed: 18.09.2023].

<sup>2</sup> Explanatory Report to the European Charter of Local Self-Government, Strasbourg, 15.10.1985, Council of Europe, European Treaty Series No. 122, p. 9, <https://rm.coe.int/16800ca437> [accessed: 18.09.2023].

<sup>3</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

Finance Act of 29 August 2009 (PFA) defines the concept of public grants and regulates the basic principles of granting from the state budget and from the budgets of other entities of the public finance sector. However, the legislator quite often provides for the possibility of transferring to local governments the so-called “financial resources” and does not use the term “subsidy” or “grant”, but ambiguous terms, i.e.: “financial resources”, “co-financing”, “financial support”, “financial assistance”. This terminological inconsistency of the legislator is not a new phenomenon [Robaczyński and Gryśka 2006, 116], because the term “financial resources” instead of “subsidy” (or “grant”) in statutory regulations concerning both income and expenditure of the local government budget has been used almost since the beginning of its introduction in Poland (in 1990). These local governments carry out many commissioned tasks in the field of government administration or their own tasks, which are financed from the so-called “resources” transferred from state earmarked funds.

An example of this is the Labor Fund’s resources, which since 2005 have been transferred annually by the minister responsible for labor matters to a separate bank account, to voivodeship and powiat self-governments for financing tasks implemented in the voivodship. Already in 2006, the literature criticized the mechanism of transferring the above-mentioned funds to separate bank accounts, operating outside the budgetary economy of the powiat, which makes it impossible to control them by its authorities and by regional accounting chambers. However, such control would be advisable, taking into account the general problem of supervision over the resources of state special-purpose funds [Chojna-Duch 2002, 90-91], as well as the significant amounts transferred by these funds to the powiat level (e.g. for salaries employees of the powiat employment office). It was pointed out that this argument supports the acceptance of the postulate to include these funds in the powiat budget, or at least include them in the budget resolution, so that significant amounts of Labor Fund resources at the disposal of powiat labor offices could be controlled by powiat authorities [Ostrowska 2006, 184].

Still, the above-mentioned Labor Fund resources received by powiat self-governments have an off-budget and non-subsidy character (they are not a subsidy), despite the fact that they meet all the features of a grant defined in Article 123 of the Public Finance Act. Still, in most self-governments of poviats, the above funds are recorded outside the budget on a separate bank account, and therefore do not constitute budgetary revenues of these self-governments.

The funds of the State Fund for Rehabilitation of Persons with Disabilities (PFRON) are of a similar, off-budget and non-grant nature, transferred by the President of the Management Board of PFRON to a separate



bank account to powiat self-governments for the implementation of specific tasks. According to the regional accounting chambers (Polish institution supervising the finance of LGU), the above funds do not constitute a source of income for the powiat budget, and consequently, these funds, transferred on the basis of the concluded agreement(s), cannot also constitute a source of income for the local government unit budget and should be transferred to a separate bank account, operating outside the budgetary economy of a given LGU.<sup>4</sup>

While formulating the above position, it was pointed out that the interpretation direction chosen in this way coincides with the general essence of the operation of special-purpose funds, which are independent of the state budget in terms of managing financial resources [Misiąg 2019, 39-44]. It should be noted, however, that both the Labor Fund and PFRON are state earmarked funds belonging to the public finance sector (hereinafter: PFS), which is not present in the case of earmarked funds established at Bank Gospodarstwa Krajowego.

Noteworthy is the above-mentioned direction emphasizing the independence of the special-purpose fund in terms of managing financial resources. This direction is somewhat convergent with the character of “means” transferred to LGUs adopted by the legislator from the COVID-19 Response Fund (CRF) during the pandemic crisis and from the Ukraine Aid Fund (UAF) during the refugee crisis. In these cases, regional accounting chambers, guided by the explanations of the Ministry of Finance (in the absence of a statutory regulation in this scope), unequivocally accepted that the funds received by LGUs from the above Funds are of a budgetary nature (they are the revenues of the local government unit budget) and should be included in the budget while maintaining their separation under the specific rules for implementing the budget of the local government unit.

Taking into account the location of the COVID-19 Response Fund and the Ukraine Aid Fund in Bank Gospodarstwa Krajowego (BGK), i.e. outside the public finance sector, the adopted “budgetary” nature of the above quasi-subsidies was surprising due to the fact that similar quasi-subsidies received by LGUs from state earmarked funds (such as the Labor Fund and PFRON) for almost 20 years have been in practice “de-budgeted” and operate outside the budget of the local government unit.

According to Article 126 of the Public Finance Act, grants are – resources from the state budget, the budget of LGUs and from state earmarked funds allocated on the basis of PFA, separate acts or international

---

<sup>4</sup> See [https://riogdansk.archiwum.bip.net.pl/pliki/10284/Dopuszczalno%C5%9B%C4%87\\_ujmowania\\_%C5%9Brodok%C3%B3w\\_z\\_PFRON\\_w\\_bud%C5%BCecie\\_miasta.pdf](https://riogdansk.archiwum.bip.net.pl/pliki/10284/Dopuszczalno%C5%9B%C4%87_ujmowania_%C5%9Brodok%C3%B3w_z_PFRON_w_bud%C5%BCecie_miasta.pdf) [accessed: 18.09.2023].

agreements, for financing or co-financing the implementation of public tasks. The above statutory definition indicates that a grant is funds (resources) that meet all of the following characteristics: 1) they come from the state budget, the budget of the local government unit or from the state special purpose fund; 2) are subject to specific accounting rules; 3) their purpose is specified in the Public Finance Act, separate Parliamentary acts or international agreements; 4) are intended for financing or subsidizing public tasks.

The statutory definition of public grant is universal and broad, which could apply to many categories of “financial resources” that meet the above four characteristics. It would also be appropriate to say that all measures that meet the above characteristics should be defined as grants, and unfortunately this is not the case. Both in the provisions of separate acts, as well as in judicial and supervisory jurisprudence, the category of “public grant” is clearly separated from other categories such as “means”, “co-financing” or “support”. This is particularly reflected in the case-law on public grants. This jurisprudence emphasized that the grant expenditure instrument may be used only when a given act allows for this form of expenditure (the word “grant” is used), because the statutory basis for granting is clearly indicated by its definition in Article 126 of PFA.

Therefore, if a given act uses the term “resources”, they cannot be transferred in the form of a grant, even though they meet all the definitional features of grant. It should be noted, however, that this interpretation leads to the exclusion of these “resources” from the obligation to apply to them the provisions of the PFA, as well as the provisions of the Act on Liability for Violation of Public Finance Discipline of 17 December 2004. They will also not be subject to penal and fiscal liability incurred on the basis of Article 82 of the Fiscal Penal Code of 10 September 1999.

Legal definitions, such as the definition of a grant from Article 126 of PFA, are extremely strong directives for the interpretation of law, imposed normatively by the legislator himself. They are norms that require certain persons applying the law to give certain words or expressions appearing in legal provisions the appropriate meaning. The rules of law interpretation indicate that an unambiguously formulated legal definition “is not broken even if the linguistic content of this definition undermines the assumptions about a rational legislator” [Zieliński 2010, 215]. Considering the above, a restrictive interpretation prohibiting the use of the form of public grant in a situation where the act does not use the term “grant” should be accepted. However, in view of the more and more frequent statutory regulations providing for the transfer to the budgets of local government units so-called “means”, “co-financing”, “support” or “financial resources” (instead of grant), there is an urgent need to regulate their legal status under public finance law.

### 3. EARMARKED FUNDS OF *BANK GOSPODARSTWA KRAJOWEGO*

Legal status of earmarked funds received by LGUs is particularly complicated when these funds are transferred by entities/funds located outside the public finance sector and do not constitute state earmarked funds in the light of their statutory definition. Such situations occurred during the COVID-19 pandemic and the refugee crisis, during which special purpose funds established at BGK – the COVID-19 Response Fund and the Assistance Fund – were transferred to through the regional governors (voivodes) of the so-called “financial resources” (co-financing, support) which are neither targeted subsidies from the state budget nor subsidies from state earmarked funds.

In 2020, under the Government Local Investment Programme (which is a “sub-fund” and an auxiliary account of the COVID-19 Response Fund), PLN 10.3 billion was transferred to local government units through voivodes.<sup>5</sup> The budgets of local government units (despite the pandemic) ended with a budget surplus of PLN 5.7 billion (against the planned deficit of PLN 21.1 billion). Undoubtedly, this state of affairs was influenced by the realization of income from the funds obtained from the Local Government Roads Fund and the Local Government Investment Fund operated by BGK, which could be used in the next three budget years.<sup>6</sup>

It should be noted that the legislator’s use of the special-purpose fund in the above crisis periods was a somewhat natural choice, taking into account the shortcomings of the classic budgetary economy and the need to react quickly to the effects of the crisis. As S. Owsiak points out, “next to the budget there are currently and have been in the past, and in the distant past, public earmarked funds as an alternative to the budget as an organizational form of collecting and spending public funds. We encounter the existence of targeted public funds already in ancient Greece, where there was, for example, a military fund and an entertainment fund. Therefore, the hypothesis that public earmarked funds were developed earlier than budgets in the form known to us today, the so-called as general purpose funds. [...] in contemporary public finance systems, earmarked funds were created as a certain response to the weaknesses of the budget collection and spending of public funds” [Owsiak 1997, 115].

However, while public earmarked funds certainly include state earmarked funds, the basic principles of which are defined in Article 29 of PFA, the features of a public special-purpose fund cannot be fully attributed

---

<sup>5</sup> See <https://www.nik.gov.pl/plik/id,24240.pdf> [accessed: 18.09.2023].

<sup>6</sup> See [https://rio.gov.pl/download/attachment/96/sprawozdanie\\_z\\_a\\_2020\\_r.pdf](https://rio.gov.pl/download/attachment/96/sprawozdanie_z_a_2020_r.pdf) [accessed: 18.09.2023].

to special-purpose funds located in BGK, such as the COVID-19 Response Fund and the Ukraine Aid Fund. However, their public nature is indicated by some statutory revenues (i.e. payments from the state budget, European funds, receipts from Treasury bonds), as well as the public status of tasks financed from their funds.

It should also be noted that although according to Polish regulations on public finance these funds are not included in the public finance sector, they do belong to this sector according to the EU methodology (they are included in the general government sector). It should be expected that in the future BGK funds will be included in the catalog of entities belonging to the public finance sector defined in Article 9 of PFA in order to make this catalog compatible with the EU GG sector. Meanwhile, they remain in the private finance sector, which also means that the principle of transparency of public finances does not fully apply to them.<sup>7</sup>

The legal and financial features of the researched special-purpose funds (earmarked funds) are presented in the table below.

**Table 1.** Features of BGK earmarked funds (COVID-19 Response Fund and Ukraine Aid Fund)

the legal basis for the creation of the fund and the redistribution of funds	the funds were established on the basis of statutory provisions – Article 65 of COVID-19 Act* and Article 14 of Ukraine Act**
fund operator	Bank Gospodarstwa Krajowego
fund administrator	The Prime Minister, who may authorize the administrator of the budget part (voivode) or the minister to submit instructions for payment from the Fund
affiliation of the fund to the public finance sector	they do not belong to the public finance sector according to national regulations (because they are not listed in the catalog definition of the SFP under Article 9 of the Public Finance Act); however, they are included in the EU general government sector (GG)
legal personality	they do not have legal personality
features of the fund	they have statutorily assigned revenues and purposes for their use, which means that they are special purpose funds (they are also called flow funds); they are not state earmarked funds, because the act establishing them does not provide so.

\* Act of 31 March 2020 on special solutions related to the prevention, counteraction and combating of COVID-19, other infectious diseases and crisis situations caused by them, and some other acts, Journal of Laws item 568 as amended.

<sup>7</sup> See <https://www.gov.pl/web/finanse/strategie-zarzadzania-dlugiem> [accessed: 18.09.2023].

\*\* Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of this country, Journal of Laws od 2023, item 103 as amended.

Source: author's own scheme based on the provisions of the laws regulating the examined funds.

The quasi-grants transferred from BGK funds in a special way “disturbed” the legal order of the budgetary economy of the local government units. The legislator did not regulate the legal status of these quasi-grants, both on the side of revenues and budget expenditures of local government units, which meant that the main interpretations in this respect were made by regional accounting chambers and the Ministry of Finance.

A breakthrough interpretation in this matter was expressed by the Department of Finance of the Local Government of the Ministry of Finance in a letter of October 21, 2020.<sup>8</sup> In this paper it was clearly confirmed, in the face of earlier doubts, that quasi-grants received by LGU form COVID-19 Response Fund are of a budgetary nature and should be included in the budget of the local government unit, while maintaining their separation under the specific rules for implementing the budget of the local government unit. Consequently, an analogous character was given to the funds transferred to LGUs. also from other BGK funds, including the Ukraine Aid Fund established to finance or subsidize the implementation of tasks to help Ukraine, in particular to Ukrainian citizens affected by the armed conflict on the territory of Ukraine.

Thus, from the legal regulations and from subsequent explanations of the supervisory and control authorities over the local government units common features of quasi-grants transferred to LGUs from the so-called crisis funds of BGK, can be derived. These features are presented in the table below.

**Table 2.** Legal and financial features of quasi-grants transferred from BGK earmarked funds to local government units

statutory “proper name”	“financing”, “co-financing”, “supports” (which are not grants or subsidies) transferred to LGU by voivodes authorized by the Prime Minister for the implementation of tasks indicated in the act
the manner and form of transferring quasi-grants	funds are granted at the request of local government units submitted after the announcement of the call for proposals or without the need to submit an application, calculated on the basis of data reported by local government units in the IT system; funds are transferred non-contractually in the form of a transfer of funds

<sup>8</sup> See <https://samorzad.pap.pl/kategoria/aktualnosci/mf-o-klasyfikacji-srodkow-rfil-niewykorzystane-w-tym-przechodza-na-rok-2021> [accessed: 18.09.2023].

the place where quasi-grants are collected by the beneficiary	state budgetary units and local government units accumulate quasi-grants from the Fund on a separate income account (SIA) and allocate them for expenses related to the implementation of tasks indicated in the Act as part of the financial plan of this account (structure analogous to the existing SIA of educational budgetary units – Article 223 of the PFA)
administrator of quasi-grants transferred to local government units	the commune head (mayor, president of the city), the poviats board and the voivodship board have and administer funds and develop a financial plan for a separate income account (SIA), where these funds are accumulated
the body supervising the SIA financial plan	voivode (the statutory scope of supervisory competences of regional accounting chambers does not cover the financial plans in question, therefore it was decided that voivodes should supervise them)
reporting obligations	Local government units submit to the competent voivode, through the electronic inbox, annual or quarterly information on the use of funds according to the formula specified in the resolution of the Council of Ministers
rules for the return of quasi-grant	lack of specific rules for the return of unused funds or funds used contrary to their intended purpose; however, Prime Minister may issue an instruction to a local government unit to pay (return) unused funds to a separate account of the Assistance Fund (FP)
the method of including quasi-grants in the budget and budget resolution of local government units	no indication of the legislator in this respect; As a result of the interpretation of the Ministry of Finance, it was decided that in the year of receiving the funds, they are included in the local government budget as own revenues and expenditures of the local government budget. In the following financial year, the unused part of the funds is recognized as revenue from unused cash in the current account of the budget, resulting from the settlement of revenues and expenses financed with them related to the specific principles of budget implementation set out in separate acts (Article 217(2)(8) of the PFA), becoming one of the sources of financing the local government budget deficit.

Source: author's own scheme based on the provisions of the laws regulating the examined funds.

The features of quasi-grants received by LGUs indicated in the above list from the BGK's special purpose funds prove that these quasi-grants have a special legal nature, which does not allow for their unambiguous and simple placement in the local government budgetary economy. The literature indicates that "although the mechanism of their redistribution is similar to the redistribution of funds from the EU budget, it should be assumed

that they will be of an exceptional and temporary nature, related to emerging crisis situations” [Dziedziak, Ostrowska, and Witalec 2022, 476].

Systemically assessing the regulations governing both of the above funds and their quasi-grants transferred to local government units it should have been assumed that the legislator did not intend to give these funds a budgetary character, as evidenced by the obligation to develop a financial plan of a separate income account (SIA) and granting executive bodies of LGUs the right to dispose of these funds. In the absence of an unambiguous statutory indication in this regard, it was the interpretations and explanations issued by the Ministry of Finance and regional accounting chambers that determined the role and location of the above funds in the budgetary economy of LGUs.

## CONCLUSIONS

It should be pointed out that the mechanism of quick and flexible redistribution of quasi-grants from earmarked funds deposited in Bank Gospodarstwa Krajowego, applied by Polish legislator, undoubtedly turned out to be effective in practice, as it prevented the occurrence of negative effects of crises in the budgetary economies of local government units. In 2020-2021, the budgets of local government units (despite the pandemic crisis) ended with high budget surpluses. Establishment of the Ukraine Aid Fund in 2022, from which LGUs were paid funds to cover expenses related to the refugee crisis also had a similar positive effect on local government budgets 2022.

Considering the significant amount of funds transferred to LGUs from the above-mentioned special-purpose funds of BGK, however, the maintenance of their still ambiguous legal nature should not be accepted, as it causes significant difficulties in their supervision and control. The status of earmarked funds operated by BGK cannot be explained on the basis of the provisions of the Public Finance Act, and the legislator characterized the support in question by the concept of quasi-grants, most likely in order to escape the subsidy/grant transfer regime in this regard [Walczak 2022, 42].

In addition, the fact that the legal status of the above measures, due to the lack of statutory regulations in this respect, is determined by way of explanations issued by the Ministry of Finance, cannot be positively assessed. In this way, it was decided on the budget nature of these quasi-grants, despite the fact that they are not included in both the constitutional and statutory catalog of revenues of LGUs. In this way, it was also decided that the unused part of these quasi-grants in a given budget year, in the following year, will be transformed into the category of revenues

related to the specific rules of budget execution, despite the fact that they do not meet the characteristics of funds settled under the so-called specific budget implementation rules. Quasi-grants transferred to local government units are not of a permanent and systematic nature, which is required for the so-called specific budget implementation rules. They are of an irregular and purposeful nature, which brings the transferred funds closer to subsidy and grant transfers.

The research hypothesis put forward in the article has been positively verified. The analysis of both legal regulations and the views of representatives of public finance science proved that: quasi-grants transferred to Polish local government units from state earmarked funds located in Bank Gospodarstwa Krajowego, although they are an effective instrument for improving the economic condition of local government budgets, are not anchored in international and national regulations of local government budget management.

Taking into account the advantages of the mechanisms used to transfer quasi-grants to local governments from BGK earmarked funds, urgent amendments to the acts regulating the financial management of local governments should be postulated, as a result of which a systemic regulation of the funds (that are not subsidies or grants) received by local government units would take place.

#### REFERENCES

- Buchanan, James M. 1984. "Politics without Romance: A Sketch of Positive Public Choice Theory and Its Normative Implications." In *The Theory of Public Choice*. II, edited by James M. Buchanan, and Robert D. Tollison, 11. Ann Arbor: The University of Michigan Press.
- Buchanan, James M., and Richard A. Musgrave. 2005. *Finanse publiczne i wybór publiczny. Dwie odmienne wizje państwa*. Warszawa: Wydawnictwo Sejmowe.
- Chojna-Duch, Elżbieta. 1988. *Struktura dotacji budżetowej. Studium teoretycznoprawne*. Warszawa: Wydawnictwo Uniwersytetu Warszawskiego.
- Chojna-Duch, Elżbieta. 2002. *Polskie prawo finansowe. Finanse publiczne*. Warszawa: LexisNexis.
- Dębowska-Romanowska, T. 1993. *Zagadnienia prawne wydatków publicznych na rzecz osób trzecich*. Łódź: Uniwersytet Łódzki.
- Dziedziak, Bernadeta, Anna Ostrowska, and Waldemar Witalec. 2022. *Uchwała budżetowa jednostki samorządu terytorialnego*. 3rd edition. Warszawa: C.H. Beck.
- Gaudemet, Paul M., and Joel Molinier. 2000. *Finanse publiczne*. Warszawa: Polskie Wydawnictwo Ekonomiczne.
- Keynes, John M. 1936. "The General Theory of Employment, Interest, and Money." [https://www.files.ethz.ch/isn/125515/1366\\_keynestheoryofemployment.pdf](https://www.files.ethz.ch/isn/125515/1366_keynestheoryofemployment.pdf) [accessed: 15.09.2023].



- Kargol-Wasiluk, Aneta. 2011. "Partnerstwo publiczno-prywatne a nowe finanse publiczne." In *Nowe zarządzanie finansami publicznymi w warunkach kryzysu*, edited by Stanisław Owsiak, 289-91. Warszawa: Polskie Wydawnictwo Ekonomiczne.
- Kopaliński, Władysław. 1983. *Słownik wyrazów obcych i zwrotów obcojęzycznych*. Warszawa: Wydawnictwo Wiedza Powszechna.
- Kurowski, Leon. 1982. *Wstęp do nauki prawa finansowego*. Warszawa: Państwowe Wydawnictwo Naukowe.
- Menge, Herman, and Henryk Kopia. 1988. *Słownik łacińsko-polski*. Warszawa: Państwowe Wydawnictwo Naukowe.
- Misiąg, Wojciech (ed.). 2019. *Ustawa o finansach publicznych. Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych*. Warszawa: C.H. Beck.
- Nelson, Kimberly L. 2012. "Municipal choices during a recession: Bounded rationality and innovation." *State and Local Government Review* 44:44S-63S. DOI: 10.1177/0160323X12452888.
- Ostrowska, Anna. 2006. *System prawnofinansowy powiatów a decentralizacja finansów publicznych*. Białystok: Wyższa Szkoła Finansów i Zarządzania w Białymstoku.
- Oates, Wallace. 2008. "On the evolution of fiscal federalism: Theory and institutions." *National Tax Journal* 61(2):313-34. DOI: 10.17310/ntj.2008.2.08.
- Owsiak, Stanisław. 1997. *Finanse publiczne. Teoria i praktyka*. 1st edition. Warszawa: Wydawnictwo Naukowe PWN.
- Owsiak, Stanisław. 2017. *Finanse publiczne. Teoria i praktyka*. 3rd edition. Warszawa: Wydawnictwo Naukowe PWN.
- Robaczyński, Tomasz, and Piotr Gryśka. 2006. *Dyscyplina finansów publicznych. Komentarz*. Warszawa: C.H. Beck.
- Szymczak, Mieczysław. 1978. *Słownik języka polskiego*. Vol. 1. Warszawa: Wydawnictwo Naukowe PWN.
- Walczak, Piotr. 2022. "Fundusz Pomocy jako źródło finansowania lub dofinansowania realizacji zadań publicznych." In *Pomoc obywatelom Ukrainy. Zadania samorządu terytorialnego i ich finansowanie*, edited by Wojciech Lachiewicz, Agnieszka Kozłowska, Marta Olech, et al. Warszawa: C.H. Beck.
- Wichowska, Anna. 2022. "Government transfers in the budgets of Polish municipalities and their determinants." *Rozwój Regionalny i Polityka Regionalna* 59:133-48. DOI: 10.14746/rrpr.2022.59.09.
- Zieliński, Maciej. 2017. *Wykładnia prawa. Zasady, reguły, wskazówki*. Warszawa: Wolters Kluwer.
- Ziółkowska, Wiesława. 2000. *Finanse publiczne. Teoria i zastosowanie*. Poznań: Wydawnictwo Wyższej Szkoły Bankowej.