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Evolution of the Internal Structure of the Social Insurance Fund

Summary

The focus of the article is the Social Insurance Fund, which has been operating since 1 January 1999, and is a state special purpose fund with a specific structure. Separate funds function and operate within its framework. The number of these funds has already changed twice. The aim of the article is to analyse the legislative changes concerning the components of the Social Insurance Fund and to evaluate them. The study is dominated by the dogmatic-legal research method, and the historical-legal method is of auxiliary use.

Key words: social insurance finances, Social Insurance Fund, earmarked funds, reserve funds

Introduction

Pursuant to Article 51(1) of the Act of 13 October 1998 on the social insurance system,¹ the Social Insurance Fund (Fundusz Ubezpieczeń Społecznych – FUS) is a state special purpose fund established to implement tasks in the area of social insurance, whose administrator (pursuant to Article 51(2)) is the Social Insurance Institution (Zakład Ubezpieczeń Społecznych – ZUS). As indicated in the literature and in case law, granting ZUS the role of the administrator of FUS means that the funds accumulated therein are not the property of the Social Insurance Institution, but are of a public-law nature. ZUS manages the separated property of the State Treasury on a trust basis, without being the owner of that property.² The entity under the name “Social Insurance Fund” was established by the Act of 25 November 1986 on the organization and financing of social insurance.³ However, with the entry into force of the Act on the Social Insurance System, it was liquidated, and its funds, receivables, and liabilities were taken over by a pension fund isolated within the current Social Insurance Fund (Article 116(1) of the System Act).⁴

The Act of 27 August 2009 on Public Finances⁵ in Article 29(1) stipulates that the state special purpose fund is created pursuant to a separate act. In turn, according to Article 29(2) of this act, the revenues of the state special purpose fund come from public funds and costs are incurred for the implementation of separate state tasks. The Social Insurance Fund is a fund established by a separate act (the Act on the Social Insurance System), its revenues come from public funds (these are mainly social insurance contributions), and its expenditures are incurred for the implementation of separate state tasks (payment of social insurance benefits – pensions, allowances, etc.).

The Social Insurance Fund, in operation since 1 January 1999, has a specific, collective structure, as separate funds were and are operating within it. The number of these funds has changed twice. The aim of this article is to analyse legislative changes concerning components of the Social Insurance Fund and to assess them.

1 Consolidated text: Dz.U. (Journal of Laws) of 2021 item 423 as amended (hereinafter referred to as the System Act).

2 I. Sierocka, *Podmioty ubezpieczeń społecznych*, in: *System ubezpieczeń społecznych. Część ogólna*, A. Wypych-Żywicka (ed.), Warszawa 2020, p. 443; Decision of the Supreme Court – Civil Chamber of 19 September 2002 (V CKN 1223/00, Legalis no. 55866).

3 Consolidated text: Journal of Laws of 1989 no. 25, item 137 as amended.

4 J. Wantoch-Rekowski, *System ubezpieczeń społecznych a budżet państwa – studium prawnofinansowe*, Warszawa 2014, pp. 117–118.

5 Consolidated text: Journal of Laws of 2021, item 305 as amended.

The dogmatic and legal research method dominates in the study, while the historical and legal method is used as an auxiliary tool.

The Social Insurance Fund as a state special purpose fund

The organization of the financing of social security benefits may be based on a budget system or a fund system. In the budget system, social insurance is included in the state budget, and contributions are, in practice, taxes. An alternative system is the fund system – a fund is understood as a separation of certain resources coming from social insurance contributions and allocating them to finance insurance expenses. The fund system may function as a system of separate special purpose funds separated from the budget. However, this does not exclude periodical or permanent financing of expenditures from the budget – in a smaller or larger part. These are special purpose funds of a budgetary type, which do not have legal personality.⁶ The financial system of social insurance is based on funds.⁷ The revenues of the Social Insurance Fund are mainly contributions paid by insured persons and payers. Other sources of income are listed in Articles 52 and 53 of the System Act. As noted by I. Jędrasik-Jankowska, the fund model of financing social insurance benefits was consolidated by the social insurance reform of 1999.⁸

Special-purpose funds are an important element of the State's financial system in Poland, functioning within this system in close relation to the other elements, including the budget.⁹ Financial plans of state special purpose funds are the elements of the Budget Act, included in the Annex to this Act.¹⁰ The financial plan of the Social Insurance Fund is also an annex to the annual budget act. However, it should be emphasized that financial plans of special purpose funds are not included in statements which would have an aggregate character.¹¹ What is more, the state

6 J. Wantoch-Rekowski, *Składki na ubezpieczenie emerytalne – konstrukcja i charakter prawny*, Toruń 2005, pp. 25–26.

7 M. Klimas, *Fundusz Ubezpieczenia Społecznego*, in: *Postępowanie sądowe w sprawach z zakresu ubezpieczeń społecznych*, Warszawa 2013.

8 I. Jędrasik-Jankowska, *Pojęcia i konstrukcje prawne ubezpieczenia społecznego*, Warszawa 2020, p. 45.

9 J. Szołno-Koguc, *Pozabudżetowe fundusze celowe w Polsce (ewolucja problemu)*, in: J. Głuchowski, C. Kosikowski, J. Szołno-Koguc (eds.), *Nauka finansów publicznych i prawa finansowego w Polsce. Dorobek i kierunki rozwoju. Księga Jubileuszowa Profesor Alicji Pomorskiej*, Lublin 2008, p. 226.

10 A. Borodo, *Polskie prawo finansowe. Zarys ogólny*, Toruń 2010, p. 50.

11 B. Kucia-Guściora, *Status prawny funduszy celowych*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2004, no. 4, p. 13.

special-purpose fund is a separate bank account held by the minister designated in the law creating the fund or by another body indicated in the law.¹² At the same time, a fund is not an organisational unit. In legal and economic terms, a special-purpose fund should be understood as a monetary resource.¹³ “A fund is a resource of money derived from specific sources and earmarked for specific purposes.”¹⁴

J. Szolno-Koguc points out that the essence and character of public purpose funds is usually formulated by comparing them to the institution of the budget. The most important difference lies in a respect for budget principles. The creation of public purpose funds is, after all, a departure from the classic rules of the universality and material unity of the budget. The two institutions differ in scope and degree of specialization. The budget is a universal device, used to collect revenue from various sources and allowing the resources obtained to be spent on various purposes/tasks. A special-purpose fund, on the other hand, is a special-purpose instrument created to finance a narrow group of objectives, on the basis of precisely defined sources.¹⁵

The reasons for creating special-purpose funds are analysed quite extensively in the literature – they are usually political in nature, less often related to the rationality of public financial management.¹⁶ According to C. Kosikowski,

special purpose funds were created mainly for political reasons. It was believed that the separation of a certain part of public funds from the budget and their allocation to a strictly defined purpose would allow for the better implementation of tasks related to that purpose. Special-purpose funds were created to meet environmental, occupational, or territorial needs. It would be more difficult to identify other motives for creating special-purpose funds, especially those that would result from the rationalization of public financial management.¹⁷

12 Art. 29 (4) of Public Finance Act of August 27, 2009. Journal of Laws 2022, item 1634.

13 K. Sawicka, *Art. 29*, in: M. Karlikowska, M. Miemiec, Z. Ofiarski, K. Sawicka, *Ustawa o finansach publicznych*, 2010, p. 82 as cited in: E. Kowalczyk, *Art. 29*, in: *Ustawa o finansach publicznych. Komentarz*, A. Mikos-Sitek (ed.), 2022.

14 K. Sawicka, *Formy prawno-organizacyjne jednostek sektora finansów publicznych*, in: *System Prawa Finansowego*, vol. II, *Prawo finansowe sektora finansów publicznych*, 2010, p. 65 as cited in: E. Kowalczyk, *Art. 29*.

15 J. Szolno-Koguc, *Fundusze związane z ubezpieczeniami społecznymi w polskim systemie finansów publicznych*, “*Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach*” 2018, no. 358, p. 244.

16 C. Kosikowski, *System funduszy celowych i niektórych innych jednostek sektora finansów publicznych*, in: *Finanse publiczne i prawo finansowe*, C. Kosikowski, E. Ruśkowski (eds.), Warszawa 2006, p. 421.

17 C. Kosikowski, *System funduszy celowych i niektórych innych jednostek sektora finansów publicznych*, p. 424.

The literature further indicates that there are also reasons for creating special purpose funds of a socio-technical nature. It is easier to gain social approval of the introduction of a new fiscal burden if it is linked to a specifically indicated objective which is substantively related to that burden.¹⁸ Moreover, the functioning of special purpose funds enables more flexible management of financial resources.¹⁹

State special purpose funds act as *statio fisci* in civil law transactions – the State Treasury is responsible for their liabilities. A consequence of the lack of legal personality of special purpose funds is also the fact that their legal subjectivity is limited only to the budgetary sphere.²⁰

A special purpose fund is an organizational and legal form, the essence of which lies in the fact that specific tasks of the state are assigned – as a source of financing – separate public revenues.²¹ The state special purpose fund, by definition, should be understood as a stock of financial resources established on the basis of separate acts. The revenues of the state special purpose fund come from public funds and the costs are allocated to the implementation of separate state tasks.²² However, the literature emphasizes that linking a particular expense to a particular source of financing makes sense when that source is financially efficient.²³ In the case of the Social Insurance Fund such a link exists – between contributions (the main revenue²⁴) and social insurance benefits (expenditure).

The opinion of J. Jończyk, presented in the critical gloss to the ruling of the Supreme Court of 19 September 2002, is worth noting here. It stated that the systematic nature of the System Act, as well as the difference in expressions, indicate the instrumental character of FUS in relation to ZUS. In other words, the Social Insurance Fund is a tool for the implementation of tasks that are legally assigned

18 E. Malinowska-Misiąg, *Jednostki sektora finansów publicznych*, in: *Ustawa o finansach publicznych. Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych. Komentarz*, W. Misiąg (ed.), Warszawa 2019, p. 111.

19 P. Lenio, *Państwowe fundusze celowe*, in: *Prawo finansów publicznych z kuzusami i pytaniami*, W. Miemiec (ed.), Warszawa 2018, p. 111.

20 W. Bożek, P. Mańczyk, *Gospodarka finansowa państwowego funduszu celowego*, in: *Ustawa o finansach publicznych. Komentarz*, Z. Ofiarski (ed.), Warszawa 2019, p. 215.

21 E. Malinowska-Misiąg, *Jednostki sektora finansów publicznych*, p. 110.

22 B. Kucia-Guściora, *Fundusz Przeciwdziałania COVID-19 – antidotum finansowe na czas pandemii*, “Kwartalnik Prawno-Finansowy” 2020, no. 1, p. 29.

23 J. Wantoch-Rekowski, W. Morawski, *Podstawy prawa finansów publicznych. Podręcznik akademicki*, Toruń 2019, p. 64.

24 K. Bielawska, *Rola pozaskładkowych źródeł w finansowaniu świadczeń z ubezpieczenia społecznego wypłacanych z Funduszu Ubezpieczeń Społecznych*, “Ubezpieczenia społeczne. Teoria i praktyka” 2016, no. 2, p. 5.

to ZUS as a state legal person, unrelated to the State Treasury. FUS funds do not participate in civil law transactions and do not fall within the scope of liabilities, receivables, and liability for which it would be necessary to indicate the owner of these funds. Therefore, the separation of FUS is not significant for its relationship with the State Treasury.²⁵

The internal structure of the Social Security Fund in 1999

The internal structure of the Social Insurance Fund was and still is regulated in Article 55(1) of the Act on the Social Insurance System. Since 1 January 1999 the following funds have been separated within FUS:

- 1) pension fund which financed pension payments;
- 2) disability pension fund, which financed payments of disability pensions, training pensions, family pensions, supplements to family pensions for orphans, nursing allowances, funeral allowances, and benefits ordered by the Social Insurance Institution to be paid subject to financing from the state budget, as well as costs of disability prevention;
- 3) sickness fund, from which benefits specified in separate regulations were financed;
- 4) accident insurance fund, from which benefits specified in separate regulations were financed;
- 5) reserve funds for:
 - (a) disability and sickness insurance,
 - (b) accident insurance.

The four funds (pension, disability, sickness, and accident funds) are basic funds, linked to their respective contributions and benefits.²⁶ The legislative changes concerning Article 55 of the System Act did not concern these funds.

The judiciary points out that the Social Insurance Fund, set out in the Act on the Social Insurance System, is a state special purpose fund established in order to implement tasks in the area of social insurance, comprising several smaller

²⁵ J. Jończyk, *Glosa do postanowienia SN z dnia 19 września 2002 r.*, V CKN 1223/00, OSP 2004, nr 7–8, p. 97. LEX, <https://sip-1lex-1pl-100078a8d01e0.han3.uci.umk.pl/#/publication/385919864/jonczyk-jan-glosa-do-postanowienia-sn-z-dnia-19-wrzesnia-2002-r-v-ckn-1223-00?keyword=V%20CKN%201223~2F00&cm=SFIRST> (accessed: 1.04.2023).

²⁶ The literature is dominated by analyses of Social Security Funds and the Pension Fund, other funds are exceptionally the subject of academic studies, see: e.g., J. Wantoch-Rekowski, *O funduszu wypadkowych – uwagi de lege lata i de lege ferenda*, “Prawo Budżetowe Państwa i Samorządu” 2014, no. 1, pp. 115–123.

sub-funds (Article 55). Adopted in Article 1 of the System Act, the social insurance was divided into four separate types of insurance, i.e., pension, disability, sickness, and accident insurance.²⁷ The case law is not indifferent to the Social Insurance Fund, which has repeatedly pointed to the essence of the Social Insurance Fund as a special-purpose fund created from social security contributions.²⁸

It should be noted that Article 55(1)(5) regulates two reserve funds – the first relates to disability and sickness insurance, the second – to accident insurance.

It needs to be stressed that in the structure of the Social Insurance Fund there has been no reserve fund for the most important of the funds, i.e., the pension fund. The reserve fund for the pension fund is the Demographic Reserve Fund (*Fundusz Rezerwy Demograficznej*–FRD), regulated in Articles 58–65 and having legal personality. It operates on the basis of the provisions of the System Act and the statute granted by the minister competent for social security by way of an ordinance. The authority of the Demographic Reserve Fund is the Social Insurance Institution (ZUS), which disposes of FRD funds and represents FRD in relations to other entities.

There are also studies analysing statistical data in the literature. One of them resulted in the conclusion that the income from contributions to the Social Insurance Fund (FUS), like the expenses, was systematically growing, however, the growth rate of the income from contributions is clearly lower than that of the expenses, which indicate the lack of self-sufficiency of the pension insurance financing system.²⁹ However, it should not be forgotten that the social security system is based in particular on the principle of self-financing.³⁰ Nevertheless, there is a belief that tasks financed from earmarked funds have guaranteed continuity and sustainability of financing, and therefore are less dependent on the current decision of politicians.³¹

The construction of the Social Insurance Fund raises an obvious question whether the individual components of the Social Insurance Funds are independent funds, or are only a ‘technical’ element of the Social Insurance Fund. In other

27 Judgment of the Court of Appeal in Rzeszow of 7 June 2017, III AUa 981/16, LEX no. 2335194; D. Wajda, *Fundusz Ubezpieczeń Społecznych*, in: *Ustawa o systemie ubezpieczeń społecznych. Komentarz*, B. Gudowska, J. Strusińska-Żukowska (eds.), Warszawa 2014, p. 767.

28 D. Wajda, *Fundusz Ubezpieczeń Społecznych*, p. 758.

29 T. Sowiński, *Status Funduszu Ubezpieczeń Społecznych*, in: *Finanse ubezpieczeń emerytalnych*, Warszawa 2009; data analysis covered the period 1999–2004.

30 D. Wajda, *Fundusz Ubezpieczeń Społecznych*, p. 762.

31 J. Wantoch-Rekowski, *Fundusz ubezpieczeń społecznych*, in: *Ustawa o systemie ubezpieczeń społecznych. Komentarz*, J. Wantoch-Rekowski (ed.), Warszawa 2015, pp. 499–500.

words, one should ask whether the division of the Social Insurance Fund into particular funds is merely of an organizational character, or it is an organizational and financial-legal division as well. Indicating greater financial independence of the funds

Twenty years ago, it was already pointed out in the literature that there was a number of arguments in favour of the thesis that the separation of particular funds within the framework of FUS were of only an organizational character. Subsidies and loans constituted revenue of FUS, not of its particular funds, and the financial plan (being an annex to the Budget Act) covered the revenue and expenditure of FUS as a special purpose fund.³²

At present, there is no doubt that the division of the Social Insurance Fund into respective funds is basically of an organizational nature. In the situation of a permanent shortfall of contributions in relation to expenditure on benefits, the financial problems of the Social Insurance Fund are perceived with regard to the Fund as a whole. Although the deficit of FUS is caused mainly by the pension fund (followed by the disability fund), it is a deficit of FUS as a special purpose fund.³³

Sources of financing of reserve funds and their significance

In the original text of the System Act, the issue of financing reserve funds was regulated in Art. 56. According to paragraph 1, reserve funds were created:

- a) for disability and sickness insurance from the funds remaining on 31 December of each year on the accounts of the funds referred to in Article 55, items 2 and 3, reduced by amounts necessary to ensure payment of benefits falling in the first month of the following year;
- b) for accident insurance from the funds remaining on 31 December of each year in the accident fund account, less the amounts necessary to ensure payment of benefits falling in the first month of the following year;
- c) from interest on deposited reserve funds.

The purpose of the funds accumulated within the reserve funds is defined in Article 56(2), according to which the reserve funds may only be used to replenish shortfalls in the disability, sickness, and accident funds.

The regulation stipulated in Article 56(3), concerning the financial management of reserve funds, had only theoretical significance. This is because the legislator

32 J. Wantoch-Rekowski, *O charakterze prawnym Funduszu Ubezpieczeń Społecznych*, in: *Studia z prawa publicznego*, K. Lubiński (ed.), Toruń 2001, p. 75.

33 J. Wantoch-Rekowski, *System ubezpieczeń społecznych*, p. 119.

indicated that the funds of the reserve funds could only be invested in bank deposits and in securities issued by the State Treasury, unless the Council of Ministers, at the request of the President of the Institution, allowed the funds to be invested in another way. In practice, the reserve funds did not hold any funds. It was not possible for the disability, sickness, or accident fund to have such surpluses at the end of a given year that, after ensuring the financing of benefit payments in January of the following year, a single zloty would remain unused.

Change in the internal structure of the Social Security Fund in 2014

The problem of the need to liquidate reserve funds has been signaled in the literature. J. Wantoch-Rekowski pointed out that

it should be considered whether, as part of the next reform of social insurance finances, changes should be made regarding funds which are part of the Social Insurance Fund. First and foremost, reserve funds should be liquidated, as in practice they have no revenues. Their significance for nearly fifteen years of the reformed system's functioning has been identical, i.e., non-existent.³⁴

As of 1 February 2014, *inter alia*, Articles 55 and 56 of the Social Insurance Act were amended – pursuant to Article 5, items 20 and 21 of the Act of 6 December 2013 on amending certain acts in connection with determining the rules for payment of pensions from funds accumulated in open pension funds.³⁵ As a result of changes in the structure of FUS, only one reserve fund remained – for disability, sickness, and accident insurance. Therefore, the reserve funds were merged. The revised Art. 56, item 1 of the System Act stipulated that a reserve fund is created:

- a) from the funds remaining on 31 December of each year in the bank account of the Social Insurance Fund (FUS) less amounts necessary to ensure payment of benefits falling in the first month of the following year;
- b) from interest on the funds deposited in the reserve fund.

No fundamental changes have been made to the sources of financing of the reserve fund. It was difficult to expect any innovative or original solutions in this respect.

³⁴ J. Wantoch-Rekowski, *System ubezpieczeń społecznych*, p. 119.

³⁵ Journal of Laws of 2013, item 1717.

The current internal structure of the Social Security Fund

Pursuant to Article 1(20) of the Act of 24 June 2021 amending the Act on the social insurance system and certain other acts,³⁶ the reserve fund was liquidated. As of 18 September 2021, the Social Insurance Fund consists of only four funds: pension, disability, sickness, and accident funds.

In the justification of 11 May 2021 to the bill³⁷ it was aptly pointed out that FUS is an important element of the public finance sector, and the financial situation of this fund has a major impact on the entire system of public finance. FUS is a deficit fund, which means that current revenues from social insurance contributions do not cover all the expenses of this fund. Therefore, the legislator has stipulated that the state is the guarantor of the solvency of social insurance benefits. The expression of such state guarantees is – above all – the subsidy for this fund planned annually in the Budget Act. The aim of the bill, as indicated in the justification, was to structure the social insurance system, to rationalize it, introduce uniform solutions for granting and paying benefits, and to improve the functioning of ZUS in the context of financial management and settlements with contribution payers.

Regarding the liquidation of the reserve fund, it was indicated that: “The existing provisions provide for the necessity for ZUS to create a reserve fund from the funds remaining in the FUS bank account on 31 December each year. Taking into consideration the fact that there is a continuous shortage of funds in the FUS, and the necessity of subsidizing that fund from the state budget in order to ensure funds for benefit payments, these provisions are impossible to implement by ZUS. At the end of the year, it may transpire that the subsidy from the state budget is the main source of funds remaining on the FUS account as of 31 December and at the same time the prerequisite for creating a reserve fund arises, which would lead to a situation where the reserve fund would be created from the subsidy from the state budget. In view of the above, a rational solution in this situation is the liquidation of provisions imposing that obligation on ZUS, as they are inapplicable and unjustified in the current financial situation of the FUS, particularly as this matter was in subsequent years the subject of interest of the Supreme Chamber of Control (NIK), which during its annual audit of the execution of the budget and financial plans expected explanations on the reasons for ZUS’s failure to fulfil its statutory task and to create a reserve fund.”

³⁶ Journal of Laws of 2021, item 1621.

³⁷ Parliamentary printed matter no. 1188 of 2021.

In principle, the justification for the bill in the part concerning liquidation of the reserve fund should be regarded as accurate. An exception is the comment concerning the results of an audit conducted by the Supreme Audit Office (NIK), which “expected explanations about the reasons for ZUS’s failure to perform its statutory task and for not creating a reserve fund.” It is true that NIK in some of its post-audit reports pointed to the lack of separation of reserve funds (when two existed) or a reserve fund, but this was based on a statement of a specific factual situation, which was in line with the law. For example, it can be pointed out that in the *Post-audit Report* of 2013³⁸ on the execution of the state budget in 2012, part 73 referring to Social Insurance Institution and execution of financial plans of the Social Insurance Fund, Demographic Reserve Fund, Bridging Pension Fund, and financial plan of the Social Insurance Institution – as a state legal entity, it was indicated that: “Reserve funds for disability and sickness and accident insurance are separated within the FUS. In 2012 – as in previous years - the Social Insurance Institution did not separate these funds. The reason was the failure to meet the statutory premise, i.e., the lack of sufficient financial resources remaining on 31 December of each year in the account of the disability, sickness, and accident fund, reduced by the amounts necessary to ensure payment of benefits falling in the first month of the following year.” In the *Post-audit Report*, it was indicated that the balance of funds in the fund accounts at the end of 2011 and 2012, was as follows:

- a) disability fund – PLN 2,139.4 thousand in 2011 and PLN 18.1 thousand in 2012;
- b) sickness fund – PLN 365.3 thousand in 2011 and PLN 11.8 thousand in 2012;
- c) accident fund – PLN 240.3 thousand in 2011 and PLN 18.2 thousand in 2012.

According to the data, in 2011 the balance of funds in their accounts ranged from 0.03% to 0.06% in relation to the benefits paid for the month of January, and in 2012 this relation fell to 0.001% – 0.004% respectively. Therefore, there is no doubt that the lack of separation of reserve funds (since 2014 – the reserve fund) by ZUS was not the result of the wrong actions of ZUS, but the lack of occurrence of statutory prerequisites, for which it is difficult to blame ZUS.

Conclusion

Creating reserve funds within the Social Insurance Fund would not be a bad solution if these funds had ‘external’ sources of financing other than social insurance contributions. The idea adopted by the legislature that the resources of reserve funds constitute unused resources of basic funds in a given year was misguided.

³⁸ Ref. no. KPS-4100-06-01/2013, P/13/108 (data relating to reserve funds, p. 43).

All existing forecasts indicated that both the Social Insurance Fund as a whole, as well as each of the funds separately, would not be able to achieve a positive financial result annually in the long term.

It should be stressed that there are several provisions that guarantee the payment of social insurance benefits, regardless of the financial condition of the Social Insurance Fund. For example, it can be pointed out that Article 2(3) of the Social Insurance System Act indicates that the payment of social insurance benefits is guaranteed by the state. Therefore, regardless of the state of financial resources within particular funds, insurance benefits financed from them must be realized, and the source of deficient financial resources is the state budget.

It may come as a surprise that the legislature took a very long time to ‘mature’ with respect to the liquidation of the facade reserve funds. In fact, it did so gradually – the two reserve funds functioning until 2014 were replaced by one, which was finally liquidated in 2021.

The current internal structure of the Social Insurance Fund corresponds to the existing types of contributions and types of benefits, it is a simple and transparent structure. It can be assumed that the internal structure of the Social Insurance Fund is adequate to its role and tasks, and that the existing funds (pension, disability, sickness, and accident funds) correspond to the financial model of social insurance implemented in Poland.

Literature

- Bielawska K., *Rola pozaskładowych źródeł w finansowaniu świadczeń z ubezpieczenia społecznego wypłacanych z Funduszu Ubezpieczeń Społecznych*, “Ubezpieczenia społeczne. Teoria i praktyka” 2016, no. 2, pp. 3–17.
- Borodo A., *Polskie prawo finansowe. Zarys ogólny*, Toruń 2010.
- Bożek W., Mańczyk P., *Gospodarka finansowa państwowego funduszu celowego*, in: *Ustawa o finansach publicznych. Komentarz*, Z. Ofiarski (ed.), Warszawa 2019.
- Jędrasik-Jankowska I., *Pojęcia i konstrukcje prawne ubezpieczenia społecznego*, Warszawa 2020.
- Jończyk J., *Glosa do postanowienia SN z dnia 19 września 2002 r.*, V CKN 1223/00, OSP 2004/7-8/97, LEX, <https://sip-lex-1pl-100078a8d01e0.han3.uci.umk.pl/#/publication/385919864/jonczyk-jan-glosa-do-postanowienia-sn-z-dnia-19-wrzesnia-2002-r-v-ckn-1223-00?keyword=V%20CKN%201223~2F00&cm=SFIRST> (accessed 1.04.2023).
- Klimas M., *Fundusz Ubezpieczenia Społecznego*, in: *Postępowanie sądowe w sprawach z zakresu ubezpieczeń społecznych*, Warszawa 2013.

- Kosikowski C., *System funduszy celowych i niektórych innych jednostek sektora finansów publicznych*, in: *Finanse publiczne i prawo finansowe*, C. Kosikowski, E. Ruśkowski (eds.), Warszawa 2006.
- Kowalczyk E., *Art. 29*, in: *Ustawa o finansach publicznych. Komentarz*, A. Mikos-Sitek (ed.), 2022.
- Kucia-Guściora B., *Fundusz Przeciwdziałania COVID-19 – antidotum finansowe na czas pandemii*, “Kwartalnik Prawno-Finansowy” 2020, no. 1, pp. 26–51, DOI: 10.34616/kpf.2020.1.26.51.
- Kucia-Guściora B., *Status prawny funduszy celowych*, “Ruch Prawniczy, Ekonomiczny i socjologiczny” 2004, no. 4, pp. 5–25.
- Lenio P., *Państwowe fundusze celowe*, in: *Prawo finansów publicznych z kazusami i pytaniami*, W. Miemiec (ed.), Warszawa 2018.
- Malinowska-Misiąg E., *Jednostki sektora finansów publicznych*, in: *Ustawa o finansach publicznych. Ustawa o odpowiedzialności za naruszenie dyscypliny finansów publicznych. Komentarz*, W. Misiąg (ed.), Warszawa 2019.
- Sawicka K., *Art. 29*, in: M. Karlikowska, M. Miemiec, Z. Ofiarski, K. Sawicka, *Ustawa o finansach publicznych*, Wrocław 2010.
- Sawicka K., *Formy prawno-organizacyjne jednostek sektora finansów publicznych* in: *System Prawa Finansowego*, vol. II, *Prawo finansowe sektora finansów publicznych*, eds. vol. II, Warszawa 2010.
- Sierocka I., *Podmioty ubezpieczeń społecznych*, in: *System ubezpieczeń społecznych. Część ogólna*, A. Wypych-Żywicka (ed.), Warszawa 2020.
- Sowiński T., *Status Funduszu Ubezpieczeń Społecznych*, in: *Finanse ubezpieczeń emerytalnych*, Warszawa 2009.
- Szołno-Koguc J., *Fundusze związane z ubezpieczeniami społecznymi w polskim systemie finansów publicznych*, “Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach” 2018, no. 358, pp. 243–252.
- Szołno-Koguc J., *Pozabudżetowe fundusze celowe w Polsce (ewolucja problemu)*, in: *Nauka finansów publicznych i prawa finansowego w Polsce. Dorobek i kierunki rozwoju. Księga Jubileuszowa Profesor Alicji Pomorskiej*, J. Głuchowski, C. Kosikowski and J. Szołno-Koguc (eds.), Lublin 2008.
- Wajda D., *Fundusz Ubezpieczeń Społecznych*, in: *Ustawa o systemie ubezpieczeń społecznych. Komentarz*, B. Gudowska, J. Strusińska-Żukowska (eds.), Warszawa 2014.
- Wantoch-Rekowski J., *Fundusz ubezpieczeń społecznych*, in: *Ustawa o systemie ubezpieczeń społecznych. Komentarz*, J. Wantoch-Rekowski (ed.), Warszawa 2015.
- Wantoch-Rekowski J., Morawski W., *Podstawy prawa finansów publicznych. Podręcznik akademicki*, Toruń 2019.
- Wantoch-Rekowski J., *O charakterze prawnym Funduszu Ubezpieczeń Społecznych*, in: *Studia z prawa publicznego*, K. Lubiński (ed.), Toruń 2001.
- Wantoch-Rekowski J., *O funduszu wypadkowym – uwagi de lege lata i de lege ferenda*, “Prawo Budżetowe Państwa i Samorządu” 2014, no. 1, pp. 115–123.

Wantoch-Rekowski J., *Składki na ubezpieczenie emerytalne – konstrukcja i charakter prawny*, Toruń 2005.

Wantoch-Rekowski J., *System ubezpieczeń społecznych a budżet państwa – studium prawnofinansowe*, Warszawa 2014.

List of legal acts:

Act of 25 November 1986 on the Organization and Financing of Social Security (consolidated text: Journal of Laws of 1989 No 25, item 137, as amended).

Act of 13 October 1998 on the Social Insurance System (consolidated text: Journal of Laws of 2021, item 423 as amended).

Act of 27 August 2009 on Public Finance (consolidated text: Journal of Laws of 2021, item 305 as amended).

Act of 6 December 2013 on amending certain acts in connection with determining the rules for payment of pensions from funds accumulated in open pension funds (Journal of Laws of 2013, item 1717).

Act of 24 June 2021 amending the Act on social insurance system and certain other acts (Journal of Laws of 2021, item 1621).

Other sources

Explanatory Memorandum of 11 May 2021 to the draft Act on amending the Act on social insurance system and certain other acts (parliamentary printed matter No. 1188 of 2021). Decision of the Supreme Court - Civil Chamber of 19 September 2002 (V CKN 1223/00, Legalis no. 55866).

Judgment of the Court of Appeal in Rzeszów of 7 June 2017 (III AUa 981/16, LEX no. 2335194).

Post-Audit Report of the Supreme Chamber of Control (NIK) of 2013. (ref. KPS-4100-06-01/2013, P/13/108).

CYTOWANIE

Wantoch-Rekowski J., Wilmanowicz-Słupczewska M., *Evolution of the Internal Structure of the Social Insurance Fund*, „Acta Iuris Stetinensis” 2023, nr 2 (vol. 43), 145–158, DOI: 10.18276/ais.2023.43-08.