

PUBLIC MONETARY FUNDS AS A SOURCE OF FINANCING OF PUBLIC ASSOCIATIONS: EXPERIENCE OF FOREIGN COUNTRIES AND PROSPECTS FOR UKRAINE

The paper investigates the possibility of introducing a separate monetary fund for financing public associations. Analyzing the experience of foreign countries, the author argues that by its legal nature and characteristic features such fund must be referred to a public monetary fund. It is proposed to determine the status of the National fund to support the institutional development of civil society as a centralized state budget fund.

Key words: public monetary fund; State support of public associations; budgetary fund; non-budgetary fund.



Kotsiuruba Olga,

*assistant of the
Department of
Administrative and
Financial Law of
Ivan Franko National
University of Lviv*

Introduction. While elaboration of the White Book of reforming the legal environment for development of civil society in Ukraine, the Expert Group of Ukrainian Independent Center for Political Research, the Development Network of European Law and the Center for Public Advocacy made a proposal on creation of the National Fund to support the institutional development of civil society [1, p. 22]. The conclusions on the need for creating such fund in Ukraine can also be found in the research of the National Institute for Strategic Studies under the President of Ukraine [2], the Project Coordinator of the Organization for Security and Cooperation in Europe in Ukraine [3, p. 49; 4, p. 149-151]. The countertypes of the establishment and operation of the Fund for support of public associations that accumulates financial resources both of the state budget and international organizations, private donors can be found in many countries, including Hungary, Croatia, Estonia. The experience of establishment of specialized trust funds, formed by specific sources that are distributed to the needs of civil society institutions can be found in Denmark (fund of football pools and lotteries), Czech Republic (Investment Foundation Fund), UK National lottery fund. In Poland there is a Public Initiatives Fund (FIO) - as a long-term government program.

Problem Statement. Supporting the idea of introduction in Ukraine of the Civil Society Development Foundation, it should be noted that the implementation of such an idea will pose a number of questions among the representatives of financial and legal science. It is necessary to determine the financial and legal nature of such Foundation and establish whether there are legal preconditions for the creation of such funds in Ukraine.

Analysis of recent research and publications, which deal with this problem. The investigation of the legal nature of public monetary funds and their classification in the financial and legal science is devoted to the works of O. B Zaychuk, L. K Voronova, M. V Karaseva, O. A Lukasheva, I. V Martyanova, A. A Nechay, N. Y Pryshvy, T. O Sholkova, N. Y. Yakymchuk.

Definition of Article purposes. Exploring the possibility of introducing a separate monetary fund for financing of public associations, it should be determined whether it belongs to the public monetary funds; what type of public monetary fund (budgetary, non-budgetary, centralized or decentralized) will in the best way perform tasks assigned to the fund designed to promote the development of civil society.

Statement of the problem. The term "fund" is inextricably related to the term "finances" and "financial resources". Thus, O. D Vasylyk, L. K Voronova determined financial resources as a set of monetary funds that are created in the process of distribution and redistribution of the gross national product and national income and are in the possession of the state, enterprises, or-

ganizations [5, p. 269]. Most researchers define the term finances as economic relations, during which the monetary funds are formed and used [6, p. 7].

The term "fund" has several meanings in Ukrainian legislation, as it is used in many aspects, in particular civil, financial and legal. The clear distinction between public and private finances is determined by A. A Nechay [7, p. 30]. Basically, the difference between them lies in the purpose of use of the accumulated funds, whether they are used to satisfy the civil or public interest.

The confusion in definition of the terms of public funds in Ukraine makes the existence of two types of funds which can be called "public": the first act as the public administration bodies, the second - public monetary funds.

N. Y. Pryshva indicates that the Pension Fund of Ukraine is a central executive body and the Social Insurance Fund on Temporary Disability, the Fund of obligatory social insurance of Ukraine against unemployment are the subjects of public relations.

All the above funds, not just the Pension Fund of Ukraine, are public funds, since they are established to meet the public interest, related to the social protection of citizens [7, p. 20].

With the express aim of avoiding inconsistency, the term public monetary funds is established to date in the financial and legal science. By definition of A. A. Nechay, it is a combination of monetary funds, generated under the laws or regulations of local government authorities to meet the public interest and adapt for serving the interests of the subjects of legal relations, arising in the process of generating, managing,

distributing (redistributing) and using of these funds [8, p. 60-63].

The term "public funds" can be found both in the law and in the doctrine of foreign countries. In Germany there are both civil and public law funds [9, p. 16]. N. Y. Pryshva stresses that the term "public finances" is commonly used and fixed at the level of constitutional regulations of Slovenia, Brazil, Romania, Principality of Monaco [10, p. 19]. In the Republic of Poland, the scientists isolated the concept of "public finance sector," which includes in addition to budget other financial institutions that carry out tasks of public financial management [11, p. 293].

Negative impact on the level, degree and effectiveness of legal regulation of the institute of public monetary funds, as stressed by O.Vysotska, has the lack of systematic legislative act that defines the legal status of the public monetary fund as well as consolidation of common features of such fund in the applicable legislation, definition of its conceptual and categorical framework [12, p. 74].

In the Republic of Poland a law has been adopted on public finance, which regulation is applied not only to budgets, but also to extra-budgetary funds, as well as budgetary institutions finances, other units of public finance sector.

In the Law "On openness of public funds", adopted on February 11, 2015, the concept of "public funds" is introduced by statute. These are in addition to the budget funds the credit recourses, granted under state and local guarantees, funds of the National Bank of Ukraine, state banks, state trust funds, the Pension Fund of Ukraine, funds of obliga-

tory state social insurance and funds of economic entities and state municipal property, received by them from their economic activities. One of the courses of public finance reform in Ukraine is granting the right to budget institutions to account the funds, raised by them on an independent basis out of the treasury bills. Thus, their regulation, as the regulation of extra-budgetary funds is not covered by the Budget Code. Given this, there is the need for integrated statutory instrument to regulate public monetary funds (Law on public funds in Ukraine).

The following key features of public funds should be highlighted: (a) regulation of their formation, distribution and use is determined by statutory and regulatory enactments; (b) on the right of ownership monetary funds belong to the respective state-territorial entity, but are transferred to the operational management of the public administration body [12, p. 76] or entity who has the delegated authority; (c) funds intended for the implementation of the public interest and can only be used for strictly defined purposes; (d) separate special-purpose account in the relevant financial institution [14, p. 38]; (e) public administration bodies monitor the use of funds; (f) public responsibility, including legal responsibility is provided for unlawful diversion of funds.

Let's perform a more detailed analysis of correspondence between the characteristics of public monetary funds defined above, and the practice of functioning of the funds, that support public associations in foreign countries.

Establishment of a fund that supports public associations and principles of its operation shall be provided

for by a separate law. Thus, Croatia adopted on 16 October 2003 the Law "National Civil Society Development Foundation". According to Article 15 of the Law, the Fund is financed with the funds provided in a separate item in the State budget (is the principal manager of budget funds). A part of the proceeds from gambling and competitions is also transferred to the Fund in accordance with Article 10, p.1, p.8 of the Law on gambling and games winners [15]. In Ukraine, the main principles of formation and activity of the fund must be set out in a separate section of the Law of Ukraine "On public associations" or in the new Law of Ukraine "On public benefit organizations".

Management of the Fund must be carried out by a specially-formed body of public administration or public entity which has the delegated authority. In Hungary the fund management is carried out by the Department of Social Dialogue at the Ministry of Social Affairs and Labor [16]. A common practice for foreign countries is the establishment of a fund management body composed equally of representatives of public administration and civil society organizations (Croatia, Albania, Jordan). In particular, Albania created a separate public administration body - Agency for support of civil society, which is controlled by the Supervisory Board and performs the distribution of grants to public associations from the state budget. The members of the Supervisory Board are appointed by the government (the Supervisory Board includes four representatives of central executive authorities and 5 representatives of civil society) [17].

Jordanian Fund for the Environment Protection includes five representatives of public administration and 5 representatives of the private sector and non-governmental organizations, appointed by the Minister on the recommendations of the Secretary-General [18]. Determination of the Fund Manager depends on whether such fund in Ukraine will refer to the budgetary or non-budgetary fund. For non-budgetary funds it is typical to establish non-profit self-regulated organizations with the involvement of the representatives of public administration to the Board. For Ukraine, the best option, which would approach the activities of the Fund to foreign examples is the establishment of the National Fund for support of the institutional development of civil society as a central executive body, which activities are directed and coordinated by the Ministry of Justice (body, conducting the Unified Register of community groups), and the procedure of funds distribution will be accomplished by a specially formed council. Establishment of a budgetary institution, the Board of which will include the representatives of the social and public sector, is also admissible.

The Foundation manages the funds of the state budget and/or funds that are inherently government revenues. In many countries, the fund that supports public associations is financed by the state budget. For example, in Albania the disposer of budgetary funds is the Agency for support of civil society, the amount allocated from the state budget, by law, can not be reduced compared to the allocation for this purpose for the first time (in 2009, the year of foundation, the sum of fund financing from the

state budget amounted to the equivalent of 1 MIO dollars). The funds, that support public organizations are financed by the funds that are in essence state revenues, including 1% of funds from privatization (Czech Republic); income from lotteries and gambling (Croatia, Great Britain, Ireland, Jordan, South Africa) [19]; deduction from the tax on income of individuals (Hungary) [20].

The monetary recourses of the fund are intended for the implementation of the public interest and can be used only for strictly defined purposes, so the National Fund can be established to strengthen the public sector as a whole, or to support specific projects of public associations that contribute to priority public policy areas. The main reason for providing organizational support is investing in the development of civil society, which can be an effective partner for the government in implementing its policies. The Croatian National Foundation for Civil Society Development in order to gain the institutional support requires the elaboration of development plans ("business plans") by the organization for the three coming years and provides long-term organizational support for this time period. In Hungary, 60% of the financial resources of the Fund must be allocated to institutional support of civil society, while 30% - to support of the projects and 10% are used to finance the activities of the Fund. Institutional support provided to a particular organization is up to 30% of its operating costs (including staff salaries), calculated on the basis of the previous year [16]. Community Initiatives Fund of Poland provides no institutional support, but ensures only

funding of individual projects of the organizations.

The Fund typically provides for a separate special-purpose account in the relevant financial institution, which in turn can ensure long-term financing. The order of service of the funds depends on whether such public fund is budgetary or extra-budgetary. In the case of long-term grants, the fund administrator shall be empowered to suspend the payments in case of failure to perform obligations by the public organization in line with the plan.

The effective financial control must be exercised with regard to the use of monetary recourses by the public funds. Thus, the state financial audit of the Hungarian National Foundation in 2006 revealed serious shortcomings in the transparency and accountability of funds. For 3 years of existence, the Fund has not developed a general strategy for the development of public sector, the performance criteria has not been specified, the criteria for support have remained unclear. [21] In addition to monitoring the work of the fund, the public associations, that are recipients of public funds, should be subject to inspection. In case of detection of inappropriate use of funds, the legislation should provide for the public and financial liability (termination of provision of funds, refunding of monetary resources, which were inappropriately used, deprivation of the right to participate in competitions for public financing).

By the example of foreign countries, including Croatia, *without introducing transparent mechanisms for allocation of public funds, monitoring their use and effective sanctions* for non-compliance with

the rules defined by the legislation, the establishment of the National Fund for support of the institutional development of civil society will not solve all problems with funding of public associations existing in Ukraine.

Thus, the National Fund for support of the institutional development of civil society, in case of its establishment must comply with all attributes of the public monetary fund.

Before the introduction of the mechanism of funding of public associations through the National Fund for the institutional support of civil society, it is necessary to decide on the question to what type of public funds it should be referred.

For this purpose, let's find out what types of funds function in Ukraine and in foreign countries. Today, of fundamental importance is the division of funds into centralized and decentralized. As noted by A. A. Nechay, decentralization of funds is associated with such parameters as administrative and territorial division and economic and managerial feasibility, that are based on the principle of subsidiarity of public services [22, p. 111]. Despite the announced decentralization reform, the status of decentralized public funds currently has no legal definition and integral regulation.

Of great practical importance is the division of public funds into the budgetary and non-budgetary. O. A. Lukashev stresses that the major costs for the development of the state or territorial communities are allocated from the budgetary funds, while the non-budgetary funds are aimed at implementing more specific goals - pensions, social security, etc. [23, p. 93]

According to N.Y. Pryshva, in the Russian Federation, as a part of financial law there exists an institution of state extra-budgetary funds [10, p. 25]. Extra-budgetary funds (budget of the Pension Fund of the Russian Federation; budget of social insurance of the Russian Federation, budget of the Federal Fund of compulsory medical insurance) were included in the budget system of the Russian Federation in line with the Article 144 of the Budget Code of the Russian Federation.

According to A. A. Satarova, extra-budgetary funds are the independent part of the financial system, which represents the financial means, separated from the budget system, which are managed by public authorities and designed to finance the constitutional rights of citizens [24, p. 8].

No criteria has been defined in Ukrainian law for assignment of funds to the budgetary or extra-budgetary. A. A. Nechay refers the funds that are not the part of the budget (including the Pension Fund of Ukraine [25]) to extra-budgetary. It should be noted that today the Pension Fund of Ukraine has a special status. On the one hand, the Fund is not an integral part of the state budget, but the Law of Ukraine "On State Budget for 2015" allocated 76 billion UAH for its funding.

The question is whether to refer this fund to the budgetary (since it is financed by the state budget) or to extra-budgetary (since it is not a part of the budget)?

In the Ukrainian financial and legal literature, as in the Russian, the attention is paid to the classification of the fund to the constituent part of the budget.

For comparison, please note that Cezary Kosikovskyy follows a different approach for determining the criteria of extra-budgetary funds in Poland. He classifies the state trust funds into the funds, included in the budget system (which use state budget funds (subsidies)) and extra-budgetary (which can not use the state budget funds) [11, p. 314-316]. The Budget trust funds include the Social Security Fund, Demographic Reserve Fund, Forest Fund, Thermal Modernization Fund, National Road Fund, National Health Fund, the State Fund for Rehabilitation of Disabled, Fund of Student loans and credits, National Housing Fund, Municipal Investment Development Fund, Railroad Fund, Architectural Monuments National Fund of Krakow, etc. For instance, the State Fund of combatants reports to the head of the Office for War Veterans and Repressed (central executive authority of the Republic of Poland) and 99% of the fund is formed by subsidies from the state budget. The public funds that can not use the budget include the National Fund for Environmental Protection and Water Management, the Creative Works Aid Fund, the Arts Aid Fund, the Police Aid Fund, Armed Forces Modernization Fund, Science and Technology Fund of Poland, etc.

For example, the payments from the Creation Works Aid Fund creativity are allocated by the Minister of Culture and National Heritage on the recommendation of a special committee. The only source of income of the Fund is mandatory fees paid by producers or publishers of literary, musical, artistic, photographic and cartographic works [26].

The state central budget funds in Ukraine include in particular the Deposit Guarantee Fund (acting under the Law of Ukraine "On the system of guaranteeing deposits of individuals"). The Social Insurance Fund of Ukraine, established on 1 January 2015, should also be referred to the extra-budgetary central funds. The state financial specialized institution, established by the state, represented by the Cabinet of Ministers of Ukraine - State Fund for Youth Housing should also be referred to the public extra-budgetary funds.

Along with the extra-budgetary funds there are also the funds in Ukraine, provided for in the state budget of Ukraine. According to the Law of Ukraine "On State Budget for 2015" as part of a special budget fund, the following state trust funds are established: the Fund of Social Protection of Disabled; Trust Fund for Defense and Security. The State specialized fund for financing of national expenses in aviation and Ukraine's participation in international aviation organizations also functions as a part of a general budget fund. The budget funds in Ukraine also include the State Fund for Basic Research); Agricultural Fund, the State Fund for Regional Development.

The classification criteria also include the classification of funds by legal nature (based on law, by-law), by ownership, territorial level (national, regional and local), by the direction of use (sectoral and intersectoral), by the period of validity (long-term and short-term), by the direction of formation (tax and non-tax).

In our opinion, these classification criteria are complementary, and are not

critical for establishment of the nature of public monetary funds. Thus, during the development of the bill on the National Fund for support of the institutional development of civil society, it is necessary to determine, first of all, whether for the best performance of the fund it is required to be established as a centralized or decentralized, budgetary or non-budgetary, and with the mechanism of the fund administration.

As we see in Ukraine there are various models of administration by trust public monetary funds. We can single out the following:

– administration is carried out by a special central executive authority (State Property Fund, Pension Fund of Ukraine);

– administration is carried out by a non-profit self-governing organization (the Social Insurance Fund of Ukraine);

– administration is carried out by budgetary institutions, which belong to the management sphere of the relevant central executive bodies (State Foundation for Basic Research is under authority of the State Agency for Science, Innovation and Information; Agrarian Fund – under the management of the Agriculture Ministry, Social Fund for the Disabled – the Ministry Social Policy of Ukraine);

– administration is carried out by the State financial specialized institution (the State Fund for Youth Housing);

– administration is carried out based on the budget program (selection of projects implemented at the expense of the State Fund for Regional Development in 2015 is carried out by the regional commissions at local government administrations and approved by the

Cabinet of Ministers of Ukraine in coordination with the Budget Committee).

Thus, the administration by a non-profit self-governing organization or the State financial specialized institution is common for extra-budgetary funds in Ukraine. In case the fund is included in the state budget, its administrator will be the central executive authority or the budget institution, which activity is directed and coordinated by such body.

Conclusions. There is a need of the legislative unification of a concept of public monetary funds, legislative consolidation of characteristics and classification of public monetary funds. As it has been proved in the research, the funds that support public organizations operating in foreign countries are the public monetary funds.

Thus, the National Fund for support of the institutional development of civil society, in case of its establishment in Ukraine must meet all characteristics of the public monetary fund. Ukrainian model of public fund for support of public associations must provide for an opportunity to accumulate yield (from the sources, established by law, for instance deductions from lotteries (example of Croatia), monetary recourses of national and international donors). However, a major source of fund financing at the early stage must be the state budget funds.

The establishment of the fund as the extra-budgetary fund with enrollment to the fund only of certain types of fees will make impossible the performance of the task of complex support of civil society institutes in Ukraine. Thus, the National Fund for support of the institutional development of civil society

must take the place of the centralized state budget fund in the currently existing system of public funds.

In our opinion, the best is the establishment of central executive body (or budgetary institution) – the National Fund for support of the institutional development of civil society, which activities are directed and coordinated by the Ministry of Justice, this fund will be the principal manager of budget funds. In this case, the activities of the fund will fall both within the scope of the law "On transparency of budgetary funds", and other forms of the state financial control and the measures of financial liability.

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Коцюруба О. О. Публічні фонди коштів як джерела фінансування громадських об'єднань: досвід зарубіжних країн і перспективи для України

У статті досліджується можливість запровадження окремого фонду коштів для фінансування громадських об'єднань. Аналізуючи досвід зарубіжних країн, автор доводить, що такий фонд за своєю правовою природою та характерними ознаками має бути віднесений до публічного фонду грошових коштів. Пропонується визначити статус Національного фонду для підтримки інституційного розвитку громадянського суспільства як централізованого державного бюджетного фонду.

Ключові слова: публічний фонд грошових коштів; державна підтримка громадських організацій; бюджетний фонд; позабюджетний фонд.

Коцюруба О. А. Публичные фонды средств как источники финансирования общественных объединений: опыт зарубежных стран и перспективы для Украины.

В статье исследуется возможность введения отдельного фонда средств для финансирования общественных объединений. Анализируя опыт зарубежных стран, автор доказывает, что такой фонд по своей правовой природе и характерными признаками должен быть отнесен к публичному фонду денежных средств. Предлагается определить статус Национального фонда для поддержки институционального развития гражданского общества как централизованного государственного бюджетного фонда.

Ключевые слова: публичный фонд денежных средств; государственная поддержка общественных организаций; бюджетный фонд; внебюджетный фонд.

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