

Government Support For Commune Housing Investments in Poland During the Covid-19 Pandemic

Abstract: One of the effects of the COVID-19 pandemic may be a reduction in investment expenditure of communes, including those allocated for the implementation of tasks in the field of commune housing. Taking this risk into account, the Government Housing Development Fund (Rządowy Fundusz Rozwoju Mieszkalnictwa – RFRM) was established in 2020. It is a temporary, i.e. a 3-year mechanism of financial support for communes with the aim of strengthening their share in the share capitals of social housing initiatives (SIMs), which function in the form of limited liability companies, joint stock companies or cooperatives of legal entities. Support is provided at the request of the interested communes. Once an application is positively verified by the competent minister, the amount of support is transferred to the commune by Bank Gospodarstwa Krajowego, which serves the RFRM, supported by contributions from the COVID-19 Counteracting Fund. In this study, an analysis and assessment of the applicable legal provisions was carried out in order to establish the legal status of the RFRM and the essence of the support provided to communes. The thesis about the public status of this fund as well as the temporary and purposeful nature of the support provided therefrom has been verified as true. Support provided by the RFRM may not be used for any purposes other than the acquisition of shares or stocks in SIMs by the commune. The study uses the legal-dogmatic method and, additionally, the analytical method, to present specific numerical values reflecting the importance of the RFRM support.

Keywords: commune, housing, Government Housing Development Fund, social housing initiatives, financial support for communes

Preliminary Remarks

The effects of the COVID-19 pandemic resulted in a decrease in the rate of economic growth and revenues to the state budget and the budgets of local government units, as well as an increase in current expenditure conditioned by the need to protect entrepreneurs and consumers in this extraordinary situation. This generates the risk of asset expenditure being limited, including investment expenditure, the implementation of which may be of significant importance for satisfying various basic social needs. This category includes e.g. housing needs, as they condition the proper functioning of the family and integrate the household. Local government units, in particular communes, should also play an important role in this respect.

In the statutory catalogue of the commune's own tasks, the main structural element of which is to meet the collective needs of the community, the issues of commune housing are listed (cf. Art. 7 sec. 1 point 7 of the Act on the Commune Local Government of 8 March 1990, Journal of Laws of 2021, item 1372 as amended). The task of the commune has been defined by the legislator quite generally, therefore it can either play the role of a direct investor in the field of housing, or only create conditions to enable the satisfaction of the housing needs of members of the community (Judgement of the Supreme Administrative Court of 18 July 2012, I OSK 968/12, LEX No. 1264986). The implementation of tasks in each of these areas is associated with incurring specific expenses from the commune budget.

The months-long period of restrictions in running businesses and various forms of social activity, justified by the need to minimise the effects of the COVID-19 pandemic, has had a negative impact on the income side of commune budgets. The structure of budget expenditures will be determined in the coming years by the decreasing budget revenues. Therefore, a decrease in asset expenditure can be expected due to the objective increase in current expenditure. In consideration of the aforementioned risks, various forms of external support for local government units have been introduced, enabling the continuation of investment tasks. One of those forms is the Government Housing Development Fund (RFRM).

The aim of the study is to analyse and evaluate the applicable legal regulations regarding the Government Housing Development Fund, including those that determine its legal status, the manner of its financial separation and the procedure for granting support. The thesis verified herein concerns the legislator's creation of a temporary (i.e. lasting a few years) mechanism of financial support for communes in the form of a centrally separated financial resource. The main motive for the establishment of the RFRM was the threat to the continuity of the communes' implementation of projects in the field of housing, which condition the satisfaction of the needs of local communities. Simultaneously, an attempt was made to prove that the separated financial resource is purposeful in terms of its subject and is dedicated only to communes. The study uses the legal-dogmatic method and, additionally, the analytical method. The effects of the COVID-19 pandemic may be long-term, but the period of application of the RFRM support mechanism has been limited by the legislator to the next three years. According to the legislator, after this period, communes should regain their ability to independently implement their obligatory own tasks in the field of housing. Nevertheless, it cannot be ruled out that there will be changes to the legislation in the future aimed at extending the period of financial support by the state for various initiatives related to commune housing.

Legal Status and the Manner of Separating the Government Housing Development Fund

Pursuant to Art. 30 of the Act of 10 December 2020 amending certain acts supporting the development of housing (Journal of Laws of 2021, item 11 as amended), the Government Housing Development Fund was established at Bank Gospodarstwa Krajowego (BGK). It is one of the initiatives included in the catalogue of legal solutions aimed at minimising the negative social and economic effects of the COVID-19 pandemic. The aim pursued by the RFRM is to support the development of communal housing and social rental housing. The legal solutions introduced in this area are consistent with the basic direction of the housing policy implemented, as defined in the National Housing Program. It is also emphasised that the initiative related to the establishment of the RFRM is an *ad hoc* state intervention determined by the COVID-19 pandemic, which negatively affects the level of communes' budgetary revenues (Substantiation of the draft act amending certain acts supporting the development of housing, Form No. 534 of the Sejm of the 9th term, pp. 1 and 55).

The provisions of the Act imply that the RFRM is not a state special-purpose fund within the meaning of Art. 29 of the Act on Public Finance of 27 August 2009 (Journal of Laws of 2021, item 305 as amended), hence it is not formally covered by the subjective and objective scope of the public finance sector [Ruśkowski 2018, pp. 118–119]. The reservation concerning the lack of formal grounds for including the RFRM in the public finance sector requires clarification, as its specific features could suggest a different interpretation. The fund was established by way of an act, the purpose of its operation and the direction of expenditure were clearly defined, and it was supported with public funds. However, in the act establishing this fund, it was not referred to as a state special-purpose fund. This is not an exceptional situation, as this term was also not used in relation to over twenty other funds operating in Poland in 2021. In the doctrine, such a category of funds is called special-purpose funds which are not covered by the rules of the Public Finance Act [Kosikowski 2008, pp. 428–429] but function in the sphere of public law [Lenio 2020, p. 117]. Such funds are public due to the status of tasks carried out with their participation as well as the wide use of funds from public resources [Szołno-Koguc 2007, p. 179].

One may conclude that the essential criterion for delimiting typical and atypical special-purpose funds is incorporating or not incorporating their annual financial plans, in the form of attachments, into the budget act. According to the legal status in force in 2021, there were 35 typical state special-purpose funds and 20 other public funds served by BGK. Substantially, the RFRM does not have its own sources of revenue, and it is financed with payments made from the COVID-19 Counteracting Fund, which was established in 2020 to finance or subsidise the implementation of tasks related to the counteracting of COVID-19 (Substantiation of the draft act amending certain acts supporting the development of housing, Form No. 534 of the

Sejm of the 9th term, pp. 1 and 55). Originally, it was a state special-purpose fund, but on 18 April 2020, its status was changed to “other public fund entrusted by the legislator to be managed by BGK” (Act on specific support instruments in connection with the spread of SARS-COV-2 virus of 16 April 2020, Journal of Laws of 2021, item 737 as amended). The amount of PLN 1,500,000,000 will be transferred to the RFRM from the COVID-19 Counteraction Fund, but in the following three tranches: PLN 300,000,000 in 2020, PLN 900,000,000 in 2021, and PLN 300,000,000 in 2022. The remaining revenues of the RFRM may come from interest on the fund’s periodically free resources deposited with banks, and from other contributions. Formally, the RFRM is not a sub-fund of the COVID-19 Counteracting Fund, but taking into account its relations with this fund, one may conclude that it could not function without the financial support from the COVID-19 Counteracting Fund, in which public funds are collected.

The RFRM’s periodically free funds may be deposited by BGK on the terms stipulated in Art. 78b sec. 2 of the Act on Public Finance of 27 August 2009. Pursuant to this provision, free funds of entities which are not entities of the public finance sector and are included in the government and local government institutions sector within the meaning of Regulation (EU) No. 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European national and regional accounts in the European Union (Official Journal of the EU L 174 of 26 June 2013, p. 1 as amended.), may be accepted in deposit by the Minister of Finance, on contractual terms. In the event this option of investing free funds is utilised, the party to the contract concluded with the Minister of Finance is the entity managing the fund in question [Bożek 2020, p. 547], i.e. BGK. The RFRM’s free funds transferred to the deposit are used by the Minister of Finance for periodic financing of the loaning needs of the state budget [Kucia-Guściora 2019, p. 33]. The costs (expenses) of the RFRM are primarily payments for the support provided to communes, as well as various fees incurred in connection with the handling of these payments and other expenses resulting from the operation of the fund.

Legal regulations were also introduced to enable the management of unused funds from the RFRM in the event of the lack of adequate interest of communes in obtaining support for their initiatives on the housing market. The minister responsible for construction, spatial planning & development and housing may transfer some of such funds to the Subsidy Fund (Act of 5 December 2002 on interest subsidies for housing loans with a fixed interest rate, Journal of Laws of 2019, item 1454 as amended), which is also operated by BGK. Funds transferred in this manner may only be used for financial support granted on the basis of the Act on financial support for the creation of residential premises for rent, sheltered housing, night shelters, shelters for the homeless, warming-up shelters, and temporary accommodation of 8 December 2006 (Journal of Laws of 2020, item 508 as amended). The aforementioned minister may also transfer part of the unused funds from the RFRM to the Ther-

mal Efficiency Improvement and Renovation Fund run with BGK. Such funds may then be allocated solely to thermal efficiency improvement, renovation and compensation bonuses granted on the basis of the Act on supporting thermal efficiency improvement and renovation and on the central register of emissivity of buildings of 21 November 2008 (Journal of Laws of 2021, item 554 as amended). Thus, the unused RFRM funds will be used to finance other projects related to housing resources owned not only by communes, but also by other entities, including natural persons.

In the provisions of Articles 33l–33s of the Act on certain forms of support for housing of 26 October 1995 (Journal of Laws of 2021, item 2224), the rules of supporting communes from the funds of the RFRM were regulated. The fund is run by BGK, but its resources are managed by the minister responsible for construction, spatial planning & development and housing. Similarly to other public funds entrusted by the legislator to be administered by BGK, the RFRM should also be run by the bank as part of a separate balance sheet and profit and loss account.

The legislator established the principles, forms and scope of cooperation between BGK and the minister responsible for construction, spatial planning & development and housing in relation to the RFRM. The minister has been authorised to conclude an agreement with BGK specifying the rules of handling the RFRM, including the amount of remuneration due to the bank. The basis for conducting financial activities by the RFRM is its annual financial plan. The draft of this plan for the following year is approved by the minister responsible for construction, spatial planning & development and housing in consultation with the minister responsible for public finance by 31 October of each year. The first financial plan for 2020 was developed by BGK, in consultation with the above-mentioned ministers, by 25 January 2021, i.e. after the end of the calendar year it related to. The purpose of this legal regulation was to enable support for communes that submitted applications in 2020.

The provisions of the Act also stipulate reporting and information obligations of BGK. By 15 April of a given year, BGK is obliged to submit to the above-mentioned ministers a report on the implementation of the RFRM financial plan as well as the balance sheet and profit and loss account for the previous year, and by 30 September of a given year – a draft RFRM annual financial plan for the following year. A procedure for the ongoing monitoring of the use of RFRM funds was also introduced. The responsibilities of BGK include providing the ministers with quarterly information on the implementation of the RFRM financial plan by the end of the month following a given quarter. Information provided should enable the monitoring of the support granted to communes from the RFRM funds.

Subjective & Objective Scope and Amounts of Support Granted from the Government Housing Development Fund

When referring to the legal form of transferring funds from the RFRM, the legislator uses the general term “support”. This form has been widely used in Poland during the COVID-19 pandemic to provide financial aid to various entities, e.g. local government units, medical facilities, educational organisational units, universities, and entrepreneurs. The essence and features of “support” from the RFRM are stipulated by the provisions of the Act on certain forms of support for housing. In the normative concept of this support, attention should be paid primarily to the closed catalogue of beneficiaries and the narrowly defined purpose of the support.

Only communes can be the beneficiaries of the support granted from the RFRM. According to the legal status as of 1 July 2021, there were 2,477 communes in Poland (302 urban communes, including 66 cities with poviats status, 652 urban-rural communes, and 1,523 rural communes). Any commune may potentially receive support from the RFRM, but it is necessary for the commune to fulfil the statutory support objective. Pursuant to Art. 33l of the Act on certain forms of support for housing, support from the RFRM may only be granted to a commune for financing part or all of an activity consisting in taking up shares or stocks in a newly created or already existing social housing initiative (SIM).

Legal forms, tasks and the manner of operation of social housing initiatives are regulated in Articles 23–33 of the Act on certain forms of support for housing. They can be created in the following forms: limited liability companies, joint-stock companies, or cooperatives of legal entities. The term “społeczna inicjatywa mieszkaniowa” (social housing initiative) as well as its abbreviation (SIM) are proprietary and may be used only to designate an activity or advertising exclusively in relation to the social housing initiative within the meaning of the provisions of the cited act. This is intended to highlight the status of entities whose activities focus on creating housing resources in the social housing segment [Żelazna 2021a, p. 8]. It is emphasised in the literature that in Poland, social housing is part of the housing sector, but separated out of the commercial market. With regard to this segment, various forms of co-financing are used for investments as well as for the maintenance and use of apartments. As a result, lower fees to be paid by households are set in the resources covered by social housing [Rataj, Iwański, Bugajska 2018, p. 294].

In each SIM, a supervisory board is appointed. The communes within which SIMs operate are entitled to introduce their representatives to the supervisory board of the SIM, in the number specified in the SIM statute. The basic scope of SIMs’ activities includes the construction of residential houses and their operation on the basis of lease. Additional activities of SIMs may include:

- purchase of residential premises and residential and non-residential buildings for the purpose of outward extension, upward extension and reconstruction to establish residential premises,
- renovation and modernisation of facilities intended for fulfilling the housing needs on the basis of lease,
- renting commercial premises located in SIM buildings,
- management, on a contractual basis, of residential and non-residential real estate not owned by the SIM,
- management of joint real estate, partially owned by the SIM,
- other activities related to housing and associated infrastructure, including the construction or purchase of buildings for the purpose of selling residential premises or premises for other purposes located in these buildings,
- lease of residential premises of social rental agencies¹ in order to rent these premises to natural persons designated by the commune.

Support for communes from the RFRM may be granted for financing part or all of an activity consisting in taking up shares or stocks in a SIM by this commune. There is no minimum amount of support determined, but the maximum amount of support for a given commune has been specified in Art. 33n of the Act on certain forms of support for housing. Two limits for the support are established, depending on the specific objective pursued by the commune. If a commune intends to acquire shares or stocks in a newly created SIM, the amount of support may not exceed PLN 3 million, and it is stipulated that the support may be granted to this commune only once. This means that even in a case where support has been granted for such purposes in an amount lower than the maximum, it is not allowed to grant further support amounting to the difference between the amount of support granted and the maximum limit of financial aid from the RFRM. If a commune intends to acquire shares or stocks in an already existing SIM, the support may not exceed 10% of the value of the project costs, but such support may be granted to a given commune more than once, provided that each activity is related to the implementation of a different investment and construction project.

1 From 23 July 2021, social rental agencies may operate in Poland, i.e. entities which, in order to create conditions for satisfying the housing needs of a local government community, carry out activities consisting in the lease of residential premises or single-family residential buildings from their owners and the renting of these premises or buildings to natural persons designated by the commune. Social rental agencies may be established in the form of: a limited liability company or a joint stock company in which the commune or communes hold over 50% of votes at the shareholders' meeting or the general meeting, respectively; a foundation; an association; or a social co-operative.

Taking up shares or stocks in a SIM with the use of support from the RFRM constitutes a compensation granted to that SIM for the provision of a public service within the meaning of the provisions of European Union law concerning public aid for the provision of services of general economic interest. Housing is classified in the catalogue of public services under the category of social services [Lissowski 2017, pp. 10–11]. A commune which acquires shares or stocks of a SIM with the use of support from the RFRM should specify in its contract with the SIM the type and duration of the public service compensated by this action.

The discussed support for communes from the RFRM resources is project-oriented and in this respect is similar to a specific-purpose subsidy, although the legislator does not use this term. Support granted is essentially non-returnable, but if it is not utilised by the commune within 6 months from the date it was provided, the amount paid is returned to the RFRM account with statutory interest accrued from the date of receipt of the payment to the date of return. The analysis of the statutory provisions shows that financial support from the RFRM is granted specifically for a project that the commune intends to implement. This means that support cannot be provided to reimburse expenses already incurred by the commune for taking up shares or stocks in a SIM.

Procedure for Granting Support from the Government Housing Development Fund

Financial support from the RFRM is granted to a commune upon an application of the commune head, mayor or city president, approved by the commune council by way of a resolution. In Art. 33m sec. 2–4 of the Act on certain forms of support for housing, indispensable elements of the application for support have been indicated [Żelazna 2021b, p. 15], i.e.: determination of the amount of the planned financial contribution of the commune related to the implementation of the activity for which the support is requested; determination of the amount of the requested support; information on the planned date of implementation of the activity; account number to which the support is to be paid. If a commune submits an application for support for taking up shares or stocks in an existing SIM, it should also include a cost estimate for the investment and construction project for the purpose of which the shares or stocks are going to be acquired, and the estimated number of apartments planned to be created under this project. There is a noticeable difference in the terms on which support from the RFRM is provided. In the cases where a SIM is being created, it is not required to provide information on planned investment and construction projects that will be implemented by the SIM, while in a situation where the commune intends to acquire shares or stocks in an already existing SIM, the provision of such information is a condition for the support to be granted. The application must be accompanied by

a resolution of the commune council approving the commune executive body's application for support.

The content of this resolution is limited to the essential elements consistent with the standards set out in the provisions of the Act on certain forms of support for housing. In its main part, the type of project (acquisition of shares or stocks) and the legal form of the SIM are indicated. The application for support prepared by the executive body of the commune is included in the form of an attachment to the resolution². The commune council, while creating the SIM, indicates that the funds necessary to cover its share capital will come from funds received from the RFRM³. The funds from the RFRM are treated by the communes as additional funds and thus it is possible for them to acquire shares or stocks above the expenditure limits set out in the commune budget resolution⁴.

The application accepted by the commune council, formally addressed to the minister responsible for construction, spatial development and housing, is submitted through the President of the National Real Estate Resources (Krajowy Zasób Nieruchomości – KZN), and the minister may commission the KZN President – on an contractual basis – to consider applications for the RFRM support. Their contract should specify, in particular: the period of its validity, reporting obligations of the KZN President, reasons and conditions for termination of the contract, detailed scope of duties and principles of liability for the processing of personal data, terms of the KZN's remuneration for covering the payment handling costs, the KZN's liability for the performance of the contract, and method of controlling the performance of the contract.

Communes' applications for support are considered within 60 days of their submission. If the total amount of support resulting from the submitted pending applications for support is higher than the amount of funds accumulated on the RFRM account, these applications are considered in the order in which they were submitted, until the funds are exhausted. After a positive assessment of a given application, support from the RFRM is paid by BGK on a one-off basis to the account specified in the application.

2 For example, Resolution No. XXI/144/2021 of the Sokoły Commune Council of 30 March 2021 on the approval of the application for support from the Government Housing Development Fund for financing the acquisition of shares in the Social Housing Initiative "KZN-Podlaskie" sp. z o.o. (Official Journal of the Podlaskie Province 2021, item 1521).

3 For example, Resolution No. XXIII/193/2021 of the Wielgie Commune Council of 30 April 2021 on the consent to the creation of the Social Housing Initiative "KZN-Toruński" sp. z o.o. (Official Journal of the Kujawy-Pomerania Province 2021, item 2376).

4 For example, Resolution No. XXXVII/266/21 of the City Council in Pyrzyce of 27 May 2021 on the principles of contributing, withdrawing and selling shares by the Mayor of Pyrzyce (Official Journal of the West Pomeranian Province 2021, item 2777).

Conclusion

The support granted to communes from the RFRM funds is *ad hoc* and short-term in nature [Doliwa 2021, p. 1037]. The main source of revenue for this fund are contributions in the total amount of PLN 1,500,000,000 from the COVID-19 Counteracting Fund. It was assumed that the eligible communes would apply for the maximum amount of support and that this would enable non-returnable financial aid to create 120 new SIMs (PLN 3,000,000 x 120 = PLN 360,000,000). The remaining funds from the RFRM will be allocated to communes in order to support the already operating social housing associations (there are approximately 250 of them), which after the amendment to the Act on certain forms of support for housing have obtained the legal status of SIM (support may not exceed 10% of the value of the planned project). As a result, the total number of SIMs should increase by approx. 48% compared to the state before the amendment to the Act.

About 50 apartments with an average usable floor space of 50 m² are planned to be created as part of each supported project, and taking into account the 2020 cost levels, the average price of 1 m² of a residential premises should be approx. PLN 6,000. Assuming the implementation of one investment project by each of the already existing SIMs, their total cost would amount to PLN 3,750,000,000, while support from the RFRM may not exceed 10% of the costs, i.e. PLN 375,000,000. Taking into account the expected effects of the functioning of the RFRM indicated by the project initiator in the assessment of the effects of the regulations attached to the amending act, this would lead to the utilisation of only PLN 735,000,000, i.e. 49% of the fund's resources. Within this amount, PLN 360,000,000 would provide support for communes taking up shares or stocks in the created SIMs, and PLN 375,000,000 – support for investment projects carried out by the already existing SIMs. However, it should be pointed out that a given commune may receive support more than once in the case of implementing a separate investment and construction project and only in such cases will it be likely for the remaining amount of the RFRM funds to be used. If one investment project includes 50 residential premises with a usable area of 50 m², the total cost of the project will be: 50 apartments x 50 m² x PLN 6,000 = PLN 15,000,000. The subsidy from the RFRM will be 10%, i.e. PLN 1,500,000. This means that the existing SIMs would have to implement 740 investment projects with a value of PLN 15,000,000 each so that all the planned financial support from the RFRM is utilised (90% of funds for the implementation of a given investment project must come from other sources, e.g. the commune's own funds, credits or loans). On average, each already existing SIM should carry out 3 investment projects. Another solution leading to the full utilisation of the RFRM would be a further increase in costs on the housing market, leading in fact to an increase in the value of implemented investment projects and, in consequence, to an increase in the amount of support constitut-

ing 10% of the price of these projects. However, there are numerous negative effects to this solution.

Due to the fact that the RFRM should function for a three-year period, its funds are planned to be used in the following three tranches: 20% in 2020, 60% in 2021, and 20% in 2022. Remuneration resulting from concluded contracts for the National Real Estate Resources and Bank Gospodarstwa Krajowego for the operational management of the RFRM and the performance of activities related to the receipt and consideration of applications from communes may not exceed 1.6% of the total value of the support provided) Assessment of the effects of the regulation of the draft act amending certain acts supporting the development of housing, Form No. 534 of the Sejm of the 9th term, p. 43).

The conducted analysis and evaluation of the changes introduced to the Act on certain forms of support for housing has allowed for a positive verification of the thesis about the adoption by the legislator of a mechanism of temporary financial support for specific initiatives of communes in the area of satisfying the housing needs of members of local government communities. The formal and legal form of this mechanism is the Government Housing Development Fund, which is a separate public fund financed with public funds from the COVID-19 Counteracting Fund. The temporary nature of this support is mainly due to the predetermined period of functioning of the RFRM and the limited financial resources put at the disposal of the fund's managing entities. It has also been shown that the RFRM is another public fund with a clearly defined purpose. However, it is not a state special-purpose fund that could be included in the public finance sector.

The main motive for the establishment of the RFRM was the expected threat to the continuity of the communes' implementation of projects in the field of housing, determined by a decrease in investment outlays during the COVID-19 pandemic. The presented support mechanism cannot be treated as one capable of solving all problems of communes in terms of the implementation of their own tasks in the area of commune housing. It is only one part of the package of solutions minimising the negative social and economic effects of COVID-19, relating to support for communal housing and social rental housing.

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