

## THE OTHER PUBLIC FINANCIAL FUNDS OUTSIDE THE STATE BUDGET IN THE SLOVAK REPUBLIC\*

### Introductory notes

**T**he law became an integral part of the social and political changes realised in Slovakia after 1989. The law as a normative system of society has to express the value of social relations, which regulates by itself. From this point of view, law is by itself an important social value, presented expressively in conditions of a social and ecologically oriented market economy system<sup>1</sup> in the form of organisation, existence, realisation and development of regulated social relations.

The creation of the conditions for the realisation of the market economy in Slovakia after november 1989 is connected with a remarkable development in social relations involving the development in legal relations as well. The quality of developing legal relations was influenced (and is still under the strong influence) by many circumstances which are in our opinion reflection of the following:

1. the current development of scientific knowledge about law,
2. internal dynamics of the legal order accompanied by frequent changes of law,
3. the quality level of the creation, realisation and application of law,
4. the current state of legal conscience of society.

The dynamics of changes in the field of creation and realisation of legal relations was inevitably demonstrated in relation to Slovak financial law and in relation with those branches of law by which a content coherence of its social relations regulation could be found. Financial law in Slovakia went in the period of the last twenty five years

through significant changes. Without any doubts, we could in this respect claim that financial law belongs to the most dynamic branches of the Slovak legal order.

Dynamics as a feature characterising the current position of financial law in Slovak legal order is needed to apply not only in the finance law making process – the application and the realisation of law – but mainly to introduce new instruments of financial law and institutions of financial law into financial practice.

After 1989, many new financial instruments and institutions in financial practice started to apply, respectively their framework went through a significant modification, extension and transformation into a particular new system. The above-mentioned circumstances refer to a very specific field of legal relations in financial law which are represented by the system of the other public financial funds outside the state budget in Slovakia.

### Three centers of public needs financing in Slovak Republic

At the turn of the 17th and 18th century, at the time of the first formation of the state budget, the principle of entireness of state budget was emphasized as one of the basic principles of organisational construction of the budgetary system. At that time the state budget was the only document about public finance that fully represented the idea of the only financial (“monetary”) fund of state. During historical development this requirement modified was in the sense that there were the most important receipts and expenditures involved in the state budget. In relation with

the above-mentioned, the conditions for formation of the other financial funds outside the state budget were created, which played an important role in state expenditures (in broader sense public expenditures) financing. Despite this tendency, the state budget is still considered as the preferential (priority) centre of state needs financing in general.

An extended area for formation of financial funds outside the state budget in conditions of the Slovak Republic is considered an indisputable fact which leads to the following conclusions:

1. there is a qualifying necessity of change of the state budget as an only and sole centre of financing state (public) needs to the **first (priority) centre of financing** state needs,
2. the state budget is **already not** the sole centre of financing state needs,
3. alongside the state budget arose in a short historical period in the Slovak Republic **at least one other** centre of financing state needs.

The Constitution of the Slovak Republic (hereinafter “SR”) enables<sup>2</sup> the SR to establish state purpose funds (“štátne účelové fondy”) involved in the state budget by a legal act. In this respect, the Slovak Constitution enables indirectly to create a **second centre of financing** of state needs in Slovakia as well, which is represented by the system of existing state purpose funds.

Moreover, taking into account the rather considerable expansion of the creation of the other public financial funds which are outside the state budget and which can not be considered as state purpose funds pursuant to Constitution of SR and related legal acts at the same time, we could think not just about the second centre of financing of state needs, but even about **the third centre** of financing of state needs. This centre is represented by the system of the other public financial funds which (apart from the fact that the Constitution does not take into account the possibility of their creation and even does not prohibit them) significantly differ from the system of state purpose funds. Therefore it would not be consistent to identify them with the above-mentioned system of state purpose funds. Common features regarding the creation, use, management rules and even legal terms are typical only for state purpose funds. Despite this fact there is a possibility to identify some characteristic features which are common for all

public financial funds (for both state purpose funds and the other public financial funds in Slovakia). Their characteristics are described by the fact that both of them are **financial funds outside the state budget** which ***do possess legal personality***. Apart from the above-mentioned facts, these funds are already represented by the following characteristics:

- their creation consists of specific, mostly earmarked (purposeful) sources;
- they are created for the purpose of financing specific tasks, mostly in the field where elasticity and flexibility of their creation and financing connected with them is required;
- they are established by a legal act (law);
- part of their sources consists of financial sources from the state budget, respectively from another public budget;
- their management is subject of public control in accordance with special regulations;
- they have their own internal organisational structure stated by law, respectively by statutes or by-laws;
- they belong to legal rules from public law, mostly to legal rules from the field of financial law.

In this place it would be convenient to focus at least minimally on the definition aspects of the term “financial (‘monetary’) fund”, as is usually described in Slovak or Czech law books. The concept “fund” has an ambiguous meaning, which means that it covers a broad content of understanding as evidenced by the fact that the word “fund” is derived from latin expression “fundus” which provides various interpretation options, as for example a base, an inventory or a ground (bottom) etc.

In relation with the definition of the concept “public fund”, many authors refer mostly to the Dictionary of Public Law from 1927, where it is stated that “Public funds are autonomous, by purpose of public administration devoted property”<sup>3</sup>. Younger law books focus rather on the fact that fund is an expression of allocation of financial or material resources (or in some cases both of them) creating a certain complex file for a particularly defined purpose<sup>4</sup>.

In our point of view, the financial (monetary) fund is a specific form of allocation of financial resources to a particular, relatively autonomous unit regulated by law and which is for a defined purpose<sup>5</sup>. A different characteristic

is offered by some Czech authors according to whom funds are particularly decentralised administrative units subordinated to government or parliament or existing units directly controlled by government or indirectly controlled by representatives of government in the organisational structure of a particular fund. Funds have therefore a varied rate of independence based on their legal form and statute (by-law)<sup>6</sup>.

As a result of the above, public financial funds (apart from the state budget, municipal budgets, and possibly extrabudgetary financial funds of self-government which we do not deal with in this article) create a particular system. This system may be divided into two separate parts which are represented by:

1. the state purpose funds system and
2. the other public financial funds system.

Some authors also distinguish between extrabudgetary financial funds in a different way, taking into account their task in a system of public budgets. From this point of view, they distinguish mainly between two groups:

- a) funds which provide resources *on non-market principles*. They involve extrabudgetary purpose funds (from public law) and privatization funds in this group,
- b) funds (government institutions) *for support of business activities*. These funds use their resources for the creation of preferential conditions by finance lending of selected entrepreneurs in the corporate sector<sup>7</sup>.

We are convinced that the criterion of non-market principles for the classification of funds is questionable. Even justification of inclusion of privatization funds in the first group of funds may be disputable. Authors refer to the fact that privatization funds may assume some expenses which integrally belong to public budgets – with reference to financial practice in the Czech republic. At the same time they deny their inclusion into the system of public funds because of their specific scope of activities and because of amount of profits from privatization, even if while they classify funds into two groups they emphasize their task in the system of public funds.

Significantly, a different classification is offered by other authors of financial law science. According to the purpose

of the fund they divide funds into the following basic groups:

1. state purpose funds,
2. extrabudgetary funds of a specific kind,
3. non-market funds,
4. security funds,
5. support government institutions of entrepreneurs activities with participating resources from the state budget,
6. funds of local government.<sup>8</sup>

Both state purpose funds and the other public financial funds are created “at the state level” with their public-law nature. Because of their differences among themselves in many areas would not be consistent to involve them into one compact system. Taking into account both groups of financial funds with their relatively autonomous position in the system of public finance, we suggest to focus our attention here (accordingly with the title of our article) to the system of the other public financial funds.

### **The system of the other public financial funds**

**The other public financial funds** (outside state purpose funds) create a very important part of the mechanism of public finance. These funds are (the same way as in the case of state purpose funds) constituted by law in order to finance specific tasks.

Characteristic features of these funds are that:

- they present a very diversified and heterogeneous group of financial funds,
- they present non-state funds regulated mostly by public law,
- the funds have legal personality and are registered in the commercial (business) register,
- these funds are not established on the basis of article 58 par. 3 Constitution of SR (as in the case of state purpose funds) or neither under the budgetary law rules<sup>9</sup>. From this point of view in connection with them, the above-mentioned provisions do not apply,
- the management of financial resources of these funds, the method of their creation and their use are regulated by specific legal acts (laws) and statutes of these funds.

Within the system of the other public financial funds may be distinguished:

1. **privatization funds,**
2. **funds of public institutions,**
3. **other funds.**

#### Ad 1)

**Privatization funds** may be generally considered as *sui generis* funds because of their specific features from the perspective of financial law. Typical for them is the fact that they are not just classic financial funds but rather mixed funds of a property-financial nature. Privatization funds became in Slovakia a specific instrument of privatization of national assets and rights with respect to the specificities of these funds (and the size of the revenue from privatization). These funds are, however, not considered as state purpose funds under the Constitution of SR or the budgetary law rules. On the other hand, there is the fact that privatization funds may assume certain expenditures organically included to public budgets. Their existence is not just a peculiarity of SR<sup>10</sup>.

Among privatization funds in Slovakia are included:

- Slovak National Property Fund (hereinafter referred to as “FNM SR”) and
- Slovak Land Fund.

**FNM SR** was established under zákon č. 253/1991 Zb.<sup>11</sup> Its legal status and legal relations are governed by zákon č. 92/1991 Zb.<sup>12</sup>

FNM SR is a legal entity established by law which shall be registered in the commercial register and which operates activities in the public interest.

FNM SR draws up a budget which is approved by the National Council of SR. Its revenues and expenses are not included in the state budget.

Fund's assets consist primarily of privatized assets transferred to the fund from the profit from the participation of the fund in the business activities of companies (in which businesses the fund is involved), the proceeds from the sale of shares or units in other than joint stock companies, shares or equity shares which were not the object of a privatization decision and which were incurred by the fund

(as a shareholder), assets transferred to the fund as a result of withdrawal of contract in accordance with the law, securities incurred by the fund from individuals etc.

**Slovak Land Fund** was established in 1991 by law<sup>13</sup> as a legal entity incorporated to the commercial (business) register. The Land Fund is, however, not set up for business activities and operates similarly as FNM SR in the public interest.

The Land Fund manages its activities according to the budget of revenues and expenditures approved by the Government of SR. The budget of the Slovak Land Fund is not part of the state budget.

The Land Fund may not accept credit or loans or may not enter into credit or loan relationships as a guarantor.

To provide financing for its activities, the Land Fund constitutes the *social fund*, the *reproduction fund*, the *reserve fund* and the *special purpose fund*.

**The social fund** is created on the basis of a legal act on the social fund<sup>14</sup>. The social fund is created by the employer in the extent and under conditions laid down by law.

**The reproduction fund** is created from the depreciation of tangible and intangible assets relating to the operating activities of the Land Fund and the distribution of its profit. Sources of the reproduction fund may be used for the acquisition of tangible and intangible assets relating to the operating activities of the Land Fund.

**The reserve fund** is created from the division of profit of Land Fund. The sources in the reserve fund may be used for the financing of the expenditures incurred from time differences between incomes and expenditures of Land Fund and expenditures which exceed the projected budget of the Land Fund and the other expenses purposefully approved by the government of SR within the profit division of the Land Fund.

**Special purpose fund** is created from proceeds of the sale of privatized assets and incomes from the sale of land whose owner is unknown as well. The financial resources which were dedicated to the fund may be used only in accordance with special regulations.

## Ad 2)

Under the rules governed by the norms of financial law are included issues of financial management of public institutions as well. In the recent past this was part of the financial regulation undeservedly neglected, and thus remained out of the interest of the community of financial law. Subjects of financial relations are thus excluding the state, self-government, their budgetary and contributory organizations, various other public bodies such as the Social Insurance Agency, public universities etc. The common feature of these legal entities is primarily the fact that legal acts (laws) constitute them as **public institutions**.

Public institutions are entitled to establish funds and several of them are directly in their name title designated with the word “fund”.

Public institutions have significant privileges in financial relations, particularly with regard to the fact that they receive and treat a significant proportion of financial resources with its public nature, i. e. with public funds. Finance of public institutions as a relatively separate component of public finance constitutes financial relationships concerning their financial management, particularly in relation with the development and use of financial (monetary) funds as well as with budgetary funds and the other public financial funds.

In respect of the legislation on financial management of public institutions, it may be stated that public institutions are regulated by legal acts by which or on the basis of which particular public institutions were established. It is therefore primarily the specific provisions which enshrine their legal status, organizational structure, roles etc. In addition to that, however, the area of financial management of public institutions is subject to a number of other adjustments of financial law and tax law such as the accounting law, etc. Moreover, in matters concerning the property dispositions of public institutions, there is a special legal act (law) on the management of the property of public institutions<sup>15</sup>, which may be considered as a *lex generalis* in relation to the other specific legal acts governing the status and role of various public institutions.

The legal act on the management of the property of public institutions refers to a disposal of the assets of a public

institution which, for the purposes of the above-mentioned legal act, means a legal entity:

- a) established by a special legal act as a public institution or a public establishment (such as the Slovak Insurance Agency, Slovak Matica etc.),
- b) established under a special legal act (for example a public university).

**Funds of public institutions** are part of public finance in the context of finance of public institutions. These institutions are created pursuant to slovak legislation, predominantly directly by the legal act having the authority to establish financial funds. It is therefore quite genuine that we include their funds to the system of the other public financial funds.

The legal status of public institutions is regulated by special legal acts which govern at the same time the creation and the use of their financial funds. The best known subjects from this area are the Social Insurance Agency, Radio and Television Slovakia, public universities, art funds, the Slovak Audiovisual Fund, the Slovak National Accreditation Service, the News Agency of SR etc.

**Social Insurance Agency** was established by the law on social insurance to perform social insurance. Currently the legal status of the Social Insurance Agency is represented by the legal act on social insurance<sup>16</sup>.

The Social Insurance Agency draws up a *budget* consisting of:

- *The sickness fund;*
- *Basic old-age insurance fund;*
- *Basic disability insurance fund;*
- *Basic accident insurance fund;*
- *Basic fund of guarantee insurance;*
- *Basic unemployment insurance fund;*
- *Solidarity reserve fund* and
- *Trust fund.*

The amount of premium of sickness insurance, basic old-age insurance, basic disability insurance, basic accident insurance, basic guarantee insurance, basic unemployment insurance and the amount of premium to the Solidarity reserve fund, means that the **premium (insurance)** is determined by a percentage rate of the salary base made in the relevant period, which varies depending on the particular



fund and depending on the specific person (insured, employers, state etc.).

Health insurance benefits, pension insurance, accident insurance, guarantee insurance and unemployment insurance are provided from the particular funds of the Social Insurance Agency, under the conditions laid down in the act on social insurance.

**Radio and Television of Slovakia** (hereinafter referred to as “RTVS”) is a public institution drawing up the budget of revenues and expenditures for the calendar year and managing it. Its legal status, mission, tasks and activities, its bodies and the management and financing of RTVS is regulated by the Law on Radio and Television of Slovakia<sup>17</sup>.

RTVS is in the meaning of above-mentioned act a public, national, independent, informational, cultural and educational institution which provides public service broadcasting. RTVS is a legal person registered in the commercial register, which performs its business activities through the branches which are Slovak Radio and Slovak Television in particular. Those branches are self-managing internal organizational units without legal personality.

The basis of the management of RTVS is the budget of revenues and expenditures for the calendar year which RTVS draws up and manages. RTVS is financed mainly by public funds. The financial resources which RTVS handles may be used only for the purposes of the act and only in the necessary extent. RTVS may not use the public resources for its business activities. If RTVS does perform business, business costs have to be covered from the revenues from business activities. When this condition is not satisfied, the business activities of RTVS have to be terminated and the incurred loss may be covered from the reserve fund.

For the disposal of the assets of this institution apply legal rules of law on RTVS and the law on management of property of public institutions. Regarding the disposal of public resources, RTVS is bound by the law on RTVS and by the law on budgetary rules.

The financial resources and the property of RTVS may not be used for the financing of political parties or political groups or in favour of a candidate for elective office. Real estate, movable property or financial resources, however, may be used for the purposes of a partnership agreement,

but only in the case that the agreed purpose of the partnership is related to its main business activities.

**RTVS income** includes mainly:

- a) a subsidy from the state budget provided annually under the state budget law to cover the cost of providing public services in the field of broadcasting in an amount equal to 0.142% of the gross domestic product of the Slovak Republic for the calendar year preceding the calendar year for which the subsidy is provided. If this amount is less than EUR 90 million, from the state budget will be provided the amount of EUR 90 million,
- b) income from broadcast media commercial communication,
- c) sponsorship fulfillment for the direct or indirect programmes financing,
- d) income from the lease and sale of property of RTVS,
- e) income from deposits in a bank or branch of a foreign bank and from financial investments,
- f) donations from individuals and legal entities that are not sponsorship payments,
- g) inheritance in favor of RTVS,
- h) grants from individuals and legal persons to perform the tasks in the public interest that are not sponsorship payments,
- i) other income.

RTVS financial resources (funds) are held in bank accounts or a branch of foreign bank accounts. If RTVS becomes a client of the State Treasury, its funds are governed by the act on the State Treasury.

RTVS constitutes a **reserve fund**. The reserve fund **is created** from profit:

- from its core activities after taxation;
- from entrepreneurial activities after taxation.

The reserve fund may be used **in the following order** for:

- reimbursement of loss of its core activity;
- reimbursement of loss of its business activities.

**Public universities** create under the act of universities (“higher education act”)<sup>18</sup> a number of financial funds, especially *the reserve fund, the reproduction fund, the scholarship fund, the fund to support students with special needs and funds under special regulations* (for example *the social fund*)<sup>19</sup>.

Financial funds of a public university (excluding funds created by special regulations) are created from the positive overall profit result of the public university, further from donations, inheritance and income from them, if the act of higher education does not provide otherwise. The targeted financial donations may be used only in accordance with their intended purpose. If the financial resources of the fund are kept in a separate account under special regulations, the state of the fund increases the credit interest and foreign exchange gains and reduces the expenses related to account management and foreign exchange losses.

The total profit of the public university means an accountable sum of its profit in the scope of its main activity and profit from its business activities after taxation.

**The reserve fund** is created by a public university from not less than 40% of its profit. The reserve fund is used by a public university to compensate the losses from the previous year and to cover accumulated losses from previous years, if such a loss is recognized. Only financial resources in the reserve fund may be used for the compensation of these losses.

If the public university does not recognise the loss from the previous year and accumulated losses from previous years, financial resources may be used through its budget and for complementation of the other financial funds of the public university.

**The reproduction fund** is in addition to the above-mentioned funds, created from the following:

- a) from depreciation of fixed tangible assets and intangible assets in the depreciation plan (excluding assets acquired from subsidies intended for the acquisition of fixed tangible assets),
- b) from the net book value of fixed tangible assets and intangible assets with its physical liquidation (excluding assets acquired from subsidies intended for the acquisition of fixed tangible assets),
- c) from the net book value of sold fixed tangible and intangible assets (excluding assets acquired from subsidies intended for the acquisition of fixed tangible assets),
- d) from the difference in the proceeds from the sale of fixed tangible assets and intangible assets and the sum of the net book value and costs incurred in

connection with the sale in the case of the sale for a price higher than the sum of the net book value of sold assets and costs incurred in connection with the sale and,

- e) from the financial resources of the other subjects (entities) under concluded partnership contracts (agreements) for the acquisition of fixed tangible assets and intangible assets.

The reproduction fund is used for the acquisition of fixed tangible assets and intangible assets including its technical evaluation, for providing resources under concluded partnership contracts for the acquisition of fixed tangible assets and intangible assets and for the repayment of loans used for the acquisition of fixed tangible assets and intangible assets or its technical evaluation.

**The scholarship fund** is in addition to the above created from part of the proceeds from tuition fees and from part of the subsidies for the social support of students designated for social scholarships and stipends. The scholarship fund is used for providing scholarships and loans for students.

**The fund to support students with special needs** may be used for financial assurance of adequate study conditions of the students with special needs with regard to their specific needs.

**Art funds** are divided into *Literary Fund*, *Music Fund* and *Fine Arts Fund*. In the meaning of the legal act on art funds<sup>20</sup>, art funds are national cultural public institutions. The main mission of the art funds is to systematically and objectively promote creative literary, scientific and artistic activities.

The financial base of the management of art funds are contributions of beneficiaries of author's fees and remunerations of reproductive artists, contributions for allowances for the use of free works, contributions of users of works etc.

In addition to contributions, there are other financial resources created by income from business activities with their own property, donations, grants, sponsorship, from heritage income as well as income from foundations.

The funds perform their particular mission by creating material conditions for the creation of new works and

performances of authors, by providing scholarships, prestigious awards, travel allowances, loans for support creative activities and other forms of support, by establishing and using corporate profits and purpose-built facilities (for example asylums).

**Audiovisual Fund** was established as a public institution for the promotion and development of audiovisual culture and industry<sup>20</sup>. The fund is a legal entity based in Bratislava.

The fund **revenues** consist of the following:

- a) contributions to the fund,
- b) contributions from the state budget,
- c) interest on deposits in banks or branches of foreign banks,
- d) interest on loans granted by the resources of the fund,
- e) contractual penalties for the unauthorized use or retention of resources of the fund,
- f) administrative fees,
- g) donations and voluntary contributions,
- h) other income.

In the financial area the fund performs administration and control of selected contributions. In addition to this, the fund **provides** financial resources:

- to authors and producers of Slovak audiovisual works;
- for the innovation and development of technical infrastructure for the production and distribution of audiovisual works and to conduct public cultural events in the area of audiovisual culture;
- for the propagation and presentation of audiovisual works.

The Audiovisual Fund also provides scholarships for individuals who with their creativity or research contribute to the development of the audiovisual industry and audiovisual culture in Slovakia and keeps the records of Slovak audiovisual works and the persons to whom were provided financial resources.

The Fund also provides financial resources for support of audiovisual production, in particular:

- the creation, development, preparation and production of Slovak audiovisual works, as well as feature

films, documentaries and animated Slovak cinematographic works;

- post-productions and distributions of Slovak audiovisual works and distribution of audiovisual works;
- festivals and other cultural activities of entities operating in the audiovisual and cinema industry in the Slovak Republic and the presentation and promotion of Slovak audiovisual works;
- the publication and distribution of periodical and non-periodical publications in audiovisual and cinema industry etc.

The basic forms in which the fund provides financial resources are:

- 1. subsidies.** Subsidies for production of an audiovisual work may be granted up to 50% of the production budget of an audiovisual work, exceptionally may be financed up to 90% of the budget, in the case of the audiovisual work which is a low-budget audiovisual work or difficult audiovisual work,
- 2. loans** (with a maturity of more than five years) or
- 3. scholarships.** Scholarships are provided only to individuals for the development of creativity, education and research in the field of audiovisual culture and film art. The scholarship is an earmarked non-repayable financial support which is paid once or several times during a specified period of time under the contract.

There is no legal right for providing financial resources from the fund.

**Slovak National Accreditation Service** (hereinafter referred to as “SNAS”) is a public institution<sup>22</sup> and a legal person established in Bratislava which manages its own financial resources based on its budget of revenues and expenditures for the particular calendar year.

SNAS income includes mainly:

- a) payments for accreditation services provided by the Slovak National Accreditation Service,
- b) other income received in accordance with the generally binding legal regulations.

In addition to that, the income of the SNAS involves either a contribution from the state budget to ensure accreditation in new areas or other non self-financing activities whose performance arises from a special regulation.



SNAS expenses include:

- a) expenditures on salaries and compensations of employees,
- b) costs of materials, energy and services related to business activities of the SNAS,
- c) compensations of travel expenses of supervisory board members pursuant to a special regulation,
- d) contributions connected with membership in international and regional organizations of associated accreditation bodies.

Apart from its *budget*, the SNAS constitutes *the reserve fund* and *the fund of investment and development*.

**The reserve fund** is created from a positive management profit recognized in the annual financial statement approved by the supervisors board and by the certified auditor for the year in which the positive profit was achieved, amounting to at least 3% of the positive profit recognized in the annual financial statements until reaching a height less than an average total annual cost for the previous three years.

The reserve fund is used to cover losses from SNAS activities, to pay unsecured ordinary budget needs, including labour costs and to cover the other incidental expenses.

**The fund of investments and development** of the SNAS is created from the positive profit recognized in the annual financial statement approved by the supervisors board and by the certified auditor with reduced contribution to the reserve fund for the year in which the positive management result is achieved.

The fund of investments and development of the SNAS is used for the acquisition of tangible and intangible assets, for the acquisition and development of human resources, for the innovation and development of working practices and the other activities focused on investment and development of the SNAS.

**The News Agency of the Slovak Republic** (hereinafter referred to as “TASR”) is a public, national, independent informational institution providing a public service in the field of news services. TASR is a legal person registered in the commercial register.

TASR draws up a budget consisting of revenues and expenditures for the calendar year and manages it. Apart from that, TASR creates a *reserve fund* as well.

**The reserve fund** is created by TASR from:

- a) the profit of its main activities after taxation,
- b) the profit of its business activities after taxation.

The reserve fund is used for covering losses from the main activity of TASR and for covering its business losses.

### Ad 3)

As regards **the other funds**, there is a group of various funds which are legal persons established by the legal act (law) and which use a designation “fund” in their name title (even if they are not public institutions). Apart from the fact that these funds have legal personality, their legal status is not always entirely clear. All these funds manage their financial resources according to their budget, which is approved by the board of the fund (the governing board of the fund).

The financial resources of funds are held in special bank accounts. In the case of the Deposit Protection Fund, they are financial resources deposited in special accounts at the National Bank of Slovakia, as regards the Investment Guarantee Fund in special accounts at the National Bank of Slovakia or in special accounts at the State Treasury and the financial resources of the Educational Support Fund are held at the State Treasury.

To this group of funds may be particularly included mostly:

- a) Educational Support Fund,
- b) Deposit Protection Fund,
- c) Recycling fund,
- d) Investment Guarantee Fund,
- e) Fund on development of vocational education and training.

**Educational Support Fund**<sup>23</sup> was established as a non-state specific fund. Its principal activity is to provide loans for students. The Fund carries out its activities in the public interest. With effect from the 1 January 2013, this fund replaced two other public financial funds - *Student Loan Fund*<sup>24</sup> and *Loan Fund for Beginning Teachers*<sup>25</sup>.

The Fund’s resources are:

- a) repayments of loans granted by the Fund,
- b) interest from financial resources deposited in the State Treasury,
- c) interest on loans,
- d) penalties for breach of contractual terms,
- e) fees and expenses of the Fund under the conditions specified in the loan agreement,
- f) subsidies from the state budget,
- g) donations and contributions from other persons,
- h) financial resources provided by the FNM of SR etc.

The financial resources of the Fund may be used for providing loans and for administration of the Fund.

**Deposit Protection Fund**<sup>26</sup> collects and manages financial contributions from banks and branches of foreign banks (initial contribution, annual contribution and extraordinary contribution) in order to provide compensation for deposits of individuals deposited in banks. The Fund's resources are also income from the use of financial resources, loans, repayable financial assistances and subsidies from the state budget in order to support the tasks of the Fund and the system of deposit protection etc. The Fund may request the Investment Guarantee Fund, the National Bank of Slovakia and the other banks for a loan.

The Fund is pursuant to its legal regulation not the state purpose fund. In relation to this Fund (this applies, however, pursuant to a special act to the Investment Guarantee Fund as well) legal regulation states that the Fund is not a state fund under a special legal act (currently under the law on budgetary rules). For clarification of this provision, attention should be drawn to the relationship of the establishment of state purpose funds, which the Slovak Republic may set up under Article 58 par. 3 of the Constitution of SR taking into account the fact that the general regulation of the establishment and management of state purpose funds is involved in the legal act on budgetary rules and the specific regulation is left on the particular act of the existing state purpose fund.

The Fund may create from its financial resources a *special fund for providing compensations for inaccessible bank deposits*. By course of the act for an inaccessible deposit protected by this law provides the Fund in the aggregate to one depositor or to the other entitled person compensation in

the amount of inaccessible deposit up to a maximum of EUR 100,000.

The financial resources of the Fund may be used (apart from providing compensations for deposits) for example also for the purchase of government securities maturing within one year from the date of purchase, for instalments of loans and for repayable financial assistances, for covering the costs necessary to ensure the activities of the Fund etc.

**Recycling fund**<sup>27</sup> was established as a non state purpose fund which collects financial resources from various sources to support the collection, recovery and processing of various types of waste (waste batteries and accumulators, waste oils, used tires, electrical equipments, plastics, paper, glass, vehicles and etc.).

The income sources of the Recycling Fund are:

- a) contributions of producers and importers for the production and import of batteries and accumulators, oil, tires, multi-layer combined materials, also for placing EEE on the market for the manufacture and import of plastic, paper, glass, metal containers and vehicles,
- b) donations and contributions of domestic and foreign legal entities and individuals,
- c) income from contractual penalties,
- d) interests on loans granted by the Recycling Fund,
- e) revenues from the recovery of unauthorized use or unauthorized holding of financial resources of the Recycling Fund,
- f) income from the management of its own property,
- g) interest on the financial resources of the Recycling Fund deposited in banks etc.

The financial resources of the Recycling Fund may be used for:

- a) payment of capital and operating costs necessary to ensure the collection and recovery of waste and processing of old vehicles,
- b) payment of economically justified costs related to transport of some old vehicles, especially in cases when the holder is unknown or does not exist,
- c) payment of economically justified costs related to providing parking lot services,
- d) payment of expenses related to the Recycling Fund,

- e) payment of expenses for the collection of packaging waste and its valuation or recycling,
- f) promoting the collection and the recovery of waste,
- g) providing information systems to support waste recovery,
- h) support focused on research, development, identification and application of new waste recovery technologies.

**Investment Guarantee Fund**<sup>28</sup> collects financial contributions of securities traders and branches of foreign securities traders, management companies and branches of foreign management companies to provide compensations for inaccessible client assets received by those entities to perform investment services and disposes lawfully with acquired financial resources.

The Fund is a legal entity registered in the commercial register. Pursuant to its regulation act is a Fund and not a state purpose fund under the law on budgetary rules.

The sources of the Fund are the following:

- a) contributions of securities traders to the Fund (initial contribution, annual contribution and extraordinary contribution),
- b) income from the use of financial resources in the accounts of the Fund including income from the sale of purchased government securities,
- c) loans (the Fund may ask for a loan from the Deposit Protection Fund, National Bank of Slovakia, banks or branches of foreign banks) etc.

The Fund's resources may also be repayable financial assistances and subsidies from state financial assets in the extent and under the conditions provided by the law on budgetary rules and the state budget act.

The Fund may create from its financial resources *a special fund to provide compensation for inaccessible client assets*.

The financial resources of the Fund may be used for:

- a) purchase of government securities with maturity of three years from the date of purchase,
- b) repayment of loans and repayable financial assistances,
- c) a loan for Deposit Protection Fund, up to a maximum of 10% of the resources of the Fund,
- d) payment of the costs necessary to ensure the activities of the Fund.

**Fund on development of vocational education and training**<sup>29</sup> was established as a non-state purpose fund which collects financial resources for the support and development of vocational education and training.

The Fund's sources are:

- a) donations and contributions from domestic natural and legal persons, apart from the public authorities and donations and contributions of foreign legal entities and individuals,
- b) voluntary contributions from employers and professional organizations,
- c) interest on the financial resources of the Fund,
- d) penalties for breach of contractual terms, etc.

The financial resources of the Fund may be used only for financing the following:

- a) the modernization of material and technical equipment of the secondary vocational schools, practical training centres, school economy, vocational practice centre and medical equipment beyond the established normative,
- b) trainings of teachers of vocational subjects, teachers of vocational training and instructors provided by practitioners,
- c) management of the fund.

In the quite recent past some other financial funds were involved in this group of public funds, such as the *Anti-Drug Fund*<sup>30</sup>, *Fund for support of international trade*<sup>31</sup> etc.

## Conclusions

Financial law, with its regulatory mechanism, creates the necessary organisational and legal conditions for the functioning of public financial funds. These public financial funds are generally considered for the positive effects of financial policy of our state, which is expressed by our financial regulation. Such a positive reaction is justified in particular by the flexibility and operability of their creation and their financing. On the other hand, there is, however, an opposite side of their legal regulation which should be pointed to. The number of public financial funds standing outside the state budget (which are in most cases involved to the state budget only by financial relations or there is even no connection with the state budget) results in the economy to **atomization** of public finance. This fact leads

to a difficult public control of their creation, in particular regarding their use as well, which is connected with the risk of a possible distortion of overall results of the financial management of the state. This fact is unfortunately neglected in Slovakia, either intentionally or even with a hidden intent.

### **Abstract**

The author of this article focuses on the legal regulation of financial (legal) anchoring of the existence of public financial funds in Slovakia. The author emphasizes that after 1989 many new financial instruments and institutions of financial practice (respectively already existed system of financial institutions) significantly modified, extended and since its sporadic application transformed into a particular system.

The author divides the extra-budgetary public financial funds into two groups, namely *the system of the state purpose funds* and *the system of the other public financial funds* created by various subjects, mainly from the field of public law and partially by subjects from private law. Within these two groups of financial funds, the author focuses on the system of the other public financial funds.

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2. Zákon č. 92/1991 Zb. o podmienkach prevodu majetku štátu na iné osoby v znení neskorších predpisov.
3. Zákon č. 253/1991 Zb. o pôsobnosti orgánov Slovenskej Republiky vo veciach prevodov majetku štátu na iné osoby a o Fonde národného majetku Slovenskej Republiky v znení neskorších predpisov (repealed by zákon č. 60/1994 Z. z.).
4. Zákon č. 330/1991 Zb. o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách v znení neskorších predpisov.
5. Zákon č. 13/1993 Z. z. o umeleckých fondoch v znení neskorších predpisov.
6. Zákon č. 189/1993 Z. z. o Fonde detí a mládeže v znení neskorších predpisov and repealed by zákon č. 452/2003 Z. z. o skončení činnosti a spôsobe zániku Fondu detí a mládeže.
7. Zákon č. 152/1994 Z. z. o sociálnom fonde a o zmene a doplnení zákona č. 286/1992 Zb. o daniach z príjmov v znení neskorších predpisov.
8. Zákon č. 118/1996 Z. z. o ochrane vkladov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
9. Zákon č. 379/1996 Z. z. o Fonde na podporu zahraničného obchodu v znení neskorších predpisov.
10. Zákon č. 381/1996 Z. z. o Protidrogovom fonde v znení neskorších predpisov.
11. Zákon č. 200/1997 Z. z. o Študentskom pôžičkovom fonde v znení neskorších predpisov.
12. Zákon č. 223/2001 Z. z. o odpadoch a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
13. Zákon č. 566/2001 Z. z. o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov (zákon o cenných papieroch) v znení neskorších predpisov.
14. Zákon č. 131/2002 Z. z. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
15. Zákon č. 471/2002 Z. z. o Pôžičkovom fonde pre začínajúcich pedagógov v znení neskoršieho predpisu.
16. Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov.
17. Zákon č. 176/2004 Z. z. o nakladaní s majetkom verejnoprávnych inštitúcií a o zmene zákona Národnej rady Slovenskej Republiky č. 259/1993 Z. z. o Slovenskej lesníckej komore v znení zákona č. 464/2002 Z. z. v znení neskorších predpisov.
18. Zákon č. 523/2004 Z. z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
19. Zákon č. 128/2005 Z. z. o zrušení Fondu na podporu zahraničného obchodu.
20. Zákon č. 516/2008 Z. z. o Audiovizuálnom fonde a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.



21. Zákon č. 184/2009 Z. z. o odbornom vzdelávaní a príprave a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
22. Zákon č. 505/2009 Z. z. o akreditácii orgánov posudzovania zhody a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
23. Zákon č. 532/2010 Z. z. o Rozhlase a televízii Slovenska a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
24. Zákon č. 121/2011 Z. z. o zrušení Protidrogového fondu.
25. Zákon č. 396/2012 Z. z. o Fonde na podporu vzdelávania v znení neskorších predpisov.

\* By the decision of the Editorial Board the last year paper of this Author "The system of state purpose funds in Slovakia" was published in "Annual Center Review" 2014, no. 7, p. 11-21 as well in the yearly "Публичные финансы и налоговое право" 2015, no. 5, p. 5-19. Currently we are publishing second article concerning funds in Slovakia.

<sup>1</sup> See: čl. 55 ústavného zákona č. 460/1992 Zb. Ústava Slovenskej Republiky v znení neskorších predpisov.

<sup>2</sup> See čl. 58 ods. 3 Ústavy SR.

<sup>3</sup> See: K. Laštovka, *Public funds*. *Password in Dictionary of public law*, C.H. Beck, Prague 1927. Similarly: H. Marková, R. Boháč, *Budgetary law*, Prague 2007, p. 159.

<sup>4</sup> V. Zahálka, *Monetary funds as an object of regulation of financial law*, Brno 1977, p. 27 and f.

<sup>5</sup> V. Babčák a kol., *Financial law in Slovakia and in European Union*, EUROKÓDEX, s.r.o., Bratislava 2012, p. 22. Similarly define the concept "financial fund" the other authors as well. Compare for instance: I. Grúň, J. Králik, *Basics of financial law in Slovakia*, MANZ, spol. s r.o., Bratislava 1997, p. 28.

<sup>6</sup> H. Marková, R. Boháč, *Budgetary law*, C.H. Beck, Prague 2007, p. 159-160.

<sup>7</sup> See more: M. Horčicová, D. Vašková, *Extrabudgetary funds and their position in the system of public funds*, "Finance and loan" 1994, no. 9 (44), p. 474.

<sup>8</sup> See: P. Jánošíková, P. Mrkvýka, I. Tomažič a kol., *Financial and tax law*, Publisher: Alois Čeněk, s.r.o., Plzeň 2009, p. 139 and f. Similar classification of funds offer as well: H. Marková, R. Boháč, *Budgetary law*, C.H. Beck, Prague 2007, p. 159 and f.

<sup>9</sup> Zákon č. 523/2004 Z. z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov v znení neskorších predpisov. This legal act laid down general principles for the creation and use of state purpose funds.

<sup>10</sup> In the period of 1993 – 2003 there was Fund of children and youth in Slovakia (similarly in Czech Republic) which was created for the takeover of the assets and management of assets of the former youth organization known under the abbreviation SZM. This Fund was established by zákon č. 189/1993 Z. z. o Fonde detí a mládeže v znení neskorších predpisov and repealed by zákon č. 452/2003 Z. z. o skončení činnosti a spôsobe zániku Fondu detí a mládeže.

<sup>11</sup> Zákon č. 253/1991 Zb. o pôsobnosti orgánov Slovenskej Republiky vo veciach prevodu majetku štátu na iné osoby a o Fonde národného majetku Slovenskej Republiky v znení neskorších predpisov (repealed by zákon č. 60/1994 Z. z.). In the Czech Republic this fund existed until the end of 2005.

<sup>12</sup> V. part of zákon č. 92/1991 Zb. o podmienkach prevodu majetku štátu na iné osoby v znení neskorších predpisov.

<sup>13</sup> Zákon č. 330/1991 Zb. o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločnostiach v znení neskorších predpisov.

<sup>14</sup> Zákon č. 152/1994 Z. z. o sociálnom fonde a o zmene a doplnení zákona č. 286/1992 Zb. o daniach z príjmov v znení neskorších predpisov.

<sup>15</sup> Zákon č. 176/2004 Z. z. o nakladaní s majetkom verejnoprávnych inštitúcií a o zmene zákona Národnej rady Slovenskej Republiky č. 259/1993 Z. z. o Slovenskej lesníckej komore v znení zákona č. 464/2002 Z. z. v znení neskorších predpisov.

<sup>16</sup> Zákon č. 532/2010 Z. z. o sociálnom poistení v znení neskorších predpisov.

<sup>17</sup> Zákon č. 532/2010 Z. z. o Rozhlase a televízii Slovenska a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

<sup>18</sup> Zákon č. 131/2002 Z. z. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

<sup>19</sup> For example pursuant to zákon č. 152/1994 Z. z. o sociálnom fonde a o zmene a doplnení zákona č. 286/1992 Zb. o daniach z príjmov v znení neskorších predpisov.

<sup>20</sup> Zákon č. 13/1993 Z. z. o umeleckých fondoch v znení neskorších predpisov.

<sup>21</sup> Zákon č. 516/2008 Z. z. o Audiovizuálnom fonde a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

<sup>22</sup> Zákon č. 505/2009 Z. z. o akreditácii orgánov posudzovania zhody a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

<sup>23</sup> Zákon č. 396/2012 Z. z. o Fonde na podporu vzdelávania v znení neskorších predpisov.

<sup>24</sup> Zákon č. 200/1997 Z. z. o Študentskom pôžičkovom fonde v znení neskorších predpisov. Pursuan to this act was Student Loan Fund a non-state specific fund established for the purpose of providing loans for university students. Fund's resources were mainly financial resources provided by FNM of SR, repayments of loans granted by the Fund, donations and contributions from domestic and foreign legal and natural persons, interests on financial resources of the fund deposited in a bank, interests on loans etc.

<sup>25</sup> Zákon č. 471/2002 Z. z. o Pôžičkovom fonde pre začínajúcich pedagógov v znení neskoršieho predpisu. Fund was established as a non-state specific fund and served for providing loans for beggining teachers who graduated from the university. Fund's resources were mainly financial resources provided by FNM of SR, repayments of loans granted by the Fund, donations and contributions from domestic and foreign legal and natural persons, interests on financial resources of the Fund deposited in a bank, interests on loans, penalties for breach of contractual terms, subsidies from the state budget etc.

<sup>26</sup> Zákon č. 118/1996 Z. z. o ochrane vkladov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

<sup>27</sup> Zákon č. 223/2001 Z. z. o odpadoch a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

<sup>28</sup> Zákon č. 566/2001 Z. z. o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov (zákon o cenných papieroch) v znení neskorších predpisov.

<sup>29</sup> Zákon č. 184/2009 Z. z. o odbornom vzdelávaní a príprave a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

<sup>30</sup> Anti-Drug Fund was established by zákon č. 381/1996 Z. z. o Protidrogovom fonde v znení neskoršieho predpisu as a non-state purpose fund which collects and provides financial resources on drug prevention, the treatment and social reintegration of drug addicts in the public interest. Fund's resources were mainly donations and contributions from domestic and foreign legal or natural persons, interests on financial resources of Fund, contractual penalties for unlawfully used financial resources of Fund, grants from the state budget etc. With effect from the 1. May 2011 was however this Fund cancelled by the law - zákon č. 121/2011 Z. z. o zrušení Protidrogového fondu.

<sup>31</sup> This fund was established by zákon č. 379/1996 Z. z. o Fonde na podporu zahraničného obchodu v znení neskorších predpisov. The Fund was established as a purpose fund which collected financial resources for support of development of the international trade. Sources of the fund were mainly compulsory contributions of domestic exporters and importers, interests of the Fund deposited in the bank, income from its own activities, subsidies from the state budget, the contribution of the FNM of SR, contributions and donations from corporations and individuals, loans etc. The Fund's financial resources could be used primarily to the partial cover of the costs of domestic exporters and importers in fairs and exhibitions abroad and at home, to cover the costs of promotion of goods abroad, to the costs of domestic organizers and participants of international seminars, symposia, etc., also on loan repayments and payment of interests on them, donations and grants to business trade missions of slovak entrepreneurs abroad etc. The Fund was repealed in 2005 by zákon č. 128/2005 Z. z. o zrušení Fondu na podporu zahraničného obchodu.