

Tomasz Dąbrowski *

Legal regulation of the Management Board of the National Fund for Environmental Protection and Water Management

* Faculty of Law and Administration, University of Technology and Humanities in Radom;
 e-mail: t.dabrowski@uthrad.pl

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Abstract

Legal regulations concerning the structure and functioning of the Management Board of the National Fund for Environmental Protection and Water Management are presented in this article. The analysis is based on the doctrine and judicial practice addressing interpretation of regulations concerning the authority. Membership, the procedures of appointing and dismissing the Fund's Management Board, its tasks, modes of sitting and resolving, as well as documentation of its activities are discussed.

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1. INTRODUCTION

The climate change and degradation of the environment that proceed apace are the greatest challenges facing Poland, Europe, and the rest of the world today. An action plan for sustainable development has been prepared to meet the challenge and presented as the European Green Deal by the President of the European Commission, Ursula von der Leyen, in December 2019 [EC Communication, 2019]. W.P. Rąbiega and P. Sikora are right to note the document treats the climate change issues as the priority in the entire EC dossier and part of the mainstream European Union actions. The communication addresses the subject of climate change comprehensively, in all actions of both the Commission itself and the individual member states. The European Green Deal envisages the European economy becoming neutral to the climate by 2050 [Rąbiega, Sikora 2020: 10]. The existing actions of the European states, including Poland, are not up to this challenge, with investments in environment-friendly technologies to become key to the process of transformation. Solution to the climate change and natural environment problems is the fundamental task of the current generation. Investment in environment protection has increased in recent years in Poland. Use of the natural environment and its resources makes financial or material investment spending a necessity. Sources of financing for the environment protection tasks in Poland can be divided into internal and external. It needs to be stressed the tasks are commonly financed out of two or more sources in parallel, e.g. the state budget and the National Fund for Environmental Protection and Water Management [Barczak, Kowalewska 2014: 38–39].

The system of financing for the environment protection in Poland is an integral part of the state's financial system [Poskrobko, Ejdyś 2005: 100]. The National Fund for Environmental Protection and Water Management will play a fundamental role in realising the requirements set out in the European Green Deal with regard to financing of the environment and water management in Poland¹. The National Fund for Environmental Protection and Water Management (also 'The National Fund' and 'the Fund' below), as explicitly implied by Article 400 Section 1 of the Environment Protection Law of 27 April 2001 [The Act... 2001, 'the EPL' below; Marchewka 2002: 45], is a state legal entity under Article 9 part 14 of the Public Finances Act of 27 August 2009 [The Act... 2009]. Provisions of Article 3 Section 1 part 18 of the Principles of State Property Management Act of 16 December 2016 [The Act... 2016] also imply the Fund is a state legal entity². This is a case of double regulation of the state legal entity status.

The judicial practice emphasises the National Fund for Environmental Protection and Water Management is a dedicated state fund with a legal personality. It is a

¹ The specialist literature notes the National Fund for Environmental Protection and Water Management plays a considerable part in financing of the environment protection in Poland. Cf. Rakoczy 2015: 77.

² As the Regional Administrative Court in Warsaw is correct to note in its judgment of 30 November 2017, IV SA/Wa 2663/17, LEX No. 2434231, the National Fund for Environmental Protection and Water Management is a state legal entity under Article 9 point 14 of the Public Finances Act, which means it is part of the public finance sector.

functional administrative entity, since it is charged with certain public tasks and has dedicated resources at its disposal³. In line with Article 386 part 3 of the EPL, is an environment protection institution⁴.

The attribute of the Fund's legal personality is associated with authorities of legal entities. Article 38 of the Civil Code Act of 23 April 1964 ('the CC' below) [The Act...] is key in this respect, stipulating a legal entity shall act via its authorities as provided for by the Act and the Statutes based on the Act⁵. The National Fund for Environmental Protection and Water Management operates by force of the Environment Protection Law and its statutes. Pursuant to Article 400o of the EPL, the Fund's statutes are instituted by the competent climate minister in consultation with the minister in charge of public finances by way of a regulation. Accordingly, the Environment Minister issued the Regulation Granting Statutes to the National Fund for Environmental Protection and Water Management dated 7 December 2010 [The Regulation... 2010, the Fund's statutes hereafter]⁶.

It must be pointed out the Fund operates via its statutory authorities. In accordance with Article 400c Section 1 of the EPL, the Supervisory Board and the Management Board are the Fund's authorities [Sikorski 2015: 151]⁷. Each authority has a specific scope of competences and is charged with certain matters under the Environment Protection Law. The authorities are supported by the National Fund Office.

This paper will analyse legal regulation on the Fund's Management Board. It will be based on both the doctrine and the judicial practice and primarily addressing regulations concerning the authority.

2. TASKS OF THE FUND'S MANAGEMENT BOARD

It should be pointed out the term 'task' itself can be interpreted in a variety of ways⁸. With reference to the

Fund's Management Board members, a task should be read as a power or capacity, competence to undertake specific actions.

According to §13 Section 2 of the Fund's statutes, the Management Board carries out the tasks laid down in the Environment Protection Law and day-to-day activities of the Fund. Article 400k of the EPL enumerates the Fund's Management Board's tasks and governs legal transactions as part of its property rights and obligations [Bukowski i in. 2013: 747]. The provision regulates tasks of both the Fund's Management Board and management boards of regional funds. The section sets out only the tasks of the Fund's Management Board, while Section 3 contains only tasks of the regional fund management boards.

The tasks under Section 1 Article 400k of the EPL are described by the doctrine as planning competences, management of available resources, and monitoring of loans⁹ and subsidies¹⁰ already issued, assessment of ecological effects of activities¹¹, land surface pollution and environment damage, as well as reporting on activities to supervisory boards [Górski i in. 2019: 1020–1021]. In turn, Section 2 Article 400k of the EPL only governs the tasks reserved for the Fund's Management Board, which include draft joint strategies of the National Fund and regional funds and draft strategy of the National Fund, listing of the National Fund's priority programmes, as well as reporting to the competent climate minister and the Chief Environment Protection Inspector under the Recycling of Disused Vehicle Act dated 20 January 2005 [The Act... 2005]¹² and the Used Electric and Electronic Equipment Act 11 September 2015 [The Act... 2015]¹³. It

who define 'task' as a mission to fulfill, a mathematical or physical problem that requires solution.

⁹ The statement of reasons for the Supreme Administrative Court decision of 4 July 2017, II OSK 1453/17, LEX No. 2312736; administration of resources of the National Fund and regional funds is a task of the Fund's Management Board under Article 400k Section 1 point 4 of the EPL, and this is the Management Board who is authorised to amortise a loan.

¹⁰ In line with the Regional Administrative Court in Warsaw judgement of 24 February 2015, IV SAB/Wa 226/14, LEX No. 1739680, the Fund's Management Board is competent in administration of the Fund's financial resources.

¹¹ Cf. the Regional Administrative Court in Gliwice judgement of 18 October 2017, I SA/GI 617/17, LEX No. 2388409.

¹² The legislation binds the Fund's Management Board to draft and present the Chief Environment Protection Inspector with quarterly information about payers of fees specified by Article 14 Section 1 and Article 17 Sections 1 and 2 of the Recycling of Disused Vehicles Act.

¹³ The Fund's Management Board is obliged to compile and provide to the competent climate minister summary information about revenue from the resources under Article 15 Section 3 point 2, Article 62 Section 6, and

³ Cf. Supreme Administrative Court judgment of 15 March 2016, II OSK 1465/15, LEX No. 2037370. The Court weighed the issue of the Fund's legal status in that decision.

⁴ Beside the National Fund for Environmental Protection and Water Management, the State Council for Environment Procedure and environment impact evaluation commissions are the environment protection institutions.

⁵ Cf. Supreme Administrative Court decision of 29 January 2015, II OSK 1833/13, LEX No. 1655906. The court emphasises an action of a legal entity's body is treated as an action of the same entity.

⁶ The Regulation became effective as of 1 January 2011. On 14 May 2020, the Climate Minister's issued Regulation Amending the Regulation Granting Statutes to the National Fund for Environmental Protection and Water Management dated 14 May 2020, O.J. of 2020, item 890.

⁷ See also Supreme Administrative Court judgement of 8 July 2011, II OSK 2030/10, LEX No. 1083629.

⁸ Cf. Drabik, Kubiak-Sokół, Sobol, Wiśniakowska 2009: 1246,

needs to be stressed the legislation obliges the competent climate minister to issue, by force of Article 400k Section 7 of the EPL, a regulation determining methods of providing the above information and reports [Gruszecki 2019: 1227]. In execution of this delegation of legislative powers, the Environment Minister issued a Regulation on Information about Fees and Subsidies Connected with Collection of Disused Vehicles under the Used Electric and Electronic Equipment Act dated 27 June 2017 [The Regulation... 2017]¹⁴.

Its representative function is a key task of the Fund's Management Board. Pursuant to Article 400i Section 16 of the EPL, the legislation invests the Fund President with representing the Fund. Accordingly, the President shall represent the Fund by executing any legal transactions in respect of property rights and obligations of the Fund subject to the regulations under Article 400k Section 4 of the EPL [Sikorski 2015: 152]. As noted by the doctrine, the President is thus authorised to represent the National Fund for Environmental Protection and Water Management in all external contacts. In addition, the President is empowered to execute all legal transactions in respect of property rights and obligations, while Article 400k Section 4 of the EPL stipulates legal transactions in respect of property rights and obligations of the Fund may be executed, beside the President, by two of the remaining Management Board members acting jointly as well as proxies appointed by the President who act solely within their powers [Gajewski, Kulon 2011: 87–88].

The question of granting powers is provided for by the Fund's statutes. Their §17 Section 1 indicates the powers are given by the President in writing. In accordance with §17 Section 2 of the Fund's statutes, meanwhile, its Management Board may grant powers to perform transactions unrelated to property affairs of the National Fund.

The doctrine is apposite in noting a peculiar regulation is incorporated in Article 400k Section 6 of the EPL. It excludes invalidity in relation to third parties of legal transactions with regard to rights and obligations of the National Fund and regional funds which Management Board members or proxies carry out without approvals by the National Fund Supervisory Board or regional fund supervisory boards, respectively, of the management boards' requests for loans and subsidies with unit values above: in the case of the National Fund loan or subsidy – equivalent of € 1 000 000 or € 500 000, respectively; in the case of a regional fund loan or subsidy – 0.5% of revenue generated by the fund in the preceding year [Gajewski, Kulon 2011: 98].

The President, as specified in Article 400l Section 1 of the EPL, manages the Fund Office with the assistance of the Fund Office director. Pursuant to Article 400i Section 17 of the EPL, the President carries out labour law transactions

with the Fund Office staff¹⁵. The President employs the Fund Office management staff on consultation with the Fund's Management Board – this duty arises from Article 400i Section 18 of the EPL. This provision fails to state whether the Management Board's opinion is binding on the President, a literal interpretation of this Article seems to suggest it is not and is merely advisory in nature.

The President's tasks comprise appointment and dismissal of the Fund Office director. The appointment follows the rules under part 1 chapter III of division two of the Labour Code dated 26 June 1972 [The Act... 1972, 'the LC' below], entitled 'The relationship of employment by way of appointment', that is, Articles 68–72. In light of these provisions, a relationship of employment is contracted by appointment in the cases set out in specific regulations¹⁶, in this case, the Environment Protection Law¹⁷. This relationship of employment is entered into for an unspecified term; should an employee be appointed for a

15 Recruitment of applicants for free positions with the Fund Office is free and competitive by force of Article 400m Section 1 of the EPL. It is announced in a public space in the National Fund offices and in the Fund's Public Information Bulletin. The documents specified in the recruitment announcement must be submitted within a minimum period of 14 days after publication of the announcement in the Public Information Bulletin. Following the deadline for the document submission specified in the recruitment announcement, a list of candidates who meet the formal requirements defined in the announcement is promptly published in a public space in the National Fund offices and in the Fund's Public Information Bulletin. The list must contain full names and addresses of the candidates. Minutes are drafted of the recruitment of applicants for free positions with the Fund Office. As provided for by Article 400m Section 9 of the EPL, results of the recruitment are published within 14 days of hiring a selected candidate or end of the recruitment if no candidate is employed as a result.

16 As the Supreme Court argues in its judgement of 4 October 2018, III PK 93/17, LEX No. 2561631: 'A specific regulation under Article 68 §1 of the LC can only mean provision of an act of parliament, not a provision constituted in the so-called autonomous source of labour law'.

17 The doctrine is right to point out appointment under Article 68 of the LC is a unilateral act of an appropriate authority, however, a relationship of employment on this basis can only be contracted with consent of an employee, since a fundamental principle of labour legislation, phrased in Article 11 of the LC, states execution of the relationship of employment on any legal grounds requires consenting statements of will by an employer and employee. Appointment has two effects: first, a job or function is entrusted to an individual, second, a relationship of employment by appointment is created between an appointing entity (employer) and a person. See more about it in Małysz 2014: 5–9.

revenue from the fees under Article 72 Section 2 and Article 77 Section 2 of the Used Electric and Electronic Equipment Act.

14 The Regulation became effective as of 1 July 2017.

fixed term by force of specific regulations, the relationship of employment is contracted for the time of appointment¹⁸. Appointment may follow a competition, even though specific regulations do not require selection only as a result of competition¹⁹. A relationship of employment by way of appointment is entered into as at the date laid down in the appointment or, if such date is not specified, at the date such appointment is delivered, unless specific regulations stipulate otherwise²⁰. The appointment must be made in writing²¹. It should be remembered that, pursuant to Article 70 §1 of the LC, an employee hired by force of appointment can be dismissed by the authority that has appointed them at any time, promptly or by a specified date [see more in: Cajselski 2012: 17–19]. This also applies to an employee appointed for a fixed term according to specific regulations. In accordance with Article 70 § 1¹ of the LC, such dismissal must be made in writing. The Fund's Management Board's duties also include supervision of tasks executed by organisations of the Fund Office²².

3. MEMBERSHIP, PROCEDURES OF APPOINTMENT AND DISMISSAL OF THE FUND'S MANAGEMENT BOARD

Article 400i Section 1 of the EPL explicitly states the Fund's Management Board is a collegiate body of three members as a minimum following the Latin formula *tres faciunt collegium*. The maximum number of the Management Board members according to the same provision is five. Section 2 Article 400i of the EPL rules the Fund's Management Board must comprise the President and his/her deputies. Only natural persons with a full capacity to enter into legal transactions may become members of the Fund's Management Board²³. Article 400i Section 2 point

1 of the EPL expressly implies the President is selected by way of an open competition announced by the Fund's Supervisory Board [Gajewski, Kulon 2011: 83]. Article 400i Section 4 of the EPL lists obligatory requirements of candidates for the position. In line with the provision, individuals who meet all of the following criteria may become the President: they hold a degree of Master or equivalent, are Polish citizens and enjoy full civil rights²⁴; have not been convicted for premeditated crimes or fiscal crimes with effective court sentences; they hold managerial competences; have worked for a minimum of six years' work experience, including at least three years in managerial positions, and hold education and knowledge of the affairs for which the National Fund is competent. Article 400i Section 4 of the EPL leads to the *prima facie* conclusion requirements of candidates for such an important post are not excessively high.

The foregoing requirements are standard and, one can even say, quite general. The first condition might be more specific by indicating particular subjects of study, not merely the degree of qualifications. These should be subjects like law, economics, management or environment protection, since the President *de lege lata* manages the largest fund financing environment protection and water management projects in Poland – such educational qualifications are completely reasonable, therefore. I additionally believe these requirements of candidates should be extended with completion of specialist postgraduate studies or certification of foreign language skills, or even compulsory holding of a scientific degree. Institution of these criteria will translate into selection of competent and professional experts to become President of the Fund's Management Board.

pursuant to Article 10 §2 of the CC and remains so even if such marriage is annulled. *De lege lata*, someone who is 18 is of age. As the Supreme Court argues in its decision of 29 July 2015, II CSK 854/14, LEX No. 1968438, 'in accordance with Article 11 of the CC, an individual acquires a full capacity to enter into legal transactions once they come of age. *A contrario*, it must be assumed absence of a conscious capacity for such transactions needs to be demonstrated'.

²⁴ Contents of Article 40 §1 of the Penal Code dated 6 June 1997 – the uniform text: O.J. of 2020 item 1444 as amended: 'Deprivation of public rights encompasses loss of active and passive voting rights for public authorities, professional or business self-government bodies, loss of right to participate in administration of justice and to hold state and local or professional government functions, as well as loss of a military rank held and a return to the rank of private; the deprivation of public rights additionally includes loss of orders, distinctions and honorary titles and loss of the capacity to win the same for the duration of such deprivation'. In line with Article 40 §2 of the Penal Code, a court may rule deprivation of public rights in case of imprisonment for a minimum of three years for crimes whose motivations deserve particular condemnation. Cf. more about it in Budyń-Kulik 2015: 104–160.

¹⁸ Cf. the Supreme Court judgement of 5 August 2008, I PK 29/08, OSNP 2010, Nos. 1–2, item 3.

¹⁹ The position is upheld by the Regional Administrative Court in Warsaw decision of 20 February 2017, IV SA/Wa 3316/16, LEX No. 2283268.

²⁰ Where specific regulations fail to imply clearly as of what date a relationship of employment by appointment is contracted, there are no grounds for restricting the employer's powers in this respect. This has been rightly argued by the Regional Administrative Court in Szczecin in its judgement of 28 February 2018, II SA/Sz 25/18, LEX No. 2459937.

²¹ Cf. the Supreme Court judgement of 19 November 2013, I PK 65/13, LEX No. 1555026.

²² As §2 Section 2 of the Fund's statutes stipulates, the Fund Office consists of the following organisations: department, section, team, and independent position.

²³ Article 11 of the CC states a full capacity for legal transactions is acquired as one becomes of age. It should also be pointed out a minor comes of age by marrying

Article 400i Section 5 of the EPL indicates recruitment of the Fund President is announced in a public space in the National Fund offices, in the Fund's Public Information Bulletin and Chancellery of the Prime Minister's Public Information Bulletin. This announcement should contain: name and address of the Fund, designation of the position, requirements associated with the job under legal regulations, responsibilities in the position, documents required; date and place of document submission, and information about methods and techniques of the recruitment.

The documents must be submitted ten days after publication of the announcement in the Chancellery of the Prime Minister's Public Information Bulletin at the latest. The deadline is laid down in Article 400i Section 6 of the EPL. The legislation decided this is a minimum, a substantive time limit that cannot be reinstated [Gajewski, Kulon 2011: 83]²⁵.

As part of the recruitment for the President of the Fund's Management Board, members of the Fund's Supervisory Board must evaluate a candidate's professional experience, knowledge required to hold the position, and managerial competences. The Supervisory Board may order this evaluation to a person who is not their member and is adequately qualified. This option arises from Article 400i Section 8 of the EPL.

Article 400i Section 9 of the EPL clearly states members of the Fund's Supervisory Board and individuals ordered to evaluate the candidates must keep confidential any information about applicants for the post gained as part of the recruitment.

At the end of the recruitment, the Supervisory Board selects a maximum of three candidates to be presented to the competent climate minister in accordance with Article 400i Section 10 of the EPL. It should be pointed out the provision not only fails to govern forms in which the Supervisory Board is to present the candidates but also fails to specify by what date it should be done. This gives rise to a *de lege ferenda* postulate to amend Article 400i Section 10 of the EPL as follows: 'As part of the recruitment, the Supervisory Board selects a maximum of three candidates to be presented in writing to the competent climate minister within seven days'. Such a legislative amendment would dispel any doubts and oblige the Fund's Supervisory Board to apply the appropriate format and abide by the deadline. It should also be noted the above provision fails to indicate clearly whether the competent climate minister is obliged to select one of the candidates submitted by the Supervisory Board. A literal interpretation of this provision implies the minister can appoint none of the three

candidates presented by the Fund's Supervisory Board. In the event, the recruitment procedure must be repeated until such candidates are selected that one of them will be appointed the President by the minister.

The Fund's Supervisory Board is obliged to draft a report of the recruitment including: name and address of the National Fund, designation of the post subject to the recruitment, and number of candidates; full names and addresses of a maximum of three best candidates ordered as per the standard up to which they meet the requirements identified in the recruitment announcement, information about the methods and techniques of the recruitment applied, and reasons for the selection or failure to select a candidate.

Results of the recruitment, as provided for by Article 400i Section 12 of the EPL, are published promptly in the Fund's Public Information Bulletin and Chancellery of the Prime Minister's Public Information Bulletin. Information of the results encompasses: name and address of the National Fund, designation of the post subject to the recruitment, and number of candidates; full names of selected candidates and their residential address as defined by the Civil Code²⁶ or information no candidate has been selected²⁷.

Article 400i Section 13 of the EPL regulates publication of a recruitment announcement and results of such recruitment in the Chancellery of the Prime Minister's Public Information Bulletin are free of charge.

Analysis of the Environment Protection Law indicates the President of the Fund's Management Board is not appointed for a specific term. Pursuant to Article 400i Section 2 point 1 *in fine* of the EPL, the President is dismissed by the competent climate minister as requested by the Fund's Supervisory Board. The legislation does not specify format of this request or whether it is binding on the competent climate minister.

26 In line with 25 of the CC, a private individual's residential address is a location where they intend to remain permanently. Its concept is expressed by the Regional Administrative Court of Lublin in its judgement of 10 March 2020, II SA/Lu 741/19, LEX No. 3009687. It said in accordance with Article 25 of the CC, 'residence is a legal qualification of a person's attitude to a place that consists of two elements: remaining in a place in the physical sense (*corpus*) and a will, intention to remain there permanently (*animus*). Both these elements must be present jointly. The element of actual remaining does not mean a continuing (permanent) remaining in a specific place'. The Supreme Court in its decision of 23 July 2019, IV CO 142/19, LEX No. 2699546, expressed similar ideas, accepting a private individual's residential address is a location of permanent remaining even if a person is not staying there temporarily.

27 As indicated by the provision of Article 28 of the CC, a private individual may only have a single residential address. Cf. Regional Administrative Court in Opole judgement of 13 April 2016, I SA/Op 44/16, LEX No. 2056414.

25 As the Supreme Administrative Court judgement of 11 January 2012, I OSK 1572/10, LEX No. 1429053, is accurate in explaining, a substantive time limit is a period during which an individual's rights or duties may be determined as part of a legal administrative substantive relationship. A procedural time limit is the time for subjects in administrative proceedings to carry out procedural transactions.

The Fund's Management Board may number three to five. The procedures of appointment and dismissal of Deputy Presidents of the Fund's Management Board, as expressed in Article 400i Section 2 point 2 in conjunction with Article 400i Section 14 of the EPL, is identical to the one set out above. The provisions discussed before apply as appropriate.

It should be noted Article 400i Section 15 of the EPL introduces the principle of *incompatibilitas*, or non-combining certain public functions²⁸, by the Management Board members. It is commonly related to avoidance of conflicts of interest or prevention of sharing time-consuming pursuits that can impede their proper discharge [Bukowski i in. 2013: 740]. Function of the Fund's Management Board member cannot be combined with employment in central or local government administration, membership of supervisory boards of the Treasury or local government companies, as well as positions of members of parliament, senators or local councillors²⁹.

4. SESSIONS AND RESOLUTIONS

The Fund's Management Board, as a collegiate body, acts in sessions. It should be kept in mind, however, not each meeting of the Management Board members can be treated as a session of this body. It should be convened and proceed as set out in relevant regulations. These regulations are incorporated in the statutes of the Fund. The Management Board sessions are held as needed, though twice a month as a minimum pursuant to § 14 Section 1 *in fine* of the Fund's statutes, unless a session is impossible or substantially hindered, in particular, by a state of epidemic threat, epidemic or state of emergency announced in the Republic of Poland.

²⁸ The judicial practice generally acknowledges 'the institution of *incompatibilitas* is an expression of universally accepted requirements of public officials; it is universally exercised in democratic systems in relation to those in power both at national and local levels; it is treated as a guarantee of proper discharge of a mandatary's duties; it prevents entanglement in connections and contradictory interests arising from simultaneous holding of different social roles that could affect independence of a mandate, undermine the authority of power or give rise to objections against impartiality and honesty of its holders. In contemporary democracies, special attention is paid to ethical aspects of public life, demanding adherence to rules of transparency, disinterestedness, and honesty.' This was acknowledged by the Regional Administrative Court in Gorzów Wielkopolski in its judgement of 29 November 2012, II SA/Go 770/12, LEX No. 1249002.

²⁹ As the Regional Administrative Court in Warsaw is correct to note in its decision of 24 February 2016, IV SA/Wa 2829/15, LEX No. 2459608, the Fund's Management Board is competent in administration of its financial resources.

The Management Board is obliged to meet as often as it is required for effective discharge of its statutory tasks and to ensure correct day-to-day operation of the Fund.

Sessions of the Management Board are held in the Fund's offices or at another location to be designated as appropriate by the President. This is governed by §3 Section 2 of the Fund's statutes.

A session of the Management Board can be called by the President at his or her own initiative or at a written request of half the Management Board members as a minimum. In the President's absence, a session is convened by a Management Board member substituting the President.

The Fund's Management Board passes its resolutions correctly if all its members have been adequately notified of a session. By force of §14 Section 2 of the Fund's statutes, such notices must contain a date and location of the Management Board session, its agenda, draft resolutions, documents underlying such resolutions, and any other materials. They must be delivered to the Management Board members three days ahead of a scheduled session as a minimum. What is noteworthy, provisions of neither the Environment Procedure Law nor the Fund's statutes govern cancellation or delay of a Management Board session. It should be assumed, therefore, the person convening a session can cancel or delay it as well.

Sessions of the Fund's Management Board are chaired by the President or a Deputy President appointed by the President, according to §14 Section 4 of the Fund's statutes. The chair opens and ends a session, manages the proceedings, gives the floor, rules voting on resolutions, and announces results of such voting.

In accordance with §3 Section 3 of the Fund's statutes, sessions of the Management Board follow agendas. As submitted by the President or substituting Deputy President who chairs a session, the Management Board accepts the agenda. A matter not included in the agenda may only be considered at a Management Board session subject to approval of all the Management Board members participating in such a session (§14 Section 3 of the Fund's statutes).

All the members have the right to take part in the Board sessions. As laid down in §13 Section 1 of the Fund's statutes, each member is bound to fulfill their duties in person. Discussion of an issue on the agenda at a Management Board session may be joined by: Chair of the Fund's Supervisory Board or Supervisory Board members designated by the Chair, staff of the Fund Office, as well as other parties, in particular experts, insofar as they may contribute to clarification of an issue and if required by the Management Board. As determined by §14 Section 6 of the Fund's statutes, such persons are invited by the Management Board to participate in its sessions.

As a collegiate body, the Management Board expresses its will in resolutions passed by voting. Each of its members makes their declarations, while a statement of will of the legal entity's collective body is the final result of all votes cast as provided for by law or provisions of the Fund's statutes. The Fund's Management Board, as a multiple-

person body, declares its will by accepting or rejecting draft resolutions.

The Management Board may resolve if all the members have been properly notified of a session. It acts by passing resolutions at its sessions, in writing or by means of distant communication capable of identifying voters (§ 3 Section 1 of the Fund's statutes). Resolving in writing or by means of distant communication is ruled by chair of a Management Board session at their own initiative or at a written request of the President or a Management Board member replacing the President (§8 Section 4 of the Fund's statutes). In the event, draft resolutions, as well as the session chair's notices of a voting procedure, agenda, and times of voting, documents underlying resolutions, and other materials may be delivered to the Management Board members in writing, in electronic format or by fax on the day prior to the date of voting at the latest. Votes cast and submitted after the date of voting are considered not to have been cast and are not accounted for as part of the quorum (§ 8 Section 6 of the Fund's statutes).

It needs to be pointed out *de lege lata* passing resolutions in writing may only be ruled if a resolution must pass urgently prior to a next scheduled date of the Management Board session or where such session is impossible or substantially hindered, in particular, by a state of epidemic threat, epidemic or state of emergency announced in the Republic of Poland (§4 Section 1 of the Fund's statutes). Pursuant to §4 Section 2 of the Fund's statutes, this provision is not applicable to resolutions subject to secret voting.

Regulations of §14 Section 5 of the Fund's statutes finally decide a Management Board session may be held if half of its membership as a minimum participate in person³¹. §15 Section 1 of the Fund's statutes implies the Management Board's resolutions pass with an ordinary majority of open votes vast by half the Management Board members as a minimum. If votes are equal, the President's vote prevails or, in the President's absence, the vote of the Deputy President who chairs the Management Board session. By force of §15 Section 4 of the Fund's statutes, the President may order secret voting as requested by a Management Board member.

The principle of the ordinary majority of votes means votes for must prevail over votes against for a resolution to pass. It must be borne in mind §5 Section 3 of the Fund's statutes determined an abstaining vote of a Management Board member is not part of a quorum. Invalid votes are not taken into account.

A correctly passed resolution binds all the Management Board members including those voting against, abstaining or absent.

The President or session chair substituting the President signs a resolution even if they have voted against it (§15 Section 3 of the Fund's statutes), since this is not a declaration of an individual, but of the body, while the chair's signature the Management Board has adopted a given wording of the resolution.

It should be remembered a Management Board member

voting against a resolution at a session is entitled to file a dissenting opinion to minutes of the session pursuant to §15 Section 5 of the Fund's statutes³⁰. Under §5 Section 1 of the Fund's statutes, a Management Board member is bound to record in the minutes and notify the remaining members of a relevant conflict of interest and to abstain from voting on a resolution in a matter to which such conflict of interest applies³¹.

5. DOCUMENTATION OF THE FUND'S MANAGEMENT BOARD

The Environment Protection Law fails to govern documentation of the Fund's Management Board's activities, all of which require to be documented. This subject matter is regulated by provisions of the Fund's statutes. Their §3 Section 4 stipulates minutes are kept of the Management Board sessions and resolutions passed in writing or by means of distant communication and accepted by way of resolution at a next session. *De lege lata*, §3 Section 5 of the Fund's statutes determines such minutes should reflect transactions undertaken at a session and specify modes of voting on resolutions. If such transactions are recorded with image or sound recording equipment, the minutes may be limited to major utterances of participants in such transactions. Electronic image or sound media, as well as written sound records are attached to minutes. Minutes may also be enclosed with documents underlying the resolutions passed. The minutes and enclosures are retained by the National Fund Office.

The statutes fail to specify who should sign the minutes. It seems appropriate that minutes of a Management Board session be signed by the President and Management Board members. Aside from those listed above, the minutes should also comprise the following elements: a subsequent number, date and place of session, and a list of participants invited to the session.

30 A dissenting opinion requires a written statement of reasons to be submitted to the chair of the Management Board session within three days of a Management Board's resolution at the latest. This right stems from §11 Section 4 of the Fund's statutes. Where resolutions are passed in writing or by means of distant communication, a Management Board member may submit a dissenting opinion and a statement of reasons in writing and present them to the chair of the Management Board session within a day of the resolution pursuant to §11 Section 5 of the Fund's statutes. This right prevails by force of §16 of the Fund's statutes, which determines the foregoing provisions apply to work of the Management Board as appropriate.

31 A conflict of interest arises where consequences of a resolution directly or indirectly affect property or personal interests of the authority's member – §5 Section 2 of the Fund's statutes.

6. THE FUND'S MANAGEMENT BOARD – STATISTICS

The legislation binds the Fund's Supervisory Board to present the climate minister with annual reports on activities of the National Fund for Environmental Protection and Water Management in a preceding year. As expressly stipulated by Article 400h Section 1 part 7 letter a of the EPL, such reports must be submitted by 30 April of each calendar year.

Some reported data can be presented to describe the Management Board's activities more fully and in practice. Due to space constraints, only the reports for 2017–2019 are analysed.

In 2019, the Management Board sat 136 times and passed 1420 resolutions. As far as resolutions on financing of environment-friendly projects are concerned, the Management Board adopted 699 resolutions on subsidy financing and 197 about loan funding [NFOŚiGW, 2020: 5]. In 2019, the Management Board realised in particular the tasks laid down in Article 400k of the EPL and focused on actions to take full advantage of non-refundable European funding for environment protection and water management and introduced new lines of spending while continuing and expanding its cooperation with regional environment protection and water management funds.

The actions involved:

- 1) Implementation of the National Fund's priority programmes, including those addressed to private individuals, i.e. Clean Air and My Electricity;
- 2) Proposed simplifications to facilitate selection of projects to be financed, implementation and settling of PO liŚ 2014–2020 programme projects;
- 3) Proposals to shift funds between PO liŚ 2014–2020 actions aimed at taking full advantage of the allocation to the Programme;
- 4) Assuring efficient operation of the national system of advice and support for the public, housing and business sectors in respect of energy efficiency and RES as part of action 1.3.3 PO liŚ 2014–2020;
- 5) Implementation of the Project of building the LIFE Programme's potential aimed at propagating information about the Programme and acquisition of a broad range of target groups acting for the environment and climate protection as well as assisting with preparing top quality LIFE applications and taking effective advantage of the funds available for this objective;
- 6) Management of the Low-Emission Transport Fund by the National Fund [NFOŚiGW, 2020: 5].

In 2019, the Fund's Management Board also made decisions about, initiated work in and supervised:

- 1) Acceptance of documents to be submitted to the Supervisory Board, including Principles of awarding co-financing by the National Fund, Criteria of selection of projects to be financed by the National Fund, and List of priority undertakings;

- 2) Approval and modifications of priority programmes;
- 3) Selection of projects to be co-financed by the National Fund and issue of the funding;
- 4) Approval of a draft financial plan of the Fund for 2020 and task-based financial plan for the budgeting years 2020 and 2021–2022;
- 5) Other actions as part of project implementation under the EU financial perspective 2014–2020;
- 6) Ongoing analysis and monitoring of the National Fund's financial condition in 2019;
- 7) Analysis of compliance of spending with priority programmes, criteria of project selection for co-financing, and the Plan of the National Fund's activities for 2019 [NFOŚiGW, 2020: 5].

The report also implies work to assure efficient operation of the priority programme Clean Air (85,500 applications for a total amount of nearly PLN 1,747 m were submitted to regional funds in 2019), the largest in respect of both finances (a budget of PLN 103 bn) and numbers of potential recipients (3 million households), was another major part of the Fund's Management Board's activities [NFOŚiGW, 2020: 5].

In 2018, the Management Board sat 136 times and passed 837 resolutions. As far as resolutions on financing of environment-friendly projects are concerned, the Management Board adopted 178 resolutions on subsidy financing and 147 about loan funding, 31 resolutions to provide funding to state budget organisations, and 6 resolutions to supply subsidies to counties and local communities with regard to collection and disassembly of disused vehicles [NFOŚiGW, 2019: 4–5].

In 2018, the Management Board realised in particular the tasks laid down in Article 400k of the EPL and focused on actions to take full advantage of non-refundable European funding for environment protection and water management that involved:

- 1) Proposed simplifications to facilitate selection of projects to be financed, implementation and settling of PO liŚ 2014–2020 programme projects;
- 2) Proposals to shift funds between PO liŚ 2014–2020 actions aimed at taking full advantage of the allocation to the Programme;
- 3) Implementation of priority programmes, in particular, the Clean Air programme;
- 4) Assuring efficient operation of the national system of advice and support for the public, housing and business sectors in respect of energy efficiency and RES as part of action 1.3.3 PO liŚ 2014–2020;
- 5) Implementation of the Project of building the LIFE Programme's potential aimed at propagating information about the Programme and acquisition of a broad range of target groups acting for the environment and climate protection as well as assisting with preparing top quality LIFE applications and taking effective advantage of the funds available for this objective;

6) Management of the Low-Emission Transport Fund by the National Fund [NFOŚiGW, 2019: 5].

In 2019, the Fund's Management Board also made decisions about, initiated work in and supervised:

- 1) Acceptance of documents to be submitted to the Supervisory Board, including Principles of awarding co-financing by the National Fund, Criteria of selection of projects to be financed by the National Fund, List of priority undertakings;
- 2) Approval and modifications of priority programmes;
- 3) Selection of projects to be co-financed by the National Fund and issue of the funding;
- 4) Approval of a draft financial plan of the Fund for 2019 and task-based financial plan for the budgeting years 2019 and 2020–2021;
- 5) Other actions as part of project implementation under the EU financial perspective 2014–2020;
- 6) Ongoing analysis and monitoring of the National Fund's financial condition in 2018;
- 7) Analysis of compliance of spending with priority programmes, criteria of project selection for co-financing, and the Plan of the National Fund's activities for 2018 [NFOŚiGW, 2019: 5].

Work to assure efficient operation of the priority programme Clean Air (25,500 applications for a total amount of nearly PLN 550 m were submitted to regional funds in 2018), the largest in respect of both finances (a budget of PLN 103 bn) and numbers of potential recipients (4 million households), was another major part of the Fund's Management Board's activities [NFOŚiGW, 2019: 5]. Takeover of management of the Low-Emission Transport Fund was another major project stimulated by the National Fund's Management Board. An agreement was executed on 26 October 2018 between the Energy Minister and the National Fund on principles of cooperation between the National Fund and the LETF administrator [NFOŚiGW, 2019: 6].

In 2017, the Management Board sat 157 times and passed 1059 resolutions. As far as resolutions on financing of environment-friendly projects are concerned, the Management Board adopted 222 resolutions on subsidy financing, 4 resolutions to make subsidies available to regional environment protection and water management funds for co-financing of projects, 100 about loan funding, 62 resolutions to provide funding to state budget organisations, and 2 resolutions to supply subsidies to counties and local communities with regard to collection and disassembly of disused vehicles [NFOŚiGW, 2018: 4–5]. In 2017, the Management Board realised in particular the tasks laid down in Article 400k of the EPL and focused on actions to take full advantage of non-refundable European funding for environment protection and water management that involved:

- 1) Proposed simplifications to facilitate selection of projects to be financed, implementation and settling of PO IiŚ 2014–2020 programme projects;

- 2) Proposals to shift funds between PO IiŚ 2014–2020 actions aimed at taking full advantage of the allocation to the Programme;
- 3) Selection of undertakings to be funded out of the Financing Mechanism of the European Economic Area and Norwegian Financing Mechanism – the financial perspective for 2009–2014 and the European Partnership Fund PHARE;
- 4) Implementation of priority programmes, corrective actions and measures to account for sales contracts of the assigned amount units (AAU) of greenhouse gas emissions;
- 5) Final settlement of projects co-financed out of the Operational Programme Infrastructure and Environment 2007–2013 or ISPA/ Cohesion Fund under the financing perspective 2000–2006;
- 6) Assuring efficient operation of the national system of advice and support for the public, housing and business sectors in respect of energy efficiency and RES as part of action 1.3.3 PO IiŚ 2014–2020;
- 7) Implementation of the Project of building the LIFE Programme's potential aimed at propagating information about the Programme and acquisition of a broad range of target groups acting for the environment and climate protection as well as assisting with preparing top quality LIFE applications and taking effective advantage of the funds available for this objective [NFOŚiGW, 2018: 5].

In 2017, the Fund's Management Board also made decisions about, initiated work in and supervised:

- 1) Acceptance of documents to be submitted to the Supervisory Board, including Principles of awarding co-financing by the National Fund, Criteria of selection of projects to be financed by the National Fund, List of priority undertakings;
- 2) Approval and modifications of priority programmes;
- 3) Selection of projects to be co-financed by the National Fund and issue of the funding;
- 4) Approval of a draft financial plan of the Fund for 2018 and task-based financial plan for the budgeting years 2018 and 2019–2020;
- 5) Other actions as part of project implementation under the EU financial perspective 2014–2020;
- 6) Ongoing analysis and monitoring of the National Fund's financial condition in 2017;
- 7) Analysis of compliance of spending with priority programmes, criteria of project selection for co-financing, and the Plan of the National Fund's activities for 2017 [NFOŚiGW, 2018: 5].

Initiation of the National Clean Air Package, realised by the National Fund and regional funds, was an important part of the Management Board's activities in 2017.

Analysis of the foregoing data implies unambiguously the Fund's Management Board was very active in fulfilling the provision of Article 400k of the EPL, made decisions, initiated work and supervised a variety of projects and

documents submitted to the Fund's Supervisory Board. The numbers of its sessions and resolutions it passed support a positive evaluation of the Management Board's activities.

7. CONCLUSION

At the time of intensifying climate changes that cause adverse weather phenomena as well as global challenges to environment protection in Poland and elsewhere, financing of investments into environment-friendly technologies seems crucial. The European Green Deal, which envisages climate neutrality of the European economy, has become a new signpost for the European Union's actions.

The National Fund National Fund for Environmental Protection and Water Management is the largest ecological fund in Poland that faces these challenges. By force of Article 400 Section 1 of the EPL, the Fund is a state legal entity as defined by Article 9 point of the Public Finances Act. In addition, Article 3 Section 1 point 18 of the State Property Management Act stipulates the Fund is a state legal entity. As a legal entity, the Fund acts via its authorities. Their significance is normatively sanctioned by Article 38 of the Civil Code, according to which a legal entity acts through its authorities as provided for by the Act and the resultant statutes. The Fund's authorities act by force of the Environment Protection Law and of the statutes. These acts govern these issues comprehensively. Beside the Supervisory Board, the Management Board is an obligatory authority within the Fund's structure. It is a

collegiate body including three to five members. This is an executive body that is also bound to represent the Fund.

The Management Board's structure consists of President and Deputy Presidents. Appointment and dismissal of both the President and Deputies are the responsibility of the climate minister as requested by the Fund's Supervisory Board. Candidates are selected by way of an open competition. It must be stressed, therefore, the Fund's Management Board is not subject to rotation in office.

Article 400i Section 4 of the EPL specifies the formal conditions to be met by candidates for President of the Management Board. Their analysis implies the legislation fails to set high requirements of applicants for such an important position. The Board members are prohibited from combining posts (*incompatibilitas*).

As a collegiate body, the Management Board expresses its will in resolutions passed in either open or secret voting. The Management Board realises the tasks set out in the Environment Protection Law and conducts day-to-day operations of the Fund. The tasks are laid down in Article 400k of the EPL. Minutes are compiled of the Management Board sessions.

Practical activities of the Fund's Management Board can be illustrated with statistics. For instance, only in 2019 did the Management Board hold 136 sessions where it passed 1420 resolutions. 699 resolutions concerned subsidy and 197 loan financing of ecological undertakings.

For the sake of even more effective and correct activities of the Management Board, greater requirements should be set of candidates for the chair and members of the Management Board, as they are very general at present.

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