

Anna KEPA-BIRAGA\*

## **ENTITLEMENTS AND DUTIES OF GOVERNMENT ADMINISTRATION AUTHORITIES WITH RESPECT TO GRANTING AND ACCOUNTING OF SUBSIDIES FOR LOCAL GOVERNMENT UNITS**

### **Summary**

*Public authorities while satisfying the needs of the society should strive towards greater efficiency in management of financial resources and better capability in execution of public tasks. Nowadays, when most of local governments is underfunded, the role of subsidies in financing tasks must not be overlooked. Nevertheless, of critical importance for efficiency of the executed tasks will be systematization of activities within granting and accounting of subsidies for local government units.*

**Key words:** *subsidies, voivod, local government unit*

### **Introduction**

A considerable part of public tasks is financed or co-financed in the form of subsidies from the State Budget. Thus, it is necessary for both government administration authorities and local government units to create conditions in which public tasks are executed smoothly and efficiently.

The aim of the paper is to present a subsidy as a public expenditure and, at the same time, as a source of revenue for local government units. The author discusses all duties and entitlements of government administration with respect to granting and accounting of these subsidies and quotes results of a control carried out by the Supreme Audit Office<sup>1</sup>

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\* Anna Kępa-Biraga MA, a doctoral student in the Department of Finance at the University of Economics in Katowice.

<sup>1</sup> NIK.

regarding voivods' supervision over execution of selected government administration duties performed by local government units<sup>2</sup>.

### **1. Subsidies – essence and legal foundations**

In accordance with provisions of Article 166 section 1 of the Constitution of the Republic of Poland of 2 April 1997<sup>3</sup>, *public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local government as their direct responsibility. However, if the fundamental needs of the State shall so require, a statute may instruct units of local government to perform other public duties. The mode of transfer and manner of performance of the duties so allocated shall be specified by statute*<sup>4</sup>. Among legal acts addressing the issue of subsidies from the State Budget there are four which should be quoted: Act of 23 January 2009 on voivod and government administration in voivodeship<sup>5</sup>, Act of 24 September 2010 on population registration<sup>6</sup>, Act of 12 March 2004 on social assistance<sup>7</sup>, Act of 14 March 2003 on nation-wide referendum<sup>8</sup>.

In accordance with Article 167 section 2 of the Constitution *revenues of units of local government shall consist of their own revenues as well as general subsidies and specific grants from the State Budget and the sources of revenues for units of local government shall be specified by statute*<sup>9</sup> (Art 167 section 3 of the Constitution). The revenue of local government units can also take the form of the so called designated grants from the State Budget<sup>10</sup>. According to the Act of 27 August 2009 on public finance<sup>11</sup>, grants and subsidies constitute one of the groups of the State Budget expenditure<sup>12</sup>.

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<sup>2</sup> The Supreme Audit Office, Information on results of audit 'Voivods' supervision over execution of government administration tasks performed by local governments units', <http://www.nik.gov.pl/kontrola/P/14/103>.

<sup>3</sup> Journal of Laws No 78, item 483 as amended.

<sup>4</sup> Article 166, paragraph 2 of the Constitution.

<sup>5</sup> Journal of Laws 2015, item 525.

<sup>6</sup> Journal of Laws 2015, item 388 as amended.

<sup>7</sup> Journal of Laws 2015, item 163 as amended.

<sup>8</sup> Journal of Laws 2015, item 318.

<sup>9</sup> Journal of Laws 2015, item 513 as amended – Act of 13 November 2003 on local government revenue.

<sup>10</sup> Article 3, item 1, point 3 of the Act on local government revenue .

<sup>11</sup> Journal of Laws 2013, item 885 as amended.

<sup>12</sup> Article 124 of the Public Finance Act.

Expenditure of the State Budget and the European Funds Budget is, to a large extent, transferred in the form of grants and subsidies for execution of current tasks to other legal entities from public finance and other sectors. In 2013 grants and subsidies aimed at financing current tasks amounted to 51.4% of the total budget and 13.2% (21.5 billion PLN) of this sum were designated subsidies for local government units<sup>13</sup>. Thus, subsidies may be defined as a separate group of state expenditure and designated grants as a sub-group.

Subsidies are defined as financial resources from the State Budget, local government budgets or special earmarked funds which are subject to specific rules of accounting and which are allocated as a form of financing or co-financing of public duties<sup>14</sup>. Designated subsidies are resources especially destined for financing or co-financing government administration duties or other tasks assigned to units of local government by acts of law; statutory tasks of the State patronage over culture and arts, tasks executed by entities other than local government units; current (own) duties of local government units; tasks of executive agencies; tasks commissioned for execution to non-governmental organizations; the costs of investments<sup>15</sup>.

Revenue of local government units is categorized according to various criteria: source of financing, its origin, frequency in the budget, fiscal or non-fiscal character. Another factor is related to the necessity of taking into account budget classification and the obligation of statutory revenue distribution by department. The designated subsidies together with the general subsidy are counted as transfers from the State Budget<sup>16</sup>.

The structure of revenues of local government budgets in 2013 is presented in the chart below (Image 1).

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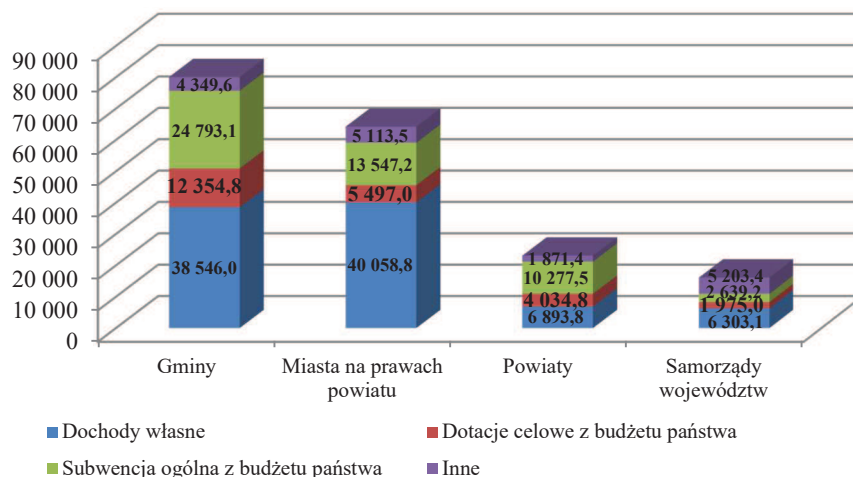
<sup>13</sup>The Supreme Audit Office: *The Analysis of Execution of the State Budget and Guidelines of the Monetary Policy in 2013*, <http://www.nik.gov.pl/id,6907.pdf>, pp. 111, 114.

<sup>14</sup> Article 126 of the Public Finance Act.

<sup>15</sup> Article 127, item 1 of the Public Finance Act.

<sup>16</sup> A. Miszczuk, M. Miszczuk, K. Żuk, *Gospodarka samorządu terytorialnego*, PWN, Warsaw 2007, pp. 62-63.

Image 1. Revenues of local government budgets in 2013 (in millions of PLN)

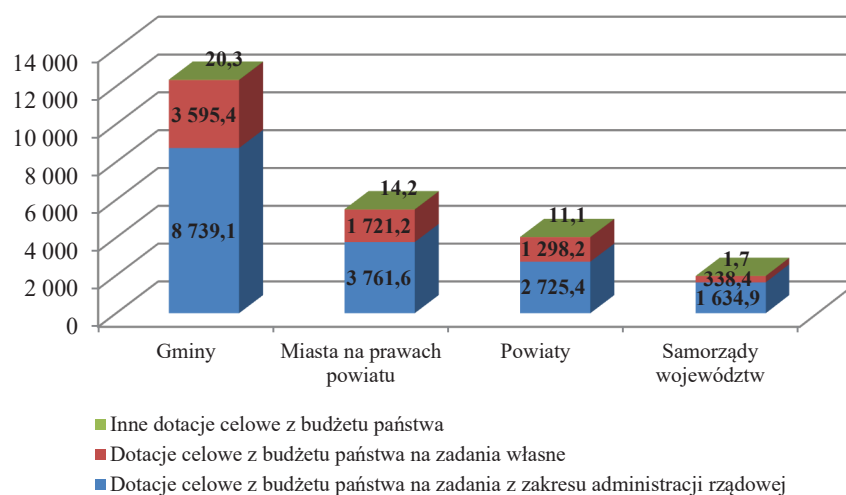


Source: Own work based on data from the Central Statistical Office *Statistical Yearbook of Voivodships*, Warsaw 2014, <http://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/rocznik-statystyczny-wojewodztw-2014,4,9.html>

In 2013 local government units received subsidies, designated subsidies included, which amounted from 8,6% (towns with district rights) to 17,5% (districts) of total revenues of their budgets; in communes this ratio was 15,4%, and in voivodeships 12,3%. The biggest share of subsidies in total revenues could be observed in districts, however, in the structure of the revenues they did not constitute a considerable share.

The value and structure of subsidies from the State Budget in particular categories of local government units (from the left: communes, towns with district rights, districts, voivodeships) are presented in the chart below (Image 2).

**Image 2. Subsidies from the State for particular categories of local government units in 2013 (in millions of PLN)**



Source: Own work based on data from the Central Statistical Office *Statistical Yearbook of Voivodeships*, Warsaw 2014, <http://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/rocznik-statystyczny-województw-2014,4,9.html>

The biggest proportion of subsidies from the State Budget for local governments in 2013 was allocated for execution of government administration duties. In case of communes the designated subsidies amounted to nearly 8.8 billion PLN, what constituted 70,7% of all State Budget subsidies. In voivodships, on the other hand, subsidies for government administration duties stood at just slightly above 1.6 billion PLN, what, nonetheless, amounted to 82,8% of the total sum of subsidies for these units. This was the biggest ratio among all local government units. As far as towns with district rights and districts are concerned, this ratio was on a similar level and amounted to 68,4% and 67,5% respectively.

When it comes to communes, in accordance with Article 8 section 1 of the Act of 8 March 1990 on local government<sup>17</sup>, legal acts may impose on local government units obligation to perform government administration duties as well as tasks related to preparation and holding of elections and referenda. Government administration duties may also

<sup>17</sup> Journal of Laws 2013, item 594 as amended.

be executed following agreements with organs of this administration<sup>18</sup>. Such agreements are of administrative nature and their subject matter is the transfer of tasks and competences between unsubordinated administrative organs<sup>19</sup>. A commune receives financial resources for execution of the above mentioned tasks<sup>20</sup>, detailed terms and dates of transfer of these resources are set out in legal acts which impose on communes execution of the tasks or provisions of agreements<sup>21</sup>. In view of the above, the financial resources received by a commune can be called a designated grant.

Designated grants constitute a source of revenue for local government units and are most frequently spent on:

- government administration duties and other tasks imposed by legal acts;
- tasks executed by local government units on the basis of agreements with government administration organs;
- removal of direct vulnerabilities and security threats for public order, effects of floods, landslides and other natural disasters;
- financing or co-financing of current tasks;
- execution of tasks resulting from international agreements<sup>22</sup>.

The structure and volume of subsidies granted by government administration organs will be presented on the example of part 85/12 – Małopolska Voivodeship. In 2013 expenditure from the Małopolska Voivode's budget on subsidies for local government units amounted to 1.9 billion PLN, which was 81,9% of the total expenses from the budget<sup>23</sup>. The designated subsidies (excluding capital expenditure) amounted to 1.7 billion PLN, from which 1.2 billion PLN covered the costs of execution of government administration duties and other tasks commissioned to local government units such as: family benefits, benefits from the alimony fund and social insurance contributions

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<sup>18</sup> Article 8 section 2 of the Act on local government.

<sup>19</sup> A. Borodo, *Samorząd terytorialny. System prawnofinansowy*, LexisNexis, Warsaw 2006, p. 162.

<sup>20</sup> Article 8 section 3 of the Act on local government.

<sup>21</sup> Article 8 section 3 and 4 of the Act on local government.

<sup>22</sup> Article 8 section 1 of the Act on local government revenue.

<sup>23</sup> The Supreme Audit Office, Krakow branch, post-audit statement, LKR-4100-001-01/2014, kontrola P/14/001 – execution of the State Budget 2013, <http://www.nik.gov.pl/kontrole/P/14/001/LKR/>, p. 29.

(pension insurance scheme), commune fire service, health insurance contributions and health benefits for people who are not subject to compulsory health insurance, financing of statutory right of passengers to concessionary travel on public transport regular services. The own-tasks of local government units such as: running nursing homes, removal of effects of natural disasters, fixed benefits, social welfare tasks including implementation of multiannual ‘Government Nutrition Programme’, social welfare centres, benefits and support in kind as well as pension scheme contributions, consumed further 444 million PLN of the subsidy. The remaining 1.3 million PLN was allocated for tasks executed on the basis of agreements with local government units. These tasks included maintenance of military cemeteries and conservation of tombs.

Designated subsidies on capital expenditure amounted to 233.9 million PLN, from which 53 million PLN was spent on execution of government administration tasks commissioned to local government of Małopolska Voivodeship. The tasks executed included: removal of water damage on basic drainage and irrigation infrastructure, tasks within ‘Upper Vistula River basin flood protection program’. The remaining 180.9 million PLN financed current tasks of local government units such as: removal of effects of natural disasters i.e. floods and landslides, tasks within the ‘National road construction programme Phase II Safety-Availability-Development’, purchase and modernisation of railway vehicles for the provision of passenger transport services, execution of Phase IV of ‘Oświęcim Strategic Government Programme 2012-2015’, creation or modernization of schoolyard playgrounds within the ‘Government Support Programme 2009-2014’, provision of safe school and classroom climate in early school education in primary schools and in first level state music schools within ‘the Happy School Programme’<sup>24</sup>.

## **2. Entitlements and duties with respect to granting and accounting for subsidies**

Government administration authorities are entitled as well as obliged to grant and account for subsidies. These entitlements and duties are dependent on the nature of tasks that are going to be financed. A number of legal acts contains regulations applicable in the process of granting and accounting for subsidies. Such provisions are to be found in the Act on public finance and the Act on local government revenue.

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<sup>24</sup> The Supreme Audit Office, Krakow branch, post-audit statement, pp. 29-31.

In accordance with the Act on public finance granting designated subsidies for local government units is defined in separate legislation<sup>25</sup>. However, the rules and criteria for transfer of designated subsidies from the State Budget to local government units do not seem to be clear and fully transparent. The amount of the grant is determined according to calculation criteria with regard to social policy, economic policy as well as budget ratios and quotas<sup>26</sup>.

To execute government administration duties and other tasks commissioned pursuant to legal acts, a local government unit is granted designated subsidies from the State Budget in the amount securing execution of these tasks. The sums of designated subsidies are determined in accordance with the guidelines of the State Budget for this kind of expenditure. The designated subsidies for government administration duties commissioned pursuant to legal acts are forwarded by the voivodes, unless other regulations specify otherwise, on terms defined in separate provisions. Nonachievement of the condition related to the mode of transfer of the subsidy to the local government unit may result in assertion, in legal proceedings, of the right to the due amount including statutory interest in the amount determined for tax arrears<sup>27</sup>. The voivodes distribute designated subsidies for respective communes and districts, unless separate regulations specify otherwise<sup>28</sup>.

In case of government administration duties to be executed pursuant to agreements with government administration authorities, the local government unit involved receives from these authorities designated subsidies in the amount resulting from the agreement. Detailed terms and conditions for transfer of subsidies for local government units are defined in the contracted agreements<sup>29</sup>.

One of the categories of designated subsidies, not mentioned above, are subsidies for own tasks of local government units. The sums for financing current and investment tasks may not exceed 80% of the costs of execution of the tasks, unless separate legislation specifies otherwise<sup>30</sup>. It should be emphasized that subsidizing own tasks of local government

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<sup>25</sup> Article 128 item 1 of the Act on public finance.

<sup>26</sup> L. Patrzalek, *Finanse samorządu terytorialnego*, Wydawnictwo Akademii Ekonomicznej im. Oskara Langego, Wrocław 2004, p. 127.

<sup>27</sup> Article 49 of the Act on local government revenue .

<sup>28</sup> Article 50 of the Act on local government revenue.

<sup>29</sup> Article 45 and Article 48 of the Act on local government revenue.

<sup>30</sup> Article 128 section 2 of the Act on public finance.



units is considered as a restraint of their independence and results in recentralization of financial resources and restoration of centrally controlled local development<sup>31</sup>.

As regards designated subsidies from the State Budget on financing own tasks such as investment projects related to schools and educational establishments, they may amount only to 50% of the planned expenditure on each individual project, unless separate regulations specify otherwise<sup>32</sup>.

Designated subsidies from the State Budget on financing own tasks related to improvements in education in rural areas, including grants and financial support for talented youth in rural areas, subsidies on implementation of the educational system reform, equal educational opportunities and practical training are distributed among particular local government units by the minister competent for education, following arrangements with the voivodes<sup>33</sup>. Distribution of designated subsidies from the State Budget on financing own tasks related to construction and renovation of sport facilities and promotion of sport among children, adolescents and people with disabilities belongs to the minister competent for sport, physical education and tourism, the minister is also responsible for transferring of the subsidies to the respective local government units<sup>34</sup>. In accordance with delegated legislation as stipulated in Article 42 section 8 of the Act on local government revenue, the Minister of Sport and Tourism on 6 April 2009 issued a resolution on financing from the State Budget tasks related to construction and renovation of sport facilities and promotion of sport<sup>35</sup>. The resolution defines the range of tasks related to construction and renovation of sport facilities and promotion of sport among children, adolescents and people with disabilities covered by the subsidies from the State Budget as well as the mode of granting subsidies on these tasks. Distribution of designated subsidies from the State Budget on financing own tasks related to construction, renovation or repair of local roads belongs to the

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<sup>31</sup> *Gospodarka finansowa jednostek samorządu terytorialnego w warunkach decentralizacji zarządzania sektorem publicznym*, H. Sochacka-Krysiak (Ed.), Warsaw School of Economics, Warsaw 2008, p. 163.

<sup>32</sup> Article 42 section 2 item 2 and section 3 and section 5 of the Act on local government revenue.

<sup>33</sup> Article 42 section 6 of the Act on local government revenue.

<sup>34</sup> Article 42 section 7 of the Act on local government revenue.

<sup>35</sup> Journal of Laws No 56, item 463.

minister competent for transport issues<sup>36</sup>. With respect to these tasks, in accordance with delegated legislation as stipulated in Article 42 section 10 of the Act on local government revenue, the Council of Ministers stipulated, by way of a regulation, detailed conditions as well as the mode of granting subsidies from the State Budget on these tasks. Proceedings with respect to these subsidies are defined in the regulation of the Council of Ministers of 27 March 2009 on granting designated subsidies for local government units on construction, renovation or repair of local roads<sup>37</sup>.

Local government units may also receive subsidies for tasks under cultural patronage of the State<sup>38</sup>. The range of tasks under cultural patronage of the State together with regulations concerning these tasks on which local government units may receive subsidies as well as mode and procedures of granting of these subsidies, including the mode and dates for submission of applications are defined in the regulation of the Minister of Culture and National Heritage of 26 June 2012<sup>39</sup>.

Pursuant to Article 51 section 1 of the Act on local government revenue, designated subsidies may be granted from the State Budget to appropriate local government units for execution of tasks related to removal of direct vulnerabilities and security threats for public order, effects of floods, landslides and other natural disasters. Subsidies may be also granted for construction of council housing essential for satisfying basic needs of victims of natural disasters within the meaning of the Act of 16 September 2011 **On Specific Solutions Related to the Elimination of the Consequences of Flooding**<sup>40</sup>.

A voivod as a disposer of the budget is obliged to pass on to local government units, by 25 October, information on the amounts of subsidies allocated for government administration tasks, inspection services and fire protection tasks and local governments own tasks adopted by the Council of Ministers in the draft budget<sup>41</sup>. Within 21 days following the promulgation of the Budget law, the voivod is obliged to inform local government units about sums of the above mentioned

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<sup>36</sup> Article 42 section 9 of the Act on local government revenue.

<sup>37</sup> Journal of Laws 2014, item 316.

<sup>38</sup> Article 43 section 1 of the Act on local government revenue.

<sup>39</sup> Journal of Laws 2012, item 737.

<sup>40</sup> Journal of Laws 2015, item 1401.

<sup>41</sup> Article 143 section 1 of the Act on public finance.

subsidies stipulated in the Budget act<sup>42</sup>. The voivod may amend the amounts of subsidies on tasks commissioned to local government units before 15 November of the budgetary year, and the amendments of sums on co-financing own tasks of local government units by 30 November of the budgetary year<sup>43</sup>. These dates, however, do not apply in the event of financing tasks of local government units to be performed following a random incident or financing Treasury obligations or in case of a prior promise of financing or co-financing from the State Budget.

Voivod while granting designated subsidies to local government units, if separate regulations or international agreements do not define the mode and procedure of granting and accounting for these subsidies, enters into an agreement which sets out: detailed description of the task and aim for which the subsidy is granted; time framework within which the subsidy must be used – but no later than by 31 December of each budget year; time framework and mode in which the subsidy must be accounted; due date by which any unused resources must be returned (the Act on public finance stipulates that this date must not be longer than 15 days following the completion date as set out in the agreement; in case of tasks executed abroad the due date is 15 days following the completion date as set out in the agreement); mode of audit. The agreement may include a clause that the audit will be conducted on terms and conditions specified in regulations on audit in government administration.

In connection with the granted subsidies the voivod is obliged to approve the clearance of the subsidy accounts (in terms of works and expenditure) submitted by the relevant unit within 30 days from its submission, in case of tasks executed abroad within 60 days from its submission<sup>44</sup>. Should it be discovered upon analysis of the clearance that the subsidy was misused partially or as a whole, or the sum of the subsidy was too high, the voivod issues a decision in which the sum of money which needs to be returned to the State Budget is determined<sup>45</sup>.

Subsidies from the State Budget in the part unused by the end of the year as well as unused resources from designated subsidies granted to the local government units for execution of government administration tasks and other tasks assigned pursuant to agreements, are the subject to return to the Budget by 31 December of the following year. This principle does

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<sup>42</sup> Article 148 section 1 of the Act on public finance.

<sup>43</sup> Article 170 section 1 of the Act on public finance.

<sup>44</sup> Article 152 section 2 of the Act on public finance.

<sup>45</sup> Article 152 section 3 of the Act on public finance.

not apply to subsidies for which the due date of return of unused resources was written down in the agreement<sup>46</sup>. If the unused resources are not returned by the specified date, the voivod issues a decision in which the due amount is to be returned and the date from which interest is charged<sup>47</sup>.

The results of audit carried by NIK in six voivodship offices<sup>48</sup> with respect to voivods' supervision over execution of selected government administration tasks performed by local government units point to an important phenomenon in the process of planning and granting subsidies for local government units. Although voivods from the audited offices conducted distribution of resources on the basis of thorough analysis of the submitted needs, preceded by methodical evaluation of the proposed expenditure with respect to purpose and cost-effectiveness and studied past year subsidies so as to the degree of their uptake and their material effects, none of the voivods conducted their own cost calculation of the executed tasks and did not compare costs of tasks performance in respective local government units<sup>49</sup>.

Tasks executed with financial resources from subsidies allocated to local government units are subject to supervision and control carried out by government administration bodies who granted the subsidies. Pursuant to Article 3 section 1 point 4 of the Act on voivod and government administration in voivodship, a voivod is a supervisory body, in terms of legality, over activities of local government units. In case of government administration tasks, however, executed by local government units upon a legal act or agreement with government administration authorities, voivod is entitled to monitor the tasks and make sure their execution is legal, cost-effective, true, clear and fair<sup>50</sup>. The mode and procedures for audit in local government units in cases related to the execution of government administration tasks are stipulated in the Act of 15 July 2011 on audit in government administration<sup>51</sup>.

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<sup>46</sup> Article 168 section 1 of the Act on public finance.

<sup>47</sup> Article 169 section 6 of the Act on public finance.

<sup>48</sup> The six audited Voivodship Offices were as follows: Kujawsko-Pomorskie, Lubuskie, Podkarpackie, Podlaskie, Świętokrzyskie, Wielkopolska. The audit embraced the period from 2011 to 2013.

<sup>49</sup> NIK, Control results..., p. 18.

<sup>50</sup> Article 3 section 2 and Article 28 section 1 item 2 and section 3 item 2 of the Act on Voivod and government administration in the Voivodship.

<sup>51</sup> Journal of Laws No 185, item 1092.

Voivod supervises and controls the uptake of the subsidies from the State Budget. The subject matter of the surveillance includes: the amount of the subsidies, the dates of money transfers, proper use of subsidies awarded from the State Budget, the relationship between the level of uptake of the resources and the degree of performance of the tasks<sup>52</sup>.

The above mentioned audit assessed as ineffective the voivods' surveillance over government administration tasks related to social assistance and management of Treasury property. It was found that the surveillance was only limited to storing information about the executed tasks following controls carried out in local government units and collecting data from the submitted reports on the execution of the assigned tasks. The audit demonstrated that none of the evaluated voivods had any vision so as to the mode of surveillance over the execution of government administration tasks assigned to local government units. In the NIK's point of view the surveillance must focus first of all on efficient execution of assigned tasks and the voivods should be involved in hands-on support for local government units executing the subsidized tasks. The surveillance must be exercised in a systemic way and should not be restricted to mere checks on the task execution or formal analysis of progress reports<sup>53</sup>.

## **Conclusions**

Rational consumption of public funds is of particular significance nowadays. Provision of relevant solutions with respect to granting and accounting for subsidies from the State Budget allocated for execution of public tasks, is necessary in order for the system to be efficient and cost-effective. The quality of the final outcome, however, depends on efficiency of both central and local bodies, not without significance are also the current social and legal conditions in which the subsidies are granted and tasks executed.

The evaluation of execution of the subsidized tasks is influenced by a number of factors, also such factors which are outside the control of local government units. What is important in this context is social and legal aspect of subsidizing tasks and efficiency of supervision over local government units which execute the subsidized tasks.

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<sup>52</sup> Article 175 sections 1 and 2 of the Act on public finance.

<sup>53</sup> NIK, Control results..., pp. 5-7.

### **Legal acts**

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