

## Legal aspects of sponsoring sports by state-owned companies

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### Abstract.

**Introduction:** Financing sports by State Treasury companies raises many doubts. In practice, not only the legitimacy of incurring the related costs is disregarded, but it is also indicated that the legislator has not established legal norms that would regulate this issue. **Problem and aim:** In 2016, the Ministry of Treasury and the Ministry of Sport and Tourism prepared the document entitled "Good sponsorship practices for State Treasury companies". This document comprehensively regulates the issue of financing sports by these entities. In practice, however, this act raises many doubts. **Research methods:** The main research methods used were the formal and dogmatic one. It mainly involved the analysis of the content of the document entitled "Good sponsorship practices for State Treasury companies" and the provisions of the Act on the principles of state property management. Other analyzed documents included the report of the Supreme Audit Office (KGP.430.023. 2017; Reg. No. 172/2017/P/17/021/KGP) of 9 August 2018 entitled "Expenditure of companies with State Treasury participation on sponsoring, media and advisory services" and the Sponsoring Insight report entitled "Sports sponsoring market in Poland 2019., **Results:** The current practices in the field regulate issues related to sponsoring activities and contain the standards of their implementation expected by the Ministry of Treasury and the Ministry of Sport and Tourism. **Conclusion:** In my opinion, neither the legislator nor the Ministry of Treasury and the Ministry of Sport and Tourism have established legal norms that would regulate the financing of professional sports by state-owned companies. The presented analysis of "Good sponsorship practices for State Treasury companies" showed that the obligations imposed on State Treasury companies were mainly consequential in nature. In my opinion, *de legeferenda*, it is necessary to draft a legal act of a general nature that will provide legal norms, which would comprehensively regulate the issue of financing sports by state-owned companies.

**Keywords:** sport, financing of sports, Company Treasury, sponsoring, supervisory board

### Introduction

Sports sponsorship by companies with State Treasury shareholding is a practice commonly used by these entities to build brand awareness or relationships as part of corporate social responsibility. It is also a particularly sensitive issue because such activities are financed with resources belonging, at least "in theory", to all citizens (Oral, 2018; Wall, 1996; Eksteen, 2012). In Poland, financing sports by state-owned companies is becoming more and more popular. Funds are transferred to sports clubs or individual athletes primarily through a sponsorship agreement (Sometimes, although very rarely, the State Treasury company transfers money under a donation agreement, or as the owner of a sports club as part of a capital increase, for example).

In practice, such financing is controversial. Although the services for sports by State Treasury companies provided as an element of promotional activities should contribute to building value and a positive image of both the sponsor and the sponsored entity, it is repeatedly indicated that the transfer of funds by State Treasury companies should be limited and even forbidden. The main reason for the rejection of sports financing by these entities is the fact that it has been repeatedly proven that the granting of these funds was against internal rules or procedures established in the company. Moreover, it was pointed out that their allocation was a sign of mismanagement by the management board (Lis & Tomanek, 2020). In practice, it was noted that the most important irregularities were sponsoring despite a negative financial result and sponsoring projects that had not been included in the plans. Hence, in the period 2009-2010, legislative work was carried out to prohibit the transfer of funds by State Treasury companies. Ultimately, however, this idea was abandoned and currently the funds allocated by these entities to sports are still growing (Dróźdź, 2020; Górecka, 2020).

However, the increase in financing sports by State Treasury companies did not significantly result in the creation of standards that would regulate this activity (Jin, 2017; Sznajder, 1997). It should be emphasized that at present there are mainly two pieces of legislation that relate to this issue. The first one is the Act of 16 December 2016 on the principles of state property management, which, pursuant to Article 1, provides the principles of state property management that are not regulated by specific regulations. However, this Act does not contain

*expressis verbis* control and supervisory instruments that would refer to financing sports by State Treasury companies.

According to Article 7 section 3 point 2 of the Act on the principles of state property management, to coordinate the exercise of powers vested in the State Treasury, the Prime Minister may define good practices, particularly in the field of corporate governance, corporate social responsibility and sponsorship, which are addressed to companies with State Treasury shareholding. Although this option was introduced on 29 February 2020, the Prime Minister has not adopted any regulations in this regard yet (It also needs to be considered that under Article 17 point 3 of this Act, the entity entitled to exercise the rights attached to shares belonging to the State Treasury or a state legal person, in the scope of exercising the rights attached to shares in a company, except for the company in bankruptcy, shall be obliged to take steps to introduce, by way of a resolution of the general meeting or in the company's statute, the obligation to submit reports on expenditure on public relations and social communication; in practice, sponsorship is also included. Such reports are submitted to the general meeting by the management body and approved by the supervisory body.) The second document is the "Good sponsorship practices for State Treasury companies", which was adopted in 2016. Interestingly, these practices do not serve as universally applicable law because it is an act prepared by the Ministry of Treasury and the Ministry of Sport and Tourism, which is not binding (it can be considered as an example of *soft law*). This document is a recommendation; it is directed to the bodies of companies in which the State Treasury exercises corporate governance directly and indirectly. The document only defines the course of action and is part of a broader process of building organizational order.

Therefore, some of the regulations on financing sports have been included in the internal regulations of companies. Though, it should be noted that not all of them have standards regulating this aspect of the activity. (By the way, it should be emphasized that the reporting obligations made towards companies listed on the Polish Stock Exchange (PSE) in Warsaw PLC concerning sponsorship also stem from the principles of the Good Practices of PSE Listed Companies, or the Accounting Act of 29 September 1994, which implemented the guidelines of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 on the disclosure of non-financial information and information concerning diversity). In practice, however, it seems that the norms contained in these acts are not sufficient.

### Material & methods

The main hypothesis of the present study publication indicates that although the financing of sports by State Treasury companies has become an important aspect of their activities, it is in practice not regulated by generally applicable acts of law. In such a situation, these entities have a lot of freedom in financing sports. For this purpose, in this publication, the formal and dogmatic method was used, analyzing primarily the following: the content of the document entitled "Good sponsoring practices for State Treasury companies" and the provisions of the Act on the principles of state property management. Other analyzed documents were the report of the Supreme Audit Office (KGP.430.023. 2017; Reg. No. 172/2017/P/17/021/KGP) of 9 August 2018 entitled "Expenditures of companies with State Treasury participation on sponsoring, media and advisory services", and the Sponsoring Insight report, that is "Sports sponsoring market in Poland 2019". In this paper, I also referred to the internal regulations of individual state-owned companies, and statements of representatives of the doctrine. In some parts of the paper, I also used the legal-historical method. In general, however, the study was designed to be a starting point for the analysis of the main issues presented in it, as well as for a potential assessment of these regulations in the event of their hypothetical use in other legal systems. Authors of this publication was the president of the football club which is held by state-owned company.

### Results

In Poland, the financing of sports by state-owned companies is mainly based on a sponsorship agreement. According to the data presented in Sponsoring Insight, sports sponsorship in Poland is the domain of such entities. According to this document, about 82 percent of all expenditure for this purpose comes from state-owned enterprises. Therefore, it can be argued that sports sponsorship is one of the most important aspects of the activities of state-owned companies. This activity enabled or supported, among others, the functioning of various fields of professional and amateur sports and sports facilities (Adamus, 2006; Armknecht, 2011).

Under Polish law, the sponsorship agreement has an unnamed character. It is a legal activity of a mixed character as it combines elements of various contracts; its content can be freely defined by the parties following the principle of freedom of contracts (Article 353<sup>1</sup> of the Civil Code). It is a mutual agreement, that is the performance of one party is equivalent to the performance of the other party (Article 487 of the Civil Code). Therefore, not only the general provisions on mutual obligations apply to it, but also contracts for the provision of services, in accordance with Article 750 of the Civil Code. It is a type of contract for the provision of advertising services (Katner, 2013; Stecki 2000). Depending on the subject of the contract, other legal provisions may also apply to it. (For example, in the case of radio or television sponsorship, the provisions of the Broadcasting Act will apply; or when the contract provides a transfer or use of intellectual property rights, the provisions of the Act on copyright and related rights or the Act concerning industrial property law and others will apply.)

The Polish literature on the topic indicates that sponsorship is an economic and social phenomenon that allows the simultaneous achievement of two basic goals: on the one hand, the goal is to support initiatives that aim at development, especially in the sphere of culture, art, science, education, sport, and others; and on the other hand, it is promoting a specific entrepreneur, their products, and acquiring by them a new target group. The prevailing opinion in the literature is that sponsorship developed as a form of classical patronage (Datko, 2013; Katner, 2013). The Polish doctrine also indicates that the sponsorship agreement is expressed in the fact that one party (the sponsor) undertakes to provide the other party (the sponsored) with a property benefit, involving the transfer of ownership of goods, payment of a monetary amount, or provision of services, relating to the purpose of the sponsored activity, as indicated in the contract. On the other hand, the sponsored, in the interests of the sponsor, undertakes to perform the activities specified in the contract that aim at consolidating or ameliorating the sponsor's image, their reputation, and the recognition of the distinctive signs used by them (Kopaczyńska-Pieczniak, 2013).

Many types of sponsorship are recognized in the Polish legal system. However, the basic division considers personal, institutional, and project sponsorship. Personal sponsorship may concern one person on the sponsored side (individual sponsorship), several persons, or even a larger group (group sponsorship). In the case of institutional sponsorship, the subject of sponsorship activities are specific organizations (e.g. a sports club). Project sponsorship concerns activities related to a specific project, which is carried out using the funds provided by the sponsor (Kopaczyńska-Pieczniak, 2013).

The rights and obligations of the parties should be specified in the contract concluded between the parties. In addition to the main benefits, such as placing a logo with the sponsor's name, providing advertising services to the sponsor in exchange for a specific monetary or non-monetary benefit, the sponsored also has other rights and obligations that are strictly dependent on contractual provisions. For example, the sponsored may be obliged to keep information about the sponsored confidential (Mruk, 2004). The sponsor's primary duty is to support sponsored activities. Most often it takes the form of a monetary benefit, and therefore, the sponsor is obliged to transfer a specified amount of money to the sponsored. There may be additional obligations. The sponsor's performance may, for example, be of a tangible or intangible nature; that is, it may, for example, involve the use of the sponsor's intangible assets. The sponsor may also provide a license, patent, or know-how (Mika, 2005; Sporek, 2007; Mierzwiński 2014).

## Discussion

The currently binding document "Good sponsorship practices for State Treasury companies" is an act of the Ministry of Treasury regulating issues related to sponsoring activities. This act indicates that sponsoring activities of companies with State Treasury shareholding should, as a rule, have a commercial purpose and be associated with achieving a specific economic or marketing effect by the sponsor. Other non-commercial activities addressed to the stakeholders of companies and their environment (e.g. charity, donations, patronage, etc.) should be distinguished from sponsorship activities; and individual initiatives, their goals, and implementation principles should be formulated separately, for example, in the corporate social responsibility (CSR) policy operating in a given company. According to this act, sponsoring activities should be undertaken by a company with a State Treasury shareholding only if in the financial year preceding such activities, the company recorded an operating profit, and on the date of signing the relevant agreements, it had available funds in its current account. The act also indicates that sponsorship projects may be implemented in particular in the areas of professional sport, including activities carried out by Polish sports unions, professional leagues and sports clubs, the Polish Olympic Committee, the Polish Paralympic Committee, and individual athletes, as well as those involved in physical education, sports for children and youth, academic sports, sports for all, and sports for people with disabilities. Moreover, in a way, this act indicates that State Treasury companies should sponsor sports because point 1 in Chapter II provides that in order to use the potential to create a positive image, which is associated with participation in projects carried out under the auspices of government administration bodies, companies with State Treasury shareholding are recommended to carry out activities as part of a marketing strategy (sponsoring activities, in particular) by participating in projects (e.g. mass events) of a national or transnational nature, or special importance, for example, for a given region or city.

Interestingly, this act obliges the management board of a company with State Treasury shareholding to prepare, under the current and implemented marketing strategy, an annual plan for conducting sponsoring activities, including particular objectives, goals, the planned budget, and the expected level of sponsorship effectiveness, broken down into individual areas of sponsorship. The management board submits a draft document to the supervisory board for approval along with the financial plan for the next financial year, but no later than by the end of the first quarter of the year it concerns.

Each year, the management board of a company with State Treasury shareholding audits the sponsorship activities carried out in a given financial year, in particular in the scope of the achieved effect or economic return concerning individual contracts, the selection of sponsored areas or entities. Also, if necessary, the audit involves making necessary changes or potential necessary modifications of the adopted long-term objectives regarding sponsorship. The management board presents the findings of the conducted audit to the supervisory board no later than upon presenting the draft sponsoring activity plan for the next year.

The good practices also include detailed recommendations regarding the running of sponsorship of professional sports. Professional sport can be supported within sponsorship activities provided that the management board indicates the real and measurable benefits resulting from participation in its financing. It is a prerequisite for such a project to be included in the sponsorship plan and approved by the supervisory board. In the case of sponsoring Polish sports associations, it is permissible to demonstrate measurable marketing and promotional benefits at the level of the incurred financing. The management board prepares a plan of such activities and measurably determines the effectiveness of such projects, estimating, on the one hand, their costs (the proposed budget), and, on the other hand, the effects, that is media coverage, an increase in brand rank, profit on sales, an increase in the company's value thanks to the use of a sports club logo, for example, and others. Interestingly, the company's management board, when deciding to sponsor Polish sports associations, should also take into account the information provided by the Ministry of Sport and Tourism regarding the promoted sports and the demand resulting from a comprehensive offer prepared by a given Polish sports association in terms of acquiring a sponsor or partner. The good practices also include the objection that a company with a State Treasury shareholding should not sponsor a Polish sports association, professional league, sports club, individual athlete, if its sponsor or partner is another company with State Treasury shareholding or an entity conducting a competitive activity unless such a situation does not adversely affect the actual and measurable benefits of sponsorship.

Chapter V of good practices includes recommendations regarding the provisions of sponsorship agreements. For example, according to the act in question, the sponsorship agreement should contain clauses enabling the sponsor to monitor or supervise the sponsored entity's expenses. In particular, State Treasury companies, in line with good practices, should introduce into their contracts a list of expenses for which the funds received from the sponsor can be allocated; for example, organizing sports competitions and events, purchasing sports equipment, training, etc. In addition, the sponsor should have access to the financial records related to the performance of the contract or ensure that expenses are itemized in the entity's annual activity report and audited financial statements. In addition, according to this act, the sponsor should ensure in the sponsorship agreement the possibility of immediate cessation of financing of this type of activities in the event of suspected violation of the law in the activities regulated by the contract, conflict of interest, corruption or circumstances confirming the deterioration of its economic and financial situation. In line with good practices, it is mandatory that sports sponsorship agreements include a clause requiring the sponsored entity to provide personal injury insurance to athletes, both during competition and training.

The act in question also includes control and reporting standards. For example, the sponsoring activities carried out by the company's management board based on a sponsorship plan are subject to constant evaluation and monitoring by the supervisory board, which should be reflected in the minutes of the meetings (For example, paragraph 20 section 2 point 18 of the statutes of KGHM Polska Miedź PLC stipulates that the supervisory board shall provide opinions on the principles of sponsoring activities and to assess the effectiveness of the sponsoring activities conducted by the company. Such a provision has not been included in the Articles of Association of PKN ORLEN PLC.) In the event of difficulties in financing planned sponsorship activities, because of a lack of current funds, the management board should immediately cease such activities, and provide the supervisory board with an explanation. The company's management board, following good practices, is obliged to prepare an annual report on the implementation of sponsorship activities in a given financial year, including in particular an analysis of the purposefulness and effectiveness of sponsorship agreements concluded; such a report is part of the management report and is published.

### **Conclusion**

In the Polish legal system, no universally binding standards have been adopted that would regulate the issues of financing sport by State Treasury companies. The Ministry of Treasury and the Ministry of Sport and Tourism prepared the document entitled "Good sponsorship practices for State Treasury companies", published on 15 June 2016. This document, though not binding, includes provisions that oblige State Treasury companies to take specific actions when sponsoring sports.

In my opinion, however, neither the legislator nor the Ministry of Treasury and the Ministry of Sport and Tourism has established legal norms that would regulate the financing of professional sports by State Treasury companies. The presented analysis of "Good sponsorship practices for State Treasury companies" showed that State Treasury companies were imposed obligations of primarily a consequential nature; however, it is simply said because this document serves as a recommendation. (At this point, it is noteworthy that Chapter VI point 3 of the good practices indicates that in the event of rejection of the implementation of the solutions specified in this act, the representative of the State Treasury "informs the organizational unit responsible for corporate governance (...), which considers using other corporate instruments, including, in particular, the powers provided by Article 236, Article 400 of the Commercial Companies Code".) Moreover, the document in question, in many cases, can be treated as guidelines in the field of broadly understood company management (e.g. in the scope of centralization of expenses or indications as to entities that should be financed by State Treasury companies). As emphasized in the preamble to the Good Practices, "(...) it is important to communicate the will of the Minister of Treasury, acting as a shareholder, regarding sponsoring activities by companies with State Treasury shareholding". Good practices are so-called "soft law". Therefore, the management board of a

company that conducts sponsorship activities without complying with good practices will not act illegally; however, it will undoubtedly act against the "will" of the owner, which, by definition, is related to corporate responsibility and often, unfortunately, also the political one. Again, in the Polish legal order, an entity is subject to certain "informal" obligations imposed by an "informal" legal act.

In the report published almost three years ago, the Supreme Audit Office (SAO) emphasized that 19 out of 20 controlled companies with State Treasury shareholding spent PLN 760.1 million on sponsorship, and almost PLN 896 million when including the donations and patronage. However, SAO noted that 12 companies did not comply with their own sponsorship regulations. The most important irregularities, according to SAO, were sponsoring entities, projects, or facilities despite a negative financial result, or not including tasks in the sponsorship plan, commissioning services without estimating the value of the contract, selecting their contractor disregarding the rules set out in internal regulations, or improper conduct of the procedure. The report in question and the previously performed analysis of, above all, good practices, allow for the *de lege ferenda* conclusion; namely, it is necessary to draft a legal act of a general nature that will provide legal norms, which would comprehensively regulate the issue of financing sports by state-owned companies. Regulating such a controversial aspect by means of recommendations is, in my opinion, insufficient and creates room for abuse.

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