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## IMPACT OF THE SO-CALLED THE BUDGET-RELATED ACT ON THE PAY POLICY OF LOCAL GOVERNMENT ENTITIES IN RELATION TO PERSONS MANAGING MUNICIPAL COMPANIES – SELECTED ISSUES

### Abstract

The article is devoted to the analysis of the impact of budget-related acts from 2018 to 2024 on the remuneration policy of local government units towards persons managing municipal companies, regulated by the Act on the principles of shaping the remuneration of persons managing certain companies, in particular in terms of the systemic inconsistencies generated by this impact.

According to the thesis, the mechanism for determining the amount of remuneration of members of bodies in municipal companies is the product of the so-called the basis for calculating and the amount of the average monthly remuneration in the enterprise sector is a regulation enabling efficient adjustment of the amount of remuneration received by members of management and supervisory boards to the economic situation. The subject of the assessment is the negative impact exerted on the analyzed area by annual budget-related acts that freeze the so-called the calculation basis at the level of 2016, as a result of which the remuneration of management staff subject to the scope of application of the Remuneration Act has not changed even by a penny since 2017.

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The set goal implied the need to use a theoretical, dogmatic and legal research method, based on the analysis of theoretical and legal publications and legal regulations, as well as the positions of supervisory authorities applying the examined legal acts.

The analysis of the provisions of the Act on Remuneration, in the author's opinion, confirms the thesis that the statutory mechanism is clear and transparent, theoretically ensuring modern and competitive remuneration principles. However, the above-mentioned connection mechanism with the so-called freezing the dimension basis, using the so-called budget-related acts, de facto leads to the elimination of the possibility of using the purpose of the legal norm contained in the Remuneration Act. In the context of the identified systemic inconsistency, the author critically assesses the relationship of the budget-related act to the budget act, including the possible subjective and objective scope of its regulation, as an act specifying the provisions of the budget act.

**Key words:** principles of remuneration for managers of municipal companies, budget-related act, financial independence of local government units, budget act

**JEL Classification:** H72, H76, K22.

## 1. Introduction

The analysis included in the study covers the impact of the provisions of the so-called budget-related laws from 2018 to 2024 on the remuneration policy of local government units towards people managing municipal companies. The article discusses the mechanism for determining the amount of remuneration of members of bodies in municipal companies, with particular emphasis on the so-called element. the basis for the calculation and the role played in this structure by the amount of the average monthly salary in the enterprise sector, excluding the payment of bonuses from profit in the fourth quarter of the previous year, announced by the President of the Central Statistical Office. The above is presented in the context of the impact of recent budget-related acts on the analyzed area, which froze the so-called dimension basis at the 2016 level.

The thesis put forward by the author assumes the recognition of the mechanism for determining the amount of remuneration of members of bodies in municipal companies, using the product of the so-called the basis for calculating and the amount of the average monthly remuneration in the enterprise sector, as a regulation enabling efficient adjustment of the amount of remuneration received by members of management and supervisory

boards to the economic situation. Moreover, the impact exerted on the analyzed area by budget-related acts that freeze the so-called dimension basis at the 2016 level.

During the research, the author will use a theoretical, dogmatic and legal research method, based on the analysis of theoretical and legal publications and legal regulations, as well as the positions of supervisory authorities applying the examined legal acts.

In the fall of 2016, the Act of June 9, 2016 on the principles of shaping the remuneration of persons managing certain companies (hereinafter: the Act on the remuneration in companies)[Act on the principles of shaping the remuneration of persons managing certain companies] entered into force. It regulates the manner of exercising rights attached to shares or shares vested in the State Treasury, local government units or their associations, state legal persons and municipal legal persons, in terms of the principles of shaping the remuneration of members of management and supervisory bodies, as well as determining selected provisions of adopted resolutions and contracts with members. above organs. In accordance with the assumptions accompanying the introduction of the Act into the legal order, it was intended to fundamentally change the approach to the principles of shaping remuneration in commercial companies with the participation of the State Treasury, local government units and their associations, as well as state and municipal legal entities. The legislator's intention was, among other things, to establish the appropriate proportion between the need to ensure a flexible mechanism for determining the above-mentioned remuneration and to bring it as close as possible to the principles applicable on the market, and the need to fully implement the constitutional principle of social justice [Grzegorzcyk 2017: 286]. In the legal situation in force before the entry into force of the Act on remuneration in companies, the Act of March 3, 2000 on the principles of remuneration of persons managing certain legal entities (the so-called Stamp Act) [Act on the remuneration in companies] applied to the remuneration of members of the management and supervisory bodies of companies. However, the Chimney Act applied only to single-member commercial law companies established by the State Treasury or local government units, and also to companies with a majority shareholding of the State Treasury, as well as companies with a majority shareholding of local government units or companies with majority shareholding of these

entities. Therefore, the previous regulation never covered companies that had already been privatized in large part and the State Treasury or local government retained a minority stake[Justification to the government's draft act on the principles of shaping the remuneration of persons managing certain companies: 1].

The Act on remuneration in companies introduced in Art. 15 of amendments to the Act of September 15, 2000, Commercial Companies Code[Commercial Companies Code, Art. 15], introducing two new provisions – Art. 203<sup>1</sup> and art. 222<sup>1</sup> of the Commercial Companies Code – and gave new wording to the existing provision of Art. 378 § 2 of the Commercial Companies Code. The cited provisions are of an instructive nature, neither creating nor prohibiting, thus confirming the admissibility resulting from the general principle of freedom of contract in commercial company law [Civil Code, Art. 353; Commercial Companies Code, Art. 2]. Provisions of Art. 203<sup>1</sup> of the Commercial Companies Code and Art. 378 § 2 of the Commercial Companies Code indicate that a resolution of the shareholders of a limited liability company or a general meeting of a joint-stock company may establish the rules for remunerating management board members, in particular the maximum amount of remuneration, as well as granting management board members the right to additional benefits or the maximum amount of such benefits.

These norms are dispositive in nature, authorizing the shareholders or the shareholders' meeting to determine in a resolution the principles of remuneration of management board members. The point is to indicate the general framework for shaping remuneration applicable to all members of the management board, which is then specified in a decision of the competent authority. The provision also provides sample provisions that may constitute the content of a resolution of shareholders or a shareholders' meeting, mentioned above. Additional benefits provided for in the shareholders' resolution may include, for example, severance pay upon termination of employment, remuneration for the ban on conducting competitive activities, the company's provision of the possibility of using a company car or other devices (telephone, computer), the right to acquire shares in the increased share capital or a liability companies to finance the costs of life insurance or property insurance (in particular: civil liability) of managers [Bieniak, Bieniak, Nita-Jagielski 2024: 646].

Therefore, it should be concluded that in order to establish the above-mentioned remuneration principles, there is no need for regulation in the company's agreement or statute, but an ordinary resolution of the partners or the general meeting of shareholders of the company is sufficient.

However, the regulation of Art. 222<sup>1</sup> of the Commercial Companies Code, regarding a limited liability company, is identical to the provisions of Art. 392 § 1 of the Commercial Companies Code relating to a joint-stock company, which existed from the beginning of this code, not to mention the Commercial Code of 1934. These provisions specify that members of the supervisory board may be granted remuneration and that they are entitled to reimbursement of costs related to participation in council work. This remuneration may be granted in the company's articles of association or on the basis of an "ordinary" resolution of the shareholders of a limited liability company. or resolutions of the general meeting of a joint-stock company [Szumański 2017; Szumański 2019].

## **2. Legal basis for shaping the rules for remunerating members of the management board and supervisory board**

Returning to the Act on Remuneration, in accordance with the regulation of its Art. 2 section 1, the entity authorized to exercise share rights/ rights from shares is obliged to take actions aimed at shaping and applying in the company the principles of remuneration of members of the management body and members of the supervisory body specified by the Act. Fulfillment of the above obligation involves, in particular, having the general meeting/meeting of shareholders of the company vote on draft resolutions on the principles of shaping the remuneration of members of the management body and members of the supervisory body of the company in accordance with the Act and voting for their adoption [Act on the principles of shaping the remuneration of persons managing certain companies: Art. 2].

The Act on remuneration in companies in Art. 4 section 1 provides for the adoption of two resolutions – on the principles of determining the remuneration of members of the management body and on the remuneration of the above persons. The first one is to contain general assumptions regarding the remuneration of members of management bodies, while the second one is to make them more specific. The commented provision should be applied together with the provisions of the Commercial Companies Code discussed

above. The Act stipulates that the remuneration of a member of the management body consists of two parts – fixed and variable (constituting additional remuneration for the company's financial year). What is important and deserves special emphasis is that the fixed part must always be expressed as an amount and not as a percentage. On the other hand, the variable part can be expressed both as an amount and as a percentage. The mechanism for determining the amount of remuneration of a member of the management body establishes correlations between the maximum ceilings of the fixed part of remuneration and the current condition of the company, taking into account in particular (though not exclusively) the value of its assets, revenues generated, and employment level. The variable part is complementary to the fixed part and depends on the achievement of management objectives. Unlike the fixed part, the legislator does not allow for increasing the upper amount of the variable part of remuneration [P. Buczyńska 2018: 30]. Pursuant to art. 4 section 2 of the Remuneration Act, the fixed part of the remuneration of a member of the management body is determined taking into account the scale of the company's operations, in particular the value of its assets, revenues generated and employment<sup>1</sup>.

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<sup>1</sup> Extract from art. 4 section 2 of the Remuneration Act:

2. The fixed part of the remuneration of a member of the management body is determined taking into account the scale of the company's operations, in particular the value of its assets, revenues generated and employment, in the amount of:

- 1) from one to three times the assessment basis – for a company that in at least one of the last two financial years met at least two of the following conditions:
  - a) employed on average up to 10 employees per year,
  - b) achieved an annual net turnover from the sale of goods, products and services as well as financial operations lower than the PLN equivalent of EUR 2 million,
  - c) the total assets of its balance sheet prepared at the end of one of those years were less than the PLN equivalent of EUR 2 million;
- 2) from twice to four times the assessment basis – for a company that in at least one of the last two financial years met at least two of the following conditions:
  - a) employed at least 11 employees on average per year,
  - b) achieved an annual net turnover from the sale of goods, products and services as well as financial operations constituting at least the PLN equivalent of EUR 2 million,
  - c) the total assets of its balance sheet prepared at the end of one of these years amounted to at least the PLN equivalent of EUR 2 million;
- 3) from three times to five times the assessment basis – for a company that in at least one of the last two financial years met at least two of the following conditions:
  - a) employed at least 51 employees on average per year,
  - b) achieved an annual net turnover from the sale of goods, products and services as well as financial operations higher than the PLN equivalent of EUR 10 million,
  - c) the total assets of its balance sheet prepared at the end of one of those years were higher than the PLN equivalent of EUR 10 million;

The variable part of the remuneration of a member of the management body, constituting additional remuneration for the company's financial year, depends on the level of achievement of management goals and should have a motivational, directing and stabilizing function [Żabski 2019: 340]. The weights of management objectives, as well as objective and measurable criteria for their implementation and settlement, are established for individual or all members of the management body. In the case of companies implementing a public mission or companies implementing public tasks, when determining management objectives, their importance and the criteria for their implementation and settlement, the degree of implementation of the public mission or the degree of implementation of public tasks in the period constituting the basis for determining the additional remuneration are also taken into account. The variable part of remuneration in a company cannot exceed 50%, and in public companies – 100% of the basic remuneration of a member of the management body in the previous financial year [Act on the principles of shaping the remuneration of persons managing certain companies: Art. 4].

As for the remuneration of supervisory board members, in accordance with Art. 10 section 1 of the Remuneration Act, the resolution on the principles of shaping the remuneration of members of the supervisory body, determines the amount of monthly remuneration of members of the supervisory body in an amount not exceeding the product of the calculation basis and a multiplier in the range of 0.5 – 2.75, depending on the same pay categories as in case of management board members.

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- 4) from four times to eight times the assessment basis – for a company that in at least one of the last two financial years met at least two of the following conditions:
    - a) employed at least 251 employees on average per year,
    - b) achieved an annual net turnover from the sale of goods, products and services as well as financial operations higher than the PLN equivalent of EUR 50 million,
    - c) the total assets of its balance sheet prepared at the end of one of those years were higher than the PLN equivalent of EUR 43 million;
  - 5) from seven times to fifteen times the assessment basis – for a company that in at least one of the last two financial years met at least two of the following conditions:
    - a) employed at least 1,251 employees on average per year,
    - b) achieved an annual net turnover from the sale of goods, products and services as well as financial operations higher than the PLN equivalent of EUR 250 million,
    - c) the total assets of its balance sheet prepared at the end of one of these years were higher than the PLN equivalent of EUR 215 million
- the amounts referred to in points 1–5 expressed in euro are converted into Polish zloty at the average exchange rate announced by the National Bank of Poland on the last day of a given financial year.

Taking into account the above solutions, another basic concept in the Act on remuneration is the concept of assessment basis, which, in accordance with Art. 1 section 3 point 11 of the Act should be understood as the amount of the average monthly remuneration in the enterprise sector, excluding payments of bonuses from profit in the fourth quarter of the previous year, announced by the President of the Central Statistical Office.

The above concept is of decisive importance in terms of the level of remuneration that will be received by members of management boards and members of supervisory boards of companies covered by the provisions of the Remuneration Act. The amount of remuneration of members of management and supervisory boards was linked to the amount of average monthly remuneration in the fourth quarter of the previous year, which results in variability of remuneration in individual calendar years [Rzetecka-Gil 2017: art. 1].

Average monthly remuneration in the corporate sector excluding profit bonuses in the fourth quarter of the year:

- 2016 amounted to: PLN 4,403.78 [Announcement of the President of the Central Statistical Office on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2016],
- 2017 amounted to: PLN 4,739.51 [Announcement of the President of the Central Statistical Office on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2017],
- 2018 amounted to: PLN 5,071.25 [Announcement of the President of the Central Statistical Office on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2018],
- 2019 amounted to: PLN 5,367.71 [Announcement of the President of the Central Statistical Office on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2019],
- 2020 amounted to: PLN 5,655.43 [Announcement of the President of the Central Statistical Office on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2020],



- 2021 amounted to: PLN 6,220.80[Announcement of the President of the Central Statistical Office on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2021],
- 2022 amounted to: PLN 6,965.84[Announcement of the President of the Central Statistical Office on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2022],
- 2023 amounted to: PLN 7,767.61[Announcement of the President of the Central Statistical Office on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2023].

Taking into account the above indicators, it can be assumed that over the years 2018 – 2023, the amount of average monthly remuneration in the corporate sector, excluding the payment of bonuses from profit, increased by over 75%.

### **3. The method of determining the calculation basis in practice, including the impact on the remuneration policy of local government units**

Analysis of the regulations of the Act on Remuneration contained in the provisions of Art. 4 section 2 and art. 4 section 5 regarding the amount of remuneration of management board members, and the provisions of Art. 10 section 1 regarding the amount of remuneration of members of supervisory boards, in connection with the wording of Art. 1 section 3 point 11, in terms of the concept of basis for assessment, in principle there should be no doubts [Gazda, Adamus 2017: art. 4].

However, as practice shows, doubts do arise. The main circumstance that complicates the simple scheme presented above is, as it turns out, the provisions of the so-called budget-related acts, and so:

- in art. 28 of the Act of December 8, 2017 on special solutions for the implementation of the Budget Act for 2018 [Act on special solutions for the implementation of the Budget Act for 2018], it was indicated that in 2018 the assessment basis referred to in Art. 1 section 3 point 11 of the Act of June 9, 2016 on the principles of shaping the remuneration of persons managing certain companies (Journal of Laws of 2017, item 2190), is the average monthly remuneration in the enterprise sector

- excluding the payment of bonuses from profit in the fourth quarter of 2016,
- in art. 22 of the Act of November 9, 2018 on special solutions for the implementation of the Budget Act for 2019 [Act on special solutions for the implementation of the Budget Act for 2019], it is indicated that in 2019 the assessment basis referred to in Art. 1 section 3 point 11 of the Act of June 9, 2016 on the principles of shaping the remuneration of persons managing certain companies (Journal of Laws of 2017, item 2190 and of 2018, item 2215), is the average monthly remuneration in the enterprise sector without payments profit awards in the fourth quarter of 2016,
  - in art. 31 of the Act of February 20, 2020 on special solutions for the implementation of the Budget Act for 2020 [Act on special solutions for the implementation of the Budget Act for 2020], it is indicated that in 2020 the assessment basis referred to in Art. 1 section 3 point 11 of the Act of June 9, 2016 on the principles of shaping the remuneration of persons managing certain companies (Journal of Laws of 2019, items 1885 and 2217), is the average monthly remuneration in the enterprise sector without the payment of bonuses from profit in the fourth quarter 2016,
  - in art. 15 of the Act of November 19, 2020 on special solutions for the implementation of the Budget Act for 2021 [Act on special solutions for the implementation of the Budget Act for 2021], it is indicated that in 2021 the assessment basis referred to in Art. 1 section 3 point 11 of the Act of June 9, 2016 on the principles of shaping the remuneration of persons managing certain companies (Journal of Laws of 2019, items 1885 and 2217), is the average monthly remuneration in the enterprise sector without the payment of bonuses from profit in the fourth quarter 2016,
  - in art. 11 of the Act of December 17, 2021 on special solutions for the implementation of the Budget Act for 2022 [Act on special solutions for the implementation of the Budget Act for 2022], it is indicated that in 2022 the assessment basis referred to in Art. 1 section 3 point 11 of the Act of June 9, 2016 on the principles of shaping the remuneration of persons managing certain companies (Journal of Laws of 2020, item 1907), is the average monthly remuneration in the enterprise

sector excluding the payment of bonuses from profit in the fourth quarter of 2016 .,

- in art. 11 of the Act of December 1, 2022 on special solutions for the implementation of the Budget Act for 2023 [Act on special solutions for the implementation of the Budget Act for 2023],, it is indicated that in 2023 the assessment basis referred to in Art. 1 section 3 point 11 of the Act of June 9, 2016 on the principles of shaping the remuneration of persons managing certain companies (Journal of Laws of 2020, item 1907), is the average monthly remuneration in the enterprise sector excluding the payment of bonuses from profit in the fourth quarter of 2016.
- and finally in art. 1 of the Act on special solutions for the implementation of the Budget Act for 2024 [Act on special solutions for the implementation of the Budget Act for 2024],, it is indicated that in the period from the date of entry into force of this provision (i.e. from February 1, 2024) to December 31, 2024, the assessment basis referred to in Art. 1 section 3 point 11 of the Act of June 9, 2016 on the principles of shaping the remuneration of persons managing certain companies (Journal of Laws of 2020, item 1907), is the average monthly remuneration in the enterprise sector excluding the payment of bonuses from profit in the fourth quarter of 2016 .

As can be seen from the justifications for the above-mentioned budget-related laws in force in the years 2018 – 2024 maintaining the assessment basis at the adopted level (in the amount of the average monthly salary in the enterprise sector without the payment of bonuses from profit in the fourth quarter of 2016, announced by the President of the Central Statistical Office, i.e. in the amount of PLN 4,403.78 PLN), is intended to be used to determine remuneration for persons employed in entities subject to the provisions of the Act on Remuneration, i.e. remuneration of members of management bodies and supervisory bodies, as well as selected provisions of contracts concluded with members of management bodies in companies with the participation of the State Treasury, local government units and their associations, as well as state and municipal legal entities.

Therefore, the ratio of the relationship and the impact of each year's budget-related act on the remuneration policy of local government units towards persons managing municipal companies requires consideration.

It is an undisputed fact that the so-called acts budget-related are solutions serving the implementation of each specific budget act and closely related to it. The regulations of the budget-related act are therefore complementary and implementing to the draft budget act. Due to the above and taking into account the principles of proper legislation, the scope of the budget-related act should be consistent with the scope of the budget act, which constitutes the basis of the state's financial management.

Just as the relationship of the budget-related act to the budget act is unquestionable, the role of the budget act and its scope of regulation – specified in Chapter X of the Constitution of the Republic of Poland and in Chapter III, Chapter 2 of the Public Finance Act, is unquestionable, including: art. 110 of the Personal Income Tax Act, which regulations do not refer to the issue of broadly understood local government finances, apart from, of course, regulating the level of subsidy and grant transfers between the state and local governments. Certainly, the provisions of the Budget Act do not refer to the wage policy in local government units.

In this area, reference should also be made to the subjective scope of the Budget Act, which, in accordance with the legislator's intention expressed in the regulations of the Public Finance Act, and in particular in its Art. 9 point 14 in fine, excluded commercial companies from the subjective scope of the public finance sector.

Therefore, not only the area related to the regulation in the act on central finances of issues related to the pay policy in local government units raises concerns, but also the regulation in the act constituting the basis for the financial management of the public finance sector, issues relating to entities not included in this sector, seems to be systematically doubtful.

Taking into account the above arguments, the principles and mechanisms determining the amount of remuneration of members of management and supervisory boards, which have been made in recent years using the budget-related act, should be critically assessed [Grzegorzcyk 2024: 72]. Introduced in the budget-related acts of recent years, the so-called freezing the calculation basis at the 2016 level clearly has a negative impact on the amount of remuneration of these people. Doubts may be raised not only by the consequences of this type of action, but also by their method, both in the context of the form of change in the statutory regulation

(amending the provisions of the act essentially without any change), as well as the long-term use of the mechanism – which, after all, could perhaps be accepted as an exception to the norm.

In practice, the issue raises doubts. A different position from the one presented above is expressed, among others, by: The Supreme Audit Office, which in its post-audit statement as part of the inspection of compliance with the provisions on the principles of remuneration of members of the management and supervisory boards of municipal companies in the Lublin Voivodeship [Supreme Audit Office I/22/003/LLU; Supreme Audit Office LLU.311.004.09.2022; Supreme Audit Office LLU.411.004.03.2022], correctly notes that the provisions of budget-related acts constitute a source of generally applicable law, and their binding force does not depend on the will of the authorities. Companies. In the opinion of the control authority, in the audited period, i.e. 2018 – 2022 (however, the expressed position is universal and can certainly be applied to subsequent calendar years), the basis for assessment referred to in Art. 1 section 3 point 11 of the Act on remuneration in companies, constitutes the average monthly remuneration in the enterprise sector excluding payments of bonuses from profit in the fourth quarter of 2016. The authority has no doubts about the above. It is difficult to agree with this view of the authority. However, the authority confirms in this respect that the so-called “freezing” the assessment basis in the years 2018–2022 at the level of PLN 4,403.78. According to the authority, budget-related acts are mandatory norms (*ius cogens*), shaping the amount of remuneration of members of the management board and supervisory boards, regardless of the will expressed in the employment contracts. management or in resolutions on the principles of shaping remuneration. The authority argues that in accordance with Article 56 of the Civil Code, a legal act produces not only the effects expressed therein, but also those resulting from the Act, and from the provisions of Article 4(1) and 2 and Article 10(1) of the Act on remuneration in companies result in limitations on the amount of remuneration of members of management and supervisory bodies of companies [Supreme Audit Office I/22/003/LLU; Supreme Audit Office LLU.311.004.09.2022; Supreme Audit Office LLU.411.004.03.2022; a similar position is expressed by Padrak 2021: 662].

#### 4. Conclusion

The analysis of the provisions of the Act on Remuneration in the scope of determining the amount of remuneration of members of the management board and, accordingly, the amount of remuneration of members of supervisory boards, in connection with the concept of basis of assessment, should in principle not raise any doubts. The statutory mechanism is clear and transparent, and most importantly, it enables automatic adjustment of the remuneration received by members of management and supervisory boards to the general economic situation. The calculation basis, related to the average remuneration rate in the enterprise sector excluding the payment of bonuses from profit in the fourth quarter of the previous year, was to ensure modern and competitive remuneration principles also in municipal companies. The above is confirmed by the indicators of the average monthly remuneration in the corporate sector excluding the payment of bonuses from profit in the years 2018 – 2023, which show that this amount increased by over 75% in the analyzed period.

However, in practice, it turns out that the remuneration of management staff, subject to the scope of application of the Remuneration Act, has not changed even by a penny since 2017.

The above results directly from the mechanism of the so-called freezing the assessment basis, introduced into the Polish legal system using the so-called the budget-related act, as an act specifying the budget act.

While this scheme can be considered acceptable for companies with ownership ties to the State Treasury, in the area of municipal companies, in the author's opinion, it raises reservations regarding the admissibility of regulations in the act on central finance and the issue related to the pay policy in local government units [Grzegorzczuk 2024: 72].

These reservations are primarily systemic issues, the relationship of the Budget Act to the budget-related Act, including the possible scope of its regulation as an Act specifying the provisions of the Budget Act.

Another issue that raises doubts is the specific scope of the subjective scope of the budget-related act, through the prism of the scope of the concept of public finance sector under Art. 9 of the Public Finance Act. The regulation of issues relating to entities not included in this sector in the act specifying

the act constituting the basis for the financial management of the public finance sector seems to be systematically questionable.

You can also refer to the so-called loading ban resulting from the provisions of Art. 109 section 5 of the Public Finance Act, which states that the Budget Act cannot contain provisions amending other acts, and to the above-described relations of the Budget-Related Act to the Budget Act. Since the budget act itself cannot amend other acts, due to, among others, on the principles of transparency and annuality, whether it is rational to covertly change the provisions of other acts using the so-called budget-related act, which is also valid for one year.

Finally, the issue of the long-term nature of this solution, which raises so many doubts, in the author's opinion, confirms the need for urgent reflection on the solutions used, which seem to have the nature, structure and form of an exception to the rule, but which have become a kind of rule. As part of the considerations on the optimal systemic solution within the analyzed issues, the first thing that needs to be resolved is the nature and permissible scope of regulations within the so-called the budget-related act, including, among others, matters related to the financial management of local government units.

## References

Bieniak J., Bieniak M., Nita-Jagielski G., Kodeks Spółek Handlowych. Komentarz. Komentarz do art. 203<sup>1</sup> [Commercial Companies Code. Commentary. Commentary on art. 203<sup>1</sup>], C. H. Beck: Warszawa 2024.

Buczyńska P., Warunki zatrudnienia menedżerów na podstawie nowej ustawy kominowej. [Conditions of employment of managers based on the new "Chimney Act"], *Praca i Zabezpieczenie Społeczne* [Labor and Social Security] 2018, no. 4.

Gazda M., Adamus R., Kształtowanie wynagrodzeń osób kierujących niektórymi podmiotami prawnymi. Komentarz. Komentarz do art. 4 [Act on the principles of shaping the remuneration of persons managing certain companies. Commentary. Commentary on art. 4] C. H. Beck: Warszawa, 2017.

Grzegorzczak F., Nowa regulacja prawna dotycząca kształtowania wynagrodzeń w spółkach kontrolowanych przez skarbu państwa w kontekście zasady społecznej gospodarki rynkowej

[New legal regulation regarding the formation of remuneration in companies controlled by the state treasury in the context of the principle of a social market economy], *Gdańskie Studia Prawnicze* [Gdańsk Legal Studies] 2017, no. 1.

Grzegorzcyk F., Kilka uwag z zakresu wykładni ustawy o zasadach kształtowania wynagrodzeń osób kierujących niektórymi spółkami [Selected remarks on the interpretation of the Act on the principles of shaping the remuneration of persons managing certain companies], *Palestra* 2024, vol. 5.

Padrak R., Kształtowanie wynagrodzeń w spółkach z udziałem JST : Członkowie organów zarządzających i nadzorczych [Shaping remuneration in companies with local government participation, Members of management and supervisory bodies], *Kontrola Państwowa* [State Control] vol. 66 (2021), no. 4 (399).

Rzetecka-Gil A. Ustawa o zasadach kształtowania wynagrodzeń osób kierujących niektórymi spółkami. Komentarz. Komentarz do art. 1 [Act on the principles of shaping the remuneration of persons managing certain companies. Commentary. Commentary on art. 1] available within the LEX legal information system, 2017. Accessed: October 25<sup>th</sup>, 2024.

Szumański A., *Prawo spółek handlowych. System Prawa Handlowego. Tom 2B* [Commercial Companies Code. System of Commercial Law. Vol 2B], C. H. Beck: Warszawa, 2019.

Żabski Ł., Cele zarządcze w umowach o świadczenie usług w zakresie zarządzania spółkami komunalnymi [Management objectives in contracts for the provision of services in the field of management of municipal companies], *Studia Prawno-Ekonomiczne* [Law and Economy Studies], Vol. CX, 2019.

### **Legal Acts:**

Act on the principles of shaping the remuneration of persons managing certain companies (consolidated text: Journal of Laws of 2020, item 1907, as amended), hereinafter referred to as: the Act on remuneration in companies. Effective date September 9, 2016

Act on the remuneration of persons managing certain legal entities (consolidated text: Journal of Laws of 2019, item 2136), hereinafter referred to as: the Stamp Act.  
Act of 27 October 1994 on toll motorways and the National Road Fund (i.e. Journal of Laws of 2022, item 2483, as amended).

Act of September 15, 2000, Commercial Companies Code (consolidated text: Journal of Laws of 2024, item 18, as amended), hereinafter referred to as the Commercial Companies Code



Act of December 8, 2017 on special solutions for the implementation of the Budget Act for 2018 (Journal of Laws of 2017, item 2371, as amended)

Act of November 9, 2018 on special solutions for the implementation of the Budget Act for 2019 (Journal of Laws of 2018, item 2435)

Act of February 20, 2020 on special solutions for the implementation of the Budget Act for 2020 (Journal of Laws of 2020, item 278)

Act of November 19, 2020 on special solutions for the implementation of the Budget Act for 2021 (Journal of Laws of 2020, item 2400)

Act on special solutions for the implementation of the Budget Act for 2022 (Journal of Laws of 2021, item 2445)

Act on special solutions for the implementation of the Budget Act for 2023 (Journal of Laws of 2022, item 2666)

Civil Code of April 23, 1964 (consolidated text: Journal of Laws of 2023, item 1610, as amended)

#### **Other Official Documents:**

Announcement of the President of the Central Statistical Office of January 18, 2017 on the average monthly salary in the sector enterprises without payment of bonuses from profit in the fourth quarter of 2016

Announcement of the President of the Central Statistical Office of January 17, 2018 on the average monthly remuneration in the enterprise sector excluding payments of bonuses from profit in the fourth quarter of 2017, published in: Journal of Laws GUS.2018.2; source: <https://stat.gov.pl>, accessed: October 25<sup>th</sup>, 2024.

Announcement of the President of the Central Statistical Office of January 18, 2019 on the average monthly salary in the enterprise sector excluding payments of bonuses from profit in the fourth quarter of 2018, published in: Journal of Laws GUS.2019.1; source: <https://stat.gov.pl>, accessed: October 25<sup>th</sup>, 2024.

Announcement of the President of the Central Statistical Office of January 21, 2020 on the average monthly remuneration in the enterprise sector excluding payments of bonuses from profit in the fourth quarter of 2019, published in: Journal of Laws GUS.2020.1; source: <https://stat.gov.pl>, accessed: October 25<sup>th</sup>, 2024.

Announcement of the President of the Central Statistical Office of January 21, 2021 on the average monthly remuneration in the enterprise sector excluding payments of bonuses from profit in the fourth quarter of 2020, published in: Journal of Laws GUS.2021.1; source: <https://stat.gov.pl>, accessed: October 25<sup>th</sup>, 2024.

Announcement of the President of the Central Statistical Office of January 21, 2022 on the average monthly remuneration in the enterprise sector excluding payments of bonuses from profit in the fourth quarter of 2021, published in: Journal of Laws GUS.2022.1; source: <https://stat.gov.pl>, accessed: October 25<sup>th</sup>, 2024.

Announcement of the President of the Central Statistical Office of January 20, 2023 on the average monthly remuneration in the enterprise sector excluding payments of bonuses from profit in the fourth quarter of 2022, published in: Journal of Laws GUS.2023.1; source: <https://stat.gov.pl>, accessed: October 25<sup>th</sup>, 2024.

Announcement of the President of the Central Statistical Office of January 22, 2024 on the average monthly remuneration in the enterprise sector excluding payments of bonuses from profit in the fourth quarter of 2023, published in: Journal of Laws GUS.2024.1; source: <https://stat.gov.pl>, accessed: October 25<sup>th</sup>, 2024.

Justification to the government's draft act on the principles of shaping the remuneration of persons managing certain companies, form 514, p. 1, source: <https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=514>, accessed: March 18<sup>th</sup>, 2024.

Post-audit statement of the Supreme Audit Office, Branch in Lublin as part of Audit No. I/22/003/LLU Compliance with the provisions on the principles of remuneration of members of the management and supervisory boards of municipal companies in the Lublin Voivodeship, letter LLU.411.004.09.2022 of March 27, 2023, source : <https://www.nik.gov.pl/kontrole/I/22/003/LLU/>, accessed: March 28<sup>th</sup>, 2024.