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## State Water Holding Polish Waters

### Państwowe Gospodarstwo Wodne Wody Polskie

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#### Abstract

On 20 July 2017 the Water Law Act was adopted<sup>1</sup>. This act introduced a number of innovative solutions that were completely new to the Polish legislative system. A complete novelty is, for instance, solutions regarding payment for water services or the implementation of certain solutions in the area of water protection and management. Other innovative solutions refer to the entity named Państwowe Gospodarstwo Wodne Wody Polskie (State Water Holding – Polish Waters). The legislator called it Wody Polskie (Polish Waters) for short.

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<sup>1</sup> Journal of Laws of 2017 item 1566, with further amendments.

This article will present issues concerning that entity. It will cover the legal status of the entity, its tasks, powers and responsibilities, as well as structure.

**Keywords:**

Water Law; Państwowe Gospodarstwo Wodne Wody Polskie (State Water Holding – Polish Waters).

## Streszczenie

W dniu 20 lipca 2017 r. uchwalono ustawę – Prawo wodne. Ustawa ta wprowadziła szereg nowatorskich rozwiązań, które były całkowicie nowe w polskim systemie prawnym. Kompletną nowością są na przykład rozwiązania dotyczące płatności za usługi wodne lub wdrożenie niektórych rozwiązań w zakresie ochrony i zarządzania wodą. Inne innowacyjne rozwiązania odnoszą się do podmiotu o nazwie Państwowe Gospodarstwo Wodne Wody Polskie. Ustawodawca nazwał go Wody Polskie w skrócie.

Niniejszy artykuł poświęcony będzie zagadnieniom dotyczącym tego podmiotu. Obejmować będzie status prawny podmiotu, jego zadania, uprawnienia i obowiązki, jak również strukturę.

**Słowa kluczowe:**

Prawo wodne; Państwowe Gospodarstwo Wodne Wody Polskie.

Wody Polskie is a state-owned legal person according to Article 9 point 14 of Act of 27 August 2009 – the Public Finance<sup>2</sup>. Wody Polskie is headquartered in Warsaw and it consists of the following units of organisation – National Water Management Authority in Warsaw; regional water management authorities in Białystok, Bydgoszcz, Gdańsk, Gliwice, Kraków, Lublin, Poznań, Rzeszów, Szczecin, Warsaw and Wrocław; catchment basin management authorities; water supervision authorities.

According to the legislator, such a solution aims at determining the legal status of this entity but only from the perspective of public finance.

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<sup>2</sup> Journal of Laws of 2017 item 2077, with further amendments; A. Malarewicz-Jakubków, R. Tanajewska, *Uczestniczenie państwa w obrocie gospodarczym na przykładzie przedsiębiorstw użyteczności publicznej oraz przedsiębiorstw komunalnych*, in: ed. A. Kidyba, *Skarb Państwa a działalność gospodarcza*, Warszawa 2014, p. 135 et seq.

It expresses this fact making direct reference to this legal act. Literature mentions a classification of legal persons according to specified criteria. “With regard to their links with the carriers of power, i.e. the state and local government units and churches as institutions representing religious authorities, they can be divided into state, local government and religious legal persons”<sup>3</sup>.

However, the effect of such a solution, according to which Wody Polskie is a state legal person, goes significantly beyond the Public Finance Act. The legislator created a completely new subject of the law having legal identity and as a consequence also legal capacity and ability to enter into legal transactions. It created an entity capable of participating in legal transactions, capable of entering into agreements and contracts and capable of being an owner. Literature emphasizes that “In most general terms, state legal entities are created in the first place to shift the competences in the area of economic relations, governed by civil law, from state officials (acting as bodies of the State Treasury) onto specialists performing the functions of the authorities of state legal persons. Thanks to separating such legal persons, the results of their economic activity are measurable and they can form objective grounds for providing incentives to the activity not only of entities acting as authorities but also to the activity of all the employees”<sup>4</sup>.

What is more, it is an entity independent of the State Treasury and the State Treasury is not liable for the obligations of such an entity. Pursuant to Article 40 of the Act of 23 April 1964 – Civil Code<sup>5</sup>:

“§ 1. The State Treasury is not liable for the obligations of state legal persons unless a separate regulation provides otherwise. State legal persons are not liable for the obligations of the State Treasury.

§ 2. In the case of a free of charge take-over, under applicable laws, of a specific property component from a state legal person for the benefit of the State Treasury, the latter is jointly and severally liable with the legal person for any obligations which arose in the period when the component was owned by the said legal person, up to the value of the component set at the time of the take-over and at the prices at the time of payment.

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<sup>3</sup> A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 2001, p. 213.

<sup>4</sup> Z. Radwański, A. Olejniczak, *Prawo cywilne – część ogólna*, Warszawa 2013, p. 193.

<sup>5</sup> Journal of Laws of 2017 item 459, with further amendments.

§ 3. The provisions of § 1 and 2 apply accordingly to liability of local government units and local government legal persons”.

The property of Wody Polskie is not the property of the State Treasury, which follows clearly from Article 34 of the Civil Code reading: “In civil law relations, the State Treasury is considered the entity having rights and obligations relating to state property which does not belong to other state legal persons”.

Wody Polskie performs tasks determined by the Law. These tasks are commissioned to respective organizational units of Wody Polskie as indicated above.

The National Water Management Authority performs the following tasks of Wody Polskie:

- 1) submits reports to the minister in charge of water management;
- 2) prepares a draft set of environmental goals for marine waters;
- 3) prepares a draft programme for the protection of marine waters;
- 4) co-participates in ensuring the protection of people and property against floods and in prevention of the effects of droughts at the level of river basins;
- 5) prepares a draft pre-assessment of flood risk;
- 6) prepares flood hazard maps and flood risk maps;
- 7) prepares draft flood risk management plans;
- 8) prepares a draft drought effects prevention plan;
- 9) manages the finances and keeps the accounting records of Wody Polskie;
- 10) prepares draft plans for water management in the area of river basins;
- 11) maintains the water management information system and makes sets of spatial data from that system available;
- 12) develops and maintains the website Hydroportal and the central access point;
- 13) takes up measures supporting sustainable water management, including the accomplishment of environmental goals, in the area of river basins and co-participates in their implementation;
- 14) supervises planning and performance of tasks related to the maintenance of waters and other property of the State Treasury connected with water management, including embankments and the inter-embankment zone, except inland waterways being particularly significant transport routes;

- 15) supervises planning and performance of projects related to the reconstruction of ecosystems degraded due to the use of water resources;
- 16) provides financial and material support to local government units to the extent of using water resources for the needs of supplying water for human consumption;
- 17) finances the activities of state services;
- 18) carries out defensive tasks and tasks related to crisis management communicated by the minister in charge of water management;
- 19) co-participates with the minister in charge of water management in developing the national programme for municipal wastewater treatment,
- 20) coordinates the supply of water in the sufficient amount and quality for the needs of people, industry and agriculture;
- 21) supervises planning and implementation of investments in water management, excluding inland waterways being particularly significant transport routes;
- 22) determines the routing of limits of river basins, limits of water regions and limits of catchment areas;
- 23) supervises water management.

Another level of organisation is regional structures determined by the Polish legislator as regional water management authorities. Regional water management authorities perform the following tasks of Wody Polskie:

- 1) taking relevant regulations into account, they take care of matters referring to relevant administrative decisions and water legal permits;
- 2) issue opinions on specific draft resolutions;
- 3) verify the impact of the existing water structures and granted water legal permits on the conditions of living and migration of different species of aquatic animals having economic significance;
- 4) analyze reports;
- 5) reconcile draft local laws;
- 6) co-participate in ensuring the protection of people and property against floods and in prevention of the effects of droughts at the level of water regions;
- 7) reconcile draft documents and draft decisions;
- 8) coordinate project performance in water regions, except inland waterways being particularly significant transport routes;

- 9) exercise proprietary rights of the State Treasury to inland flowing waters and land covered by such waters, and enter into related agreements, except for inland waterways being particularly significant transport routes;
- 10) provide administrative and office services to consulting committees;
- 11) represent the State Treasury in relation to the property;
- 12) exercise the powers of the owner of waters related to inland fishing in inland flowing waters owned by the State Treasury;
- 13) prepare draft planning documentation;
- 14) supervise water management;
- 15) perform and cooperate in the performance of sustainable water management activities, including accomplishment of objectives in water regions;
- 16) plan tasks related to the maintenance of waters and other property of the State Treasury connected with water management, including embankments and the inter-embankment zone, except inland waterways being particularly significant transport routes;
- 17) plan projects related to the reconstruction of ecosystems degraded due to the use of water resources;
- 18) supervise specified activities;
- 19) prepare, maintain, verify and update lists of protected areas;
- 20) issue opinions on draft voivodeship waste management plans referred to in the Act on Waste of 14 December 2012 with regard to protection of water resources;
- 21) issue opinions, with reference imminent threats of damage to waters and damage to waters, on decisions mentioned in Article 13 item 3 and Article 15 item 1 point 2 of the Act of 13 April 2007 on prevention and remedying of environmental damage;
- 22) gather, process, make available and communicate information for the needs of spatial planning and crisis management centres;
- 23) plan the maintenance of inland waterways, except inland waterways being particularly significant transport routes;
- 24) cooperate with voivodes in developing the voivodeship crisis management plans;
- 25) undertake measures to assess the quantity and quality of surface and underground waters;
- 26) undertake measures to supply water in the sufficient amount and quality for the needs of people, industry and agriculture;

The third level of organisational structure is the catchment basin management authorities. The catchment basin management authorities perform the following tasks of Wody Polskie:

- 1) taking relevant regulations into account, they take care of matters referring to decisions and water legal permits;
- 2) co-participate in ensuring the protection of people and property against floods and in prevention of the effects of droughts at the level of catchment basins;
- 3) take care of matters related to:
  - a) payment for water services;
  - b) increased fees;
- 4) enter into agreements;
- 5) agree on the amount of payment;
- 6) plan and implement water management projects, and perform the function of an investor or a substitute investor, to the extent defined in the provisions of the law, except for inland waterways being particularly significant transport routes;
- 7) perform and cooperate in the performance of sustainable water management activities, including accomplishment of objectives in catchment basins;
- 8) perform tasks related to the maintenance of waters and other property of the State Treasury connected with water management, including embankments and the inter-embankment zone, except inland waterways being particularly significant transport routes;
- 9) implement projects related to the reconstruction of ecosystems degraded due to the use of water resources and cooperate to that extent with the competent authorities and entities;
- 10) cooperate with entities using waters and constructing water structures, including entities planning the construction or modernisation of systems making use of hydropower for generating electricity;
- 11) cooperate with economic entities dealing with navigation activities to the extent of maintaining and developing inland waterways, except inland waterways being particularly significant transport routes;
- 12) undertake protective measures according to protective task plans and protection plans for Natura 2000 areas mentioned in the Act of 16 April 2004 on the Protection of Nature, with reference to waters owned by Wody Polskie or entities entrusted with powers of owners under this Act;

- 13) maintain inland waterways, except inland waterways being particularly significant transport routes;
- 14) program, plan and supervise the construction of land improvement water structures;
- 15) maintain records;
- 16) reconcile draft resolutions.

Finally, the last level of the structure is field units called water supervision authorities. Water supervision authorities, taking specific regulations into account, perform the following tasks of Wody Polskie:

- 1) take care of matters related to decisions;
- 2) co-participate in ensuring the protection of people and property against floods and in prevention of the effects of droughts at the level of catchment basins;
- 3) take care of matters related to water legal permit applications;
- 4) accept applications for issuing water legal permits and other decisions provided for in the Act;
- 5) perform and cooperate in the performance of sustainable water management activities, including accomplishment of objectives in catchment basins;
- 6) maintain and operate water structures owned by the State Treasury, except water structures in relation to which the State Treasury is represented by the minister in charge of inland navigation who exercises the State Treasury's proprietary rights;
- 7) ensure communication of hazards in case of extreme hydrological phenomena;
- 8) ensure identification of navigable routes on inland waterways;
- 9) ensure proper technical condition, operation and safety of hydraulic structures owned by the State Treasury, except hydraulic structures in relation to which the State Treasury is represented by the minister in charge of inland navigation who exercises the State Treasury's proprietary rights;
- 10) read the measuring instruments.

The aforementioned indicates that this entity performs a wide variety of tasks some of which fall into the scope of public administration and others into the scope of civil law. The Polish legislator clearly provides for



the participation of Wody Polskie in civil law transactions. Wody Polskie can run economic activity according to the provisions of the Act of 2 July 2004 on Freedom of Economic Activity<sup>6</sup>, including tasks related to water management activities including design, construction, maintenance and operation of water structures; generation of power in hydroelectric power plants; educational and tourist activities related to water management; services related to transport of cargo and passengers by water; and other activities related to water management.

In addition to the above-described organisational units of Wody Polskie, the authorities of this entity must be also mentioned. The President of Wody Polskie is the authority of Wody Polskie. The President of Wody Polskie manages the activities of Wody Polskie and represents Wody Polskie before third parties. The President of Wody Polskie manages the works of the National Water Management Authority. The President of Wody Polskie carries out all legal transactions regarding the property rights and obligations of Wody Polskie. The President of Wody Polskie is appointed by the minister in charge of water management.

The works of regional water management authorities, here referred to as “regional management authorities” are managed by directors of regional management authorities. The director and deputy directors of the regional management authority are appointed by the President of Wody Polskie.

The works of catchment basin management authorities are managed by directors of catchment basin management authorities. The director and deputy directors of the catchment basin management authority are appointed by the President of Wody Polskie at the request of the director of the regional management authority.

The works of water supervision authorities are managed by managers of water supervision authorities. The manager of water supervision authority is appointed by the director of the regional management authority at the request of the director of the catchment basin management authority in consultation with a respective starost (poviat administrator).

The President of Wody Polskie appoints consulting committees as opinion issuing and advisory bodies consisting of representatives of voivodes, marshals, representatives of the local government members

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<sup>6</sup> Journal of Laws of 2017 item 2168, with further amendments.

of the Joint Committee of the Government and Local Government and directors of inland navigation offices.

The operation of Wody Polskie requires huge financial expenditure that is necessary for the accomplishment of the intended objectives set for such an entity.

Wody Polskie manages its finances independently, using its funds and revenues to cover tasks defined in the Act and the operating costs. The financial management of Wody Polskie is based on the annual financial plan.

The funds of Wody Polskie can be allocated to additional financing of tasks in the area of water management carried out by the state budgetary units.

The revenues of Wody Polskie include:

- 1) receipts from payments for water services and increased fees;
- 2) receipts from the use of inland waterways and water structures owned by the State Treasury, situated on inland surface waters;
- 3) receipts from annual fees by virtue of lending for use land covered by water in relation to which Wody Polskie exercises the proprietary rights of the State Treasury;
- 4) receipts from fees by virtue of agreements referring to inland fishing in inland flowing waters owned by the State Treasury;
- 5) receipts from rent and lease and from other similar agreements covering the assets of the State Treasury and other receipts from the management of the State Treasury's property related to water management;
- 6) receipts from participation in the costs of maintenance of waters or water structures;
- 7) voluntary payments, grants, donations, including material donations and money from foundations as well as receipts from undertakings organized for the purposes of water management;
- 8) receipts from legalization fee;
- 9) receipts from payment for water legal permit;
- 10) revenues:
  - a) other than mentioned in points 1-9,
  - b) from economic activities referred to in Article 240 item 6.

The revenues of Wody Polskie can be funds from the budget of the European Union, non-refundable money from foreign sources, other than from the budget of the European Union and money from loans and

borrowings. Wody Polskie can receive specific grants from the state budget on terms and conditions determined in the Public Finance Act.

The tasks of Wody Polskie connected with the collective supply of water and collective disposal of sewage must be analyzed separately. These issues are regulated by the Act of 7 June 2001 on Collective Water Supply and Collective Sewage Disposal<sup>7</sup>. However, they are not analyzed in detail in this paper. It must be given separate treatment.

To sum up, the newly formed legal entity, that is Państwowe Gospodarstwo Wodne Wody Polskie, employs legislative solutions that are completely new to the law of the Republic of Poland. It is not only about forming a new entity but also about the future scope of activities of such an entity. Its powers and responsibilities include water management but also supervision of water and sewerage companies or issuance of water legal permits. This entity also collects payment for water services and performs the activities of the owner of waters. Thus, an omnipotent entity was formed which will either function properly for the sake of protection and proper management of water or will be inefficient in terms of organisation, too bureaucratic and incapable of performing its functions.

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<sup>7</sup> Journal of Laws of 2017 item 328, with further amendments.

