

DOI: [10.26354/bb.10.2.103.2026](https://doi.org/10.26354/bb.10.2.103.2026)

Paweł Wajda*

ORCID: 0000-0003-4423-8881

p.wajda@wpia.uw.edu.pl

Effective supervision of an entity carrying out activities entrusted by a financial institution

ABSTRACT

This article analyses a controversial position in case law according to which an investment fund company, when outsourcing activities to a third party (i.e. under an outsourcing agreement), is obliged to ensure effective ongoing supervision of that entity. This position was expressed by the Provincial (Voivodship) Administrative Court in Warsaw in its judgment of 18 April 2024 (case number: VI SA/Wa 8336/22). In the author's view, this interpretation goes beyond the literal wording of the provision, which may pose a serious risk to financial institutions that use outsourcing agreements. The risk is all the greater given that the aforementioned position of the Provincial (Voivodship) Administrative Court in Warsaw stems from the Polish Financial Supervision Authority's (KNF) adoption of a law-making interpretation of Article 45a(4a) of the Act on Investment Funds and the Management of Alternative Investment Funds, according to which the ongoing supervision of the company must be effective.

These considerations constitute a doctrinal response to the position of the KNF and the Provincial (Voivodship) Administrative Court in Warsaw regarding the obligation of a financial institution acting as an outsourcer to ensure effective supervision, and demonstrate that the position adopted is *contrary to the law* and gives rise to very serious risks. It has also been demonstrated that the position adopted by the Polish Financial Supervision Authority (KNF) and the Provincial (Voivodship) Administrative Court in Warsaw is one that stands in clear opposition to the principles of administrative liability.

* Paweł Wajda – professor at the Faculty of Law and Administration, University of Warsaw, and a barrister.

Keywords: supervision, effective supervision, ongoing supervision, Financial Supervision Authority, administrative liability, administrative supervision, private-law supervision, administrative-law relationship, civil-law relationship

JEL Codes: K10, K23

INTRODUCTION

Pursuant to Article 45a(4a) of the Act of 27 May 2004 on investment funds and the management of alternative investment funds,¹ an investment fund management company is obliged to exercise ongoing supervision over the performance of the entrusted activities (i.e. the activities referred to in Article 45a(1)–(2) of the on Investment Funds) (Mroczkowski, 2011, p. 301 et seq.), regardless of the entity carrying them out. The provision of Article 45a of the Investment Funds Act provides the legal basis for a company to enter into agreements under which the performance of specific activities related to the company's operations may be entrusted to an external entity (an outsourcing agreement). However, such entrustment may not cover the entire scope of the company's activities, as is explicitly stated in Article 45a(2) of the Act on Investment Funds. Legal scholars have noted that the scope of the entrusted activities must be defined in such a way that the company continues to actually carry out the activities specified in Article 45 of the Act on Investment Funds (Dumkiewicz, 2018), whilst also taking into account the provisions of Articles 75–82 of Regulation 231/2013.

The interpretation of this provision – it would seem – should not give rise to any doubts; in the wording of the provision in question, the legislator has imposed on an investment fund company which entrusts the performance of activities to a third party the obligation to exercise ongoing supervision over the performance of those activities by that third party. The company is therefore obliged to exercise ongoing supervision, and thus to supervise, on an ongoing basis (continuously, throughout the entire term of the outsourcing agreement), the performance of these activities by the third party. In essence, the aim here is for the company – within the framework of the outsourcing agreement referred to in Article 45a(4) of the Act on Investment Funds – to establish and implement a contractual mechanism for ongoing supervision of the third party's performance of the activities entrusted to it. In the context of the delegation standards set out in Article 75 of Regulation 231/2013, the contractual mechanism for ongoing supervision should include at least: (i) methods and procedures for the ongoing review of services and responses in the event of a risk that the contractor will not perform its functions effectively or in accordance with the law, (ii) the investment fund management company's (TFI's) powers regarding information, inspection, entry, access and the issuing of binding instructions, (iii) a requirement for the contractor to conduct its own internal supervision and manage risks, and (iv) a business continuity plan on the part of the contractor; these elements

¹ Consolidated text: Journal of Laws of 2024, item 1034, as amended; hereinafter: the Act on Financial Instruments.

are implemented in Article 45a(4)(3), (5) and (7) of the Act on Investment Funds (Rodzynekiewicz & Sarkowicz, 2023). This supervision is intended to be ongoing supervision, i.e. it is not to be preliminary or ex post supervision (Administrative law doctrine distinguishes between: preventive (preliminary) supervision – carried out before the supervised entity commences operations in order to prevent potential irregularities, verification (ongoing) supervision – involving the verification of actions taken by the supervised entity; and ex post supervision – amounting to the imposition of consequences on the supervised entity in the event of irregular conduct; Starościak, 1964, p. 93; Chęłmoński, 2005, pp. 539–540), though this is to be ongoing supervision, where the subject of such supervision is the performance by a third party of the tasks entrusted to it.

The essence of the aforementioned obligation is therefore, firstly, that the company must ensure that supervision is exercised (i.e. this is to be supervision within the scope of the company's powers arising from the contract under Article 45a(4) of the Act on Investment Funds, i.e. supervision based on private law provisions); secondly, that, in terms of the subject matter, the supervision relates to the entity to which the company entrusts the performance of activities, in accordance with Article 45a(1)–(2) of the Act on Investment Funds; (i.e. that the supervision should in no circumstances relate to entities other than the entity referred to in Article 45a(1) of the Act on Investment Funds); thirdly, that, in terms of subject matter, the supervision should relate only to the performance by that entity of the activities referred to in Article 45a(1)–(2) of the Act on Investment Funds (i.e. that supervision should under no circumstances relate to any other activities carried out by that entity); fourthly and finally, that, from a functional perspective, the supervision should be ongoing supervision (i.e. that the private-law supervision arising from the provisions of the contract should not, under any circumstances, constitute preliminary or ex post supervision, but should be ongoing supervision). It is worth noting, however, that from a functional perspective, the legislator did not in any way indicate that the ongoing supervision referred to in Article 45a(4a) of the Act on Financial Instruments was effective supervision.

It is worth noting, by applying the principles of linguistic interpretation, that the absence of such an indication is the result – it would seem – of the legislator's rationality; the legislator is, of course, – is fully aware that different expectations must be formulated in relation to administrative supervision, which is based on the exercise of administrative authority, and different expectations in relation to private-law supervision, which is in no way based on the exercise of administrative authority. It is worth recalling here that administrative authority is the power to resolve individual situations unilaterally in a manner that is permanent and binding on all legal entities within the state, and secured by state coercion, where the content of the decision involves the imposition of an obligation (Boć, 1994, p. 23; Nowicki & Peszkowski, 2015, p. 12). It is also worth noting that administrative authority is, of course, specific to administrative law relationships; whereas in the case of the ongoing supervision referred to in Section 45a(4a) of the Act on Financial Instruments, we are dealing with supervision under

private law, i.e. supervision arising not from a relationship of administrative subordination of the supervised entity to the public administration body exercising supervision, but from the provisions of the agreement referred to in section 45a(4) of the Act on Financial Instruments, and supervision based on a relationship of equality between the supervising entity and the supervised entity. This latter relationship does not contain any elements of administrative law and is not based on administrative authority.

In light of the above, the position of the Provincial (Voivodship) Administrative Court in Warsaw, as set out in its judgment of 18 April 2024, (VI SA/Wa 8336/22), in which the Provincial (Voivodship) Administrative Court in Warsaw *explicitly* stated, in particular, that: *nevertheless, this supervision was not carried out on an ongoing and effective basis*; as well as that: *where, however – due to the Manager’s conduct – it was not possible in practice to exercise effective supervision, the Company should have terminated its cooperation with the Manager. The Company should therefore have ensured that the Manager performed the functions entrusted to him effectively and in accordance with applicable law and regulatory requirements*; and finally, that: *one must agree with the authority’s position that there was a failure to exercise effective, ongoing supervision over the Manager, of a continuous nature, extending over successive quarters in relation to the Funds under management*. The Provincial (Voivodship) Administrative Court in Warsaw therefore essentially pointed out that Article 45a(4a) of the Act on Investment Funds imposes – on the fund management company – an obligation to exercise effective day-to-day supervision over the activities of the third party referred to in Article 45a(4a) of the Act on Investment Funds. The position regarding ‘effective’ (as a synonym for ‘effective’) supervision has also been expressed in the literature (Rodzynekiewicz & Sarkowicz, 2023); however, the author of this article, in view of the circumstances discussed in detail in this publication, presents a position that differs from that set out therein.

Bearing in mind that the aforementioned position of the Provincial (Voivodship) Administrative Court in Warsaw regarding the obligation of an investment fund company to ensure effective ongoing supervision is a position which, in the author’s view, lacks sufficient support in the linguistic interpretation and principles of application of the sanctioning provisions (which will be the subject of further discussion later in this article) and a position which, it would appear, poses a particular threat to trading practice; it therefore seems appropriate to ‘examine’ the interpretation of the provision in Article 45a(4a) of the Investment Funds Act and the correct understanding of the concept of ‘ongoing supervision’ within the meaning of Article 45a(4a) of the Investment Funds Act in connection with Article 45a(4)(7) of the Act on Financial Instruments.

Methodologically, the article presents both arguments in favour of an interpretation limiting the concept of ‘ongoing supervision’ to civil-law supervision, and arguments in favour of an understanding encompassing the element of ‘effectiveness’, arising, amongst other things, from the phrase ‘effective supervision’ and supervisory practice. The aim is to ‘weigh up’ these arguments as objectively as possible and to present the interpretative assumptions transparently.

1. ONGOING SUPERVISION OF THE ACTIVITIES OF A THIRD PARTY TO WHICH – UNDER THE TERMS OF AN OUTSOURCING AGREEMENT – THE PERFORMANCE OF CERTAIN TASKS IS ENTRUSTED

From Article 45a(4a) of the Act on Financial Instruments in conjunction with Article 45a(4)(7) of the Investment Funds Act, it follows that the day-to-day supervision referred to in Article 45a(4a) of the Investment Funds Act is undoubtedly a mechanism of civil law and is not, to any extent, a mechanism of administrative law. It is, after all, obvious that an investment fund company is not an entity forming part of the administrative apparatus and is not vested with any instrument of administrative authority. It is equally obvious that the source of this supervision lies in the provisions of the agreement referred to in Article 45a(4) of the Act on Investment Funds, and not in the provisions of substantive administrative law, which would endow an investment fund company with any supervisory powers. From a subjective perspective (the legal status of the investment fund company) and from an objective perspective (supervision derived from the provisions of the agreement referred to in section 45a(4) of the Investment Funds), we are not, in fact, dealing with administrative supervision, but rather with supervision under private law (civil law).

The fact that the supervision referred to in Article 45a(4a) of the Act on Investment Funds is a form of civil-law supervision means that such supervision exists solely to the extent provided for in the terms of the management agreement under Article 45a(4) of the Act on Investment Funds – and this must be emphasised – one of *the essential elements* of that agreement. For, in accordance with Article 45a(4)(7) of the Act on Investment Funds, one of the constituent elements specific to a trust agreement is to enable – *verba legis* – *the company to effectively supervise the performance of the activities entrusted to it*, and thereby to ensure that the company will be able to effectively exercise ongoing supervision over the performance by a third party of the activities entrusted to that party. It is, after all, evident that the provisions of Article 45a(4)(7) of the Act on Investment Funds must be interpreted in conjunction with the provisions of Article 45a(4a) of the Act on Investment Funds, as the supervision referred to in Article 45a(4)(7) of the Act on Investment Funds is, in fact, the ongoing supervision referred to in Article 45a(4a) of the Act on Investment Funds. The basis for exercising ongoing supervision under Article 45a(4a) of the Act on Investment Funds is the provisions of the agreement referred to in Article 45a(4)(7) of the Act on Investment Funds, and the fund's effective supervision of the performance by a third party of the activities entrusted to it is manifested in the fund's exercise of ongoing supervision under Article 45a(4a) of the Act on Investment Funds. The supervision referred to in Article 45a(4)(7) of the Act on Investment Funds is the ongoing supervision referred to in Article 45a(4a) of the Act on Investment Funds, where this interpretation is supported both by the prohibition on antonymic interpretation – which is one of the principles of interpretation – and by the result of a systematic interpretation of both provisions, which must obviously be interpreted together. For the sake of clarity, it is worth noting that 'ongoing' (paragraph 4a) defines the timeframe and manner of carrying out

contractual supervision, whilst ‘enabling effective supervision’ (paragraph 4(7)) sets out the minimum functional standard for contractual mechanisms – rather than a result in the form of ‘effectiveness’ understood as a guarantee of the absence of breaches on the part of the contractor (Dumkiewicz, 2018; Ferran, Howell & Steffek, 2023; Moloney, 2014; Rodzynkiewicz & Sarkowicz, 2023).

This, in turn, leads to the conclusion that the provisions of the entrustment agreement referred to in Article 45a(4)(7) of the Investment Funds Act, must be worded in such a way as to ensure that the investment fund company is entitled to exercise day-to-day supervision over the performance by a third party of the activities entrusted to it in connection with the business conducted by that company. It should be emphasised once again that this supervision is a matter of private law, not administrative law, where the relationship between the investment fund company and the entity carrying out the activities entrusted to it is a civil law relationship, which presupposes the equality of the parties, rather than an administrative law relationship, which presupposes the subordination of the administered entity to the administering entity.

The private-law nature of this supervision, combined with the purely civil-law relationship between the investment fund company and the entity entrusted with carrying out the activities, determines that the term ‘ongoing supervision’ should be understood as the investment fund company’s continuous exercise – using the mechanisms set out in the contract – of control over that entity’s activities and – where such control leads to the finding that there are any irregularities within the scope of that entity’s activities relating to the performance by that third party of the tasks entrusted to it – the ability to exert contractual influence over that entity so that such irregularities are rectified as efficiently as possible, along with their adverse consequences (provided, of course, that achieving such a result is generally possible through the use of civil law mechanisms). It must be categorically emphasised that neither the day-to-day control exercised by the investment fund management company nor the investment fund management company’s ability to influence the third party contractually are based on the concept of administrative authority; consequently, the private-law supervision exercised by the investment fund management company over that third party will in no circumstances be, as it were, a replica of administrative supervision (Moloney, 2014), which is exercised by the Polish Financial Supervision Authority (KNF) and is based on the concept of administrative authority. An investment fund management company may not therefore – whilst exercising day-to-day supervision – use any administrative-legal instruments of influence; rather, it may use only those instruments of influence which are of a contractual nature and which necessarily arise from the provisions of the agreement referred to in Article 45a(4) of the Act. It is essential to emphasise categorically that these instruments do not have an authoritative character, which stems, for example, from the fact that a civil-law relationship is based on the equality of the parties, rather than on the subordination of one party to the other (a relationship of subordination which is characteristic of an administrative-legal relationship). A consequence of this nature of the relationship and the fact that we are dealing here with a civil law contract

is that the parties to the entrustment contract – in shaping the terms of the contract – enjoy a degree of freedom which derives from Article 353¹ of the Act of 23 April 1964 – the Civil Code.

As a side note to the above considerations, it is worth pointing out that the legal literature correctly observes that *the principle of freedom of contract therefore means that the parties to a contract may shape its content at their discretion, establishing a contractual relationship that corresponds to their interests. The limits on freedom of contract set out in Article 353¹ of the Civil Code relate to the content of the contract and to the purpose of the legal relationship established by the parties (II CSK 290/13; Fuchs 2018, III AUa 940/15)*. In practice, this means that the parties to the contract are bound both by the provisions of Article 45a(4) of the Act on Investment Funds and by good practice and the nature of the relationship, the nature of which precludes the possibility of basing a fund's supervision of a third party on administrative authority. The consequence of this latter statement is that the position of the Polish Financial Supervision Authority (KNF) of 15 May 2018 (the KNF Position) does not appear to be correct; in that position, the KNF stated in particular that: *In view of the above, in the UKNF's assessment, the company should ensure that it is able to influence the actions of the entity with which it has concluded a contract, to the extent that that entity is performing the contract with the company, including ensuring that it has the power to issue binding instructions and orders to the manager concerning the management of the closed-end investment fund's investment portfolio. At the same time, the fund management company should provide for appropriate mechanisms in such a contract to enable it to effectively enforce such instructions and orders.*

Hypothetically, if the fund management company were granted *the power to issue binding instructions and orders to the manager regarding the management of the closed-end investment fund's investment portfolio, whilst the fund management company were to provide for appropriate mechanisms in such an agreement enabling it to effectively enforce such instructions and orders*, this would constitute an instrument of administrative law, rather than private law; consequently, such a provision would run counter to the nature of the relationship between the management company and a third party, and would thus constitute an element exceeding the scope of the parties' contractual freedom arising from the principle set out in Article 353¹ of the Civil Code. The latter, in turn, would imply that such provisions, or indeed the entire contract, would be void, i.e. the consequence referred to in Article 58 § 1 of the Civil Code.

Similarly, the position of the Polish Financial Supervision Authority (KNF) is incorrect, according to which: *'Furthermore, the supervision exercised by the company should, amongst other things, ensure that the manager manages the investment portfolio of a closed-end investment fund in accordance with the Act and the articles of association of the fund in question, whilst taking into account the interests of the fund's unit-holders' (Position of the UKNF)*. The obligation to ensure proper operation is, in fact, the responsibility of the KNF, not that of the investment fund management company (*argument based on* Article 2 of the Act of 21 July 2006 on the supervision of the financial market), and its fulfilment is based on the KNF being vested with powers grounded in the mechanism of administrative authority; where, in the purely

hypothetical event of an attempt to confer administrative authority upon an investment fund management company pursuant to the provisions of a contract under Article 45a(4) of the Act on Investment Funds, we would be faced with a similar overstepping of the scope of contractual freedom under Article 353¹ of the Civil Code. The latter would similarly entail the consequence referred to in Article 58 § 1 of the Civil Code.

In this context, it should be noted that the principle of freedom of contract allows the parties to shape their mutual legal relationships as they see fit and to establish contractual obligations; however, this freedom is restricted where the provisions of the contract lead to a breach of the law, the circumvention of applicable regulations, an abuse of rights or a breach of the principles of social justice (III AUa 15/21; III AUa 580/19). Legal literature emphasises that the principle of freedom of contract, set out in Article 353¹ of the Civil Code, enables the parties to create non-standard contractual relationships. They may use standardised contract templates, but they also have the right to make modifications or additions to these contracts, thereby creating a legal instrument that better suits their needs. The principle of freedom of contract therefore means that the parties may formulate the content of the contract in accordance with their preferences, creating a contractual relationship that best serves their interests. The scope of freedom of contract, in accordance with Article 353¹ of the Civil Code, relates both to the content of the contract and to the legal purpose which the parties intend to achieve (Fuchs, 2018; CSK 290/13).

A closer examination of the KNF's position cited above leads to the conclusion that the only part of that position with which one can agree – and which is correct – is the part stating that: *Supervision should be exercised by the Association on an ongoing basis, that is, continuously and throughout the entire term of the contract referred to in Article 45a(1) of the Act (UKNF Position)*. In fact, this supervision is intended to be ongoing, i.e. it is to be carried out on an ongoing basis and throughout the entire term of the provisions of the agreement under Article 45a(4) of the Act on Financial Instruments.

Referring to the aforementioned position of the Polish Financial Supervision Authority (KNF), it is also worth noting its surprising structure. Thus, in the first instance, the KNF – correctly – pointed out that: *In the context of the aforementioned provisions of the Act, as well as the provisions of Articles 75–82 of Regulation 231/2013, it should be noted that an investment fund company should ensure that the legal relationship established by contract between the company and the entity which has been entrusted with the performance of the assigned activities, enables the company to exercise ongoing supervision (...), whilst only in the next step did the KNF – in a sense elaborating on the concept of 'ongoing supervision' – state that: In view of the above, in the opinion of the UKNF, the company should ensure that it has the ability to influence the actions of the entity.*

To complete the picture, it should be noted here that the delegation of functions by AIF managers is regulated in Articles 75–82 of Regulation 231/2013 (Dumkiewicz, 2018), which emphasise

the requirements for due diligence in the selection and supervision of the entity performing the functions, the proportionality of supervisory measures, and the assurance of an uninterrupted capacity to perform key functions. Consequently, the fulfilment of supervisory duties by an AIFM under the function delegation model requires the retention of responsibility and decision-making authority in key areas, in particular through the maintenance of risk management relating to the delegation of functions. The instrument enabling the exercise of supervision in this sense remains a properly structured delegation agreement, ensuring extensive powers of information, inspection and guidance, including mechanisms for further sub-delegation, conditions for terminating the cooperation, requirements regarding business continuity and the protection of confidentiality of information. At the same time, in accordance with the principle of due diligence, supervision of the entity performing the functions should be continuous and proportionate, as reflected in regular reporting, the conduct of inspections and audits, periodic reviews of indicators, compliance tests and the taking of immediate corrective action in the event of irregularities being identified (EBA Guidelines, 2019). Of particular importance in this regard is ensuring the proper management of conflicts of interest, including the functional and hierarchical separation of duties and a full cycle of identifying, monitoring and disclosing conflicts to AIFMs and investors. An integral part of this supervisory regime is also ensuring that supervisory authorities and auditors have the necessary access to data, documents and premises at all levels of the delegation chain. These requirements are complemented by the maintenance of tested contingency plans and the capacity to seamlessly transfer functions or bring them back in-house, without compromising the quality and continuity of management. A supervisory model structured in this way enables the AIFM to comply with the general principles arising from the relevant regulations, maintain effective control over delegated functions, ensure compliance with applicable requirements, whilst at the same time mitigating the regulatory risks associated with the loss of its status as an AIF manager. It should be noted, however, that supervision within the meaning of Articles 75–82 of Regulation 231/2013 has not, however, been explicitly defined as supervision that is to be effective – in the sense used by the Provincial (Voivodship) Administrative Court in Warsaw in its judgment of 18 April 2024, reference number: VI SA/Wa 8336/22.

As a result, we are faced with a rather surprising situation where the Polish Financial Supervision Authority (KNF) first categorically points to a statutory obligation and then – whilst interpreting the content of that obligation – the KNF, in formulating its position, qualifies that this position is merely the assessment of the Polish Financial Supervision Authority (KNF). Such action by the Polish Financial Supervision Authority (KNF) is surprising in that it runs counter to the principle of public trust in state authorities. The principle referred to above is enshrined, amongst other places, in Article 8 of the Code of Administrative Procedure, under which public administration bodies are obliged to conduct proceedings in a manner that inspires confidence in public authority amongst those involved. This principle plays a key role from the perspective of so-called social justice in procedural terms, as it imposes on the authority conducting the proceedings an obligation to justify its actions and explain their basis. It is important to note

that the principle of trust in public authorities is also enshrined in constitutional provisions. In accordance with the principle of a democratic state governed by the rule of law, as laid down in Article 2 of the Constitution of the Republic of Poland, there arises a rule of citizens' trust in the state and in the law established by that state, which imposes specific obligations on the state in various areas of its activity. The protection of this trust manifests itself in two key spheres of the administration's functioning: firstly, in the stability of relations arising from the administration's official actions, in particular from final administrative decisions; and secondly, in the compensation of financial losses suffered by citizens as a result of the revocation or amendment of such decisions. From the principle of the protection of legitimate expectations, one can therefore derive a standard of certainty in the application of the law, which means that state authorities should act in a manner ensuring that their decisions – including those concerning individual matters within the sphere of public administration – constitute a logical and consistent outcome of the process of governance in a well-organised state. Consequently, only conduct on the part of administrative authorities that meets the requirement of predictability, based on clear and rational grounds, can be regarded as trustworthy (VI SA/Wa 42/20; II UKN 685/98; IV SA/Wa 1300/17).

It can reasonably be assumed that the position taken by the Polish Financial Supervision Authority (KNF) is, in a sense, the root cause of the position – which poses a threat to trading practice – regarding the obligation to ensure effective day-to-day supervision. An analysis – in the context of the aforementioned judgment of the Provincial (Voivodship) Administrative Court in Warsaw – leads to the conclusion that the KNF assumes – which is entirely incorrect – that a hypothetical breach of the law by an entity to which the company has entrusted the performance of activities would lead the KNF to conclude that ongoing supervision was not effective (since ongoing supervision failed to ensure that *the manager would manage the investment portfolio of the closed-end investment fund in accordance with the Act and the fund's articles of association, whilst taking into account the interests of the fund's unit-holders*), and thus implies the KNF's finding that the investment fund company committed an irregularity (i.e. an administrative offence amounting to a breach of the obligation under Article 45a(4a) of the Act on Investment Funds). In turn, the commission of an administrative offence by the investment fund management company gives rise – in the KNF's incorrect assessment – to the administrative liability of the investment fund management company, as referred to in the provisions deriving from Article 228(1) of the Act on Investment Funds. The consequence of such an – incorrect, it must be emphasised – understanding and interpretation by the KNF of the provision in Article 45a(4a) of the Act on Investment Funds is that the KNF applied administrative liability measures against the investment fund company (i.e. an administrative fine and a follow-up supervisory measure in the form of the revocation of its operating licence), an administrative decision which was subsequently reviewed by the Provincial (Voivodship) Administrative Court in Warsaw. Consequently, the outsourcing regime shapes a multi-tiered architecture of liability and supervision: (i) civil liability and ongoing contractual supervision by the investment fund management company (TFI) over the contractor, (ii) public-law supervision

by the Polish Financial Supervision Authority (KNF) over the investment fund management company (TFI) and – within statutory limits – over the entities to which activities have been entrusted, and (iii) in specific areas (e.g. securitisation) – an additional licensing and sanctions regime applicable to the contractor. This stratification is of interpretative significance when assessing the scope and content of the obligations assigned to the investment fund management company (TFI). It is worth noting at this point – a matter which will be discussed in greater detail in the next paragraph of this article – that the Provincial (Voivodship) Administrative Court in Warsaw, similarly incorrectly, accepted – following the KNF's view – that the supervision referred to in Article 45a(4a) of the Act on Investment Funds must be effective supervision. The above provides a starting point for analysing whether, under the provisions of Article 45a(4a) of the Act on Investment Funds, it is generally possible to take the view that the ongoing supervision referred to in that provision is intended to be effective supervision.

2. EFFECTIVE ONGOING SUPERVISION?

The aforementioned positions of the Polish Financial Supervision Authority (KNF) and the Provincial (Voivodship) Administrative Court in Warsaw provide – as indicated – a basis for analysing whether, in the case of the ongoing supervision referred to in Article 45a(4a) of the Act on Investment Funds, it can generally be argued that such supervision must be effective, and consequently whether it can generally be argued that a breach by an entity to which the company has entrusted the performance of activities – be it of the provisions of the Act on Investment Funds, or the provisions of the fund's articles of association, or acting without regard to the interests of the fund's unit-holders, constitutes a breach by the investment fund management company of the obligation under Article 45a(4a) of the Investment Funds Act, and thus that this constitutes an administrative offence on the part of that investment fund management company.

At this point, it must be categorically stated that the analysis carried out shows that it cannot under any circumstances be inferred that the provision of Article 45a(4a) in conjunction with Article 45a(4)(7) of the Act on Investment Funds imposes an obligation on the investment fund management company to ensure effective ongoing supervision; for the provision cited imposes solely an obligation on the investment fund company to ensure ongoing supervision. A number of arguments support the above position.

Firstly, drawing on the tools of linguistic interpretation, it should be noted that if the legislator's sole intention had been for the ongoing supervision referred to in Article 45a(4a) of the Act on Investment Funds to be effective supervision, this intention would have been expressed by the legislator in Article 45a(4a) of the Act by adding the qualifier: 'effective'. It is worth emphasising that the interpretation of the provisions – which form the legal basis for the Polish Financial Supervision Authority (KNF) to take regulatory action (where, in the hypothetical event that the KNF's position were to be upheld, namely that the ongoing supervision under Article 45a(4a)

of the Act on Investment Funds must be effective supervision, and thus a breach of the law by a third party simultaneously constitutes an administrative offence on the part of the investment fund company, which in turn gives rise to the company's administrative liability under Article 228(1) of the Act on Investment Funds) must be carried out in accordance with their literal wording. It is therefore not permissible, when interpreting legal provisions, to apply other types of interpretation – such as purposive or systemic interpretation – in order to arrive at a meaning of a given provision that differs from that resulting from a linguistic interpretation (I OSK 653/13) (P 2/03; II GSK 972/08; Gajek, 2019, p. 16). Administrative court case-law correctly holds that, in this category of cases, the results of a linguistic interpretation may be set aside only in exceptional circumstances, e.g. where they are grossly inconsistent with the presumption of a rational legislator (III SZP 4/15; III SK 51/15; III SK 75/15). Similarly, the application of an expansive interpretation (I OSK 1750/17), analogy (II SA/Łd 203/21) or presumptions (III SK 59/13; XVII AmE 92/17; II GSK 1019/19; Krawczyk, 2019, Lex/el).

The fact that the legislator did not introduce the term 'effective' in Article 45a(4a) of the Investment Funds Act should, consequently, be understood to mean that an investment fund company is required to ensure ongoing supervision, rather than effective ongoing supervision. The latter obligation has not, in fact, been incorporated into the legal framework. Consequently, the activities of an investment fund company may be subject to sanctions only if that investment fund company fails to ensure ongoing supervision, and not if, whilst it does ensure ongoing supervision, but it subsequently proves to be ineffective (i.e. it fails, as it were, to prevent a breach of the law by the entity to which the investment fund company has entrusted the performance of activities) (Rodzynekiewicz & Sarkowicz, 2023). It is, after all, obvious that if the legislator's sole intention had been for the obligation under Article 45a(4a) of the Investment Funds Act to relate to the exercise of effective ongoing supervision, this intention would have been confirmed by the legislator's use of the qualifier: '**effective**'.

Secondly, as a sort of elaboration on the first point above, it should be noted that – purely hypothetically – if the provision in Article 45a(4a) of the Act on Investment Funds implied an obligation on the part of an investment fund company to ensure effective day-to-day supervision, then the Polish Financial Supervision Authority (KNF) – in its position (the UKNF's Position) – would not, it seems, have used the phrase '*in the UKNF's view*', but would have categorically stated the existence of such an obligation. It is, after all, obvious that if such an obligation (i.e. to ensure effective ongoing supervision, that is – in the opinion of the UKNF – supervision which, amongst other things, guarantees *that the manager will manage the investment portfolio of a closed-end investment fund in accordance with the Act and the fund's articles of association, whilst taking into account the interests of the fund's unit-holders*) were to arise from statutory provisions, the KNF would not have used the phrasing employed, *in the opinion of the UKNF*, but would have referred directly and explicitly to a statutory obligation (as, for example, was the case in other paragraphs of the aforementioned KNF position).

Thirdly, it should be recalled that the provision set out in Article 45a(4a) in conjunction with Article 45a(4)(7) of the Act on Investment Funds constitutes an exception to the principle of freedom of economic activity (VISA/Wa 1957/12; Sobaczak, 2021, p. 7 ff.; Szydło, 2005, p. 14 ff.; Sowiński, 2007), as well as from the principle of freedom of contract under Article 353¹ of the Civil Code. The nature of this provision (in fact, of these provisions) determines the direction of their interpretation, which must take the form of a strict interpretation (Morawski, 1997, pp. 202–203; II UK 236/06). The consequence of this latter observation is that the provision in Article 45a(4a) of the Act on Financial Instruments must be interpreted strictly; consequently, the scope of the concept of ‘ongoing supervision’ must be interpreted as narrowly as possible and must not, under any circumstances, be interpreted broadly (as was also mentioned in point (i) above). The adoption by the Polish Financial Supervision Authority (KNF) and subsequently by the Provincial (Voivodship) Administrative Court in Warsaw of the position that ‘ongoing supervision’ under Article 45a(4a) of the Act on Investment Funds is to constitute effective ongoing supervision is, of course, an expression of a broad interpretation of the obligation set out therein, which stands in clear opposition to the aforementioned principle.

Fourthly, it should be recalled that the fulfilment by an investment fund company of the obligation under Article 45a(4a) of the Act on Investment Funds has been secured by means of the administrative liability mechanism under Article 228(1) of the Act on Investment Funds; which similarly dictates the manner in which the provision of Article 45a(4a) of the Act on Investment Funds must be interpreted; such interpretation must be carried out using the tools applied in the interpretation of criminal law provisions (SK 70.06; SK 18/09; II SA/Ol 293/20). Thus, the interpretation of administrative law provisions forming the legal basis for the imposition of an administrative sanction should be similar to the process of interpreting provisions falling within the branch of criminal law, in particular by giving priority to textual interpretation over any other types of interpretation (GSK 30/04; GSK 31/04). In terms of the general principles of administrative sanctions law, it is necessary to consider to what extent interpreting the element of ‘effectiveness’ of ongoing supervision – if it were to serve as a criterion for attributing administrative liability to the investment fund management company (TFI) – remains consistent with the principles of specificity (predictability) and proportionality. On the one hand, this argues in favour of a strict linguistic interpretation of Article 45a(4a) of the Act on Investment Funds; on the other hand, one must not lose sight of the protective purpose of the regulations on outsourcing and the EU standards on the delegation of functions, which emphasise the adequacy and actual capacity of supervisory mechanisms to mitigate risks. This conflict of values should be resolved whilst respecting the primacy of a strict interpretation in criminal matters and the prohibition on retroactive application.

Bearing in mind, however, that the interpretation of the obligation under Article 45a(4a) of the Act on Financial Instruments must be carried out using the tools of linguistic interpretation, it is clear that from the wording of Article 45a(4a) of the Act on Financial Instruments cannot be used to derive an obligation which is not literally, directly and explicitly set out in that provision.

It is therefore in no circumstances permissible to assume that Article 45a(4a) of the Act on Investment Funds gives rise to an obligation which is not expressed in that provision; for the sole source of such an obligation would be – and this must be emphasised – the position of the Polish Financial Supervision Authority (KNF), where the Polish Financial Supervision Authority (KNF) has explicitly indicated the evaluative nature of that position. It is clear, moreover, that the Polish Financial Supervision Authority's (KNF's) interpretative position does not constitute, and cannot under any circumstances constitute, a source of law.

Fifthly, it should be noted that the purely hypothetical adoption of the position that the ongoing supervision referred to in Article 45a(4a) of the Act on Financial Instruments must be effective supervision would stand in clear opposition to one of the principles of administrative liability, namely the principle of the specificity of an administrative offence. In this context, it is worth noting that the principle of the specificity of an administrative offence is intended to provide individuals with legal protection against arbitrariness and abuse on the part of public authorities (Supreme Court judgment 22/02) in the regulation of legal liability, and thus in cases where the legislation provides for the possibility of imposing an administrative sanction (P 46/07; K 7/99). This is because provisions establishing administrative offences are required to meet the criteria of accessibility and predictability, which concern both the precise definition of prohibited acts and the penalties attached to them. The requirement for precision implies that the person concerned, on the basis of the wording of the relevant provision and, where necessary, its judicial interpretation, should be able to clearly determine which acts or omissions may give rise to legal liability. Turning to the considerations *strictly* addressed in this publication, it must be noted that in such a situation, an investment fund company would be held liable for a breach of a duty which is not expressly set out in generally applicable law and whose sole source is a discretionary position adopted by the Polish Financial Supervision Authority (KNF). In turn, a breach of this obligation – which derives exclusively from the KNF's discretionary position – would entail the company's administrative liability under Article 228(1) of the Act on Investment Funds.

It is worth noting here – somewhat as an aside to the present discussion – that in the case in which the Provincial (Voivodship) Administrative Court in Warsaw delivered its judgment, a judgment which served as the inspiration for this article, we were dealing precisely with the aforementioned breach of the principle of specificity. The Provincial (Voivodship) Administrative Court in Warsaw *explicitly* pointed out that the investment fund company exercised supervision over the entity to which the performance of activities had been entrusted, but that this supervision was ineffective (VI SA/Wa 8336/22), whereas there is no legal basis in the legislation for holding that the ongoing supervision referred to in Article 45a(4a) of the Investment Funds Act is intended to be effective.

Sixthly, it should be noted that the purely hypothetical assumption that the ongoing supervision referred to in Article 45a(4a) of the Act on Financial Instruments must constitute effective supervision would be in clear conflict with another principle of administrative liability, namely the objective nature of such liability (VI SA/Wa 1410/11; VI SA/Wa 2442/13). It should be noted

that the imposition of administrative penalties cannot be based on the principle of purely objective liability, which is entirely detached from the specific circumstances of the case in question, including an assessment of the perpetrator's fault. When applying a general legal provision, the administrative authority should adapt it to the specific circumstances of the particular case. The imposition of specific administrative sanctions by the authority must also be duly justified, bearing in mind that they are merely a means of achieving the objectives for which they were intended (SK 6/12). In light of this concept – as should be recalled – a party to sanction proceedings will be entitled to be exempted from administrative liability (II GSK 1019/19) if it demonstrates that it did everything that could reasonably be expected of it to prevent the breach of the law from occurring (P 12/01; Niżnik-Dobosz, 2011, p. 135). An investment fund company, however, would be liable – in the hypothetical scenario where the positions of the Polish Financial Supervision Authority (KNF) and the Provincial (Voivodship) Administrative Court in Warsaw were to be shared – for conduct (a breach of the law by an entity entrusted with carrying out activities) over which the company had no influence and could not have had any influence, and would thus bear administrative liability despite having done everything that could reasonably be expected of it to prevent a breach of the law.

Seventhly, it is worth noting that the KNF's position was issued on 15 May 2018, whilst the KNF's administrative decisions challenged before the Provincial (Voivodship) Administrative Court in Warsaw – and which were the subject of assessment by that court in the judgment that inspired this article – relate to the activities of this investment fund company and its cooperation with the so-called securitisation fund servicer, a collaboration which took place primarily before 15 May 2018. Consequently, we were faced with the retroactive application of a sanctioning provision – which in itself undermined the principles of a democratic state governed by the rule of law due to a breach of the fundamental principle of intertemporal law, namely the principle of non-retroactivity (*lex retro non agit*). It is worth recalling here that this principle amounts to a prohibition on applying newly enacted regulations to events that took place before those provisions came into force, events to which the law had not previously attached the legal consequences provided for by the new regulations, and thus to the requirement that legal events be governed by the provisions of substantive law in force at the time the legal event in question occurred (VI SA/Wa 8176/22; VI SA/Wa 2129/21; VI SA/Wa 179/21). In this context, the Provincial (Voivodship) Administrative Court in Warsaw – in another judgment – rightly pointed out that: *in administrative case law, it is rightly and consistently held on this matter that the absence of an unambiguous position on the part of the legislature as to which provisions should apply to events occurring prior to the entry into force of new provisions, does not, however, imply the existence of a 'regulatory gap', as this should be filled by way of interpretation by the authorities applying the law; nevertheless, the rule in this regard cannot be the automatic application of the provisions of the new Act to legal situations (events) occurring prior to the date of its entry into force. The question of whether to give precedence to the principle of the continued application of existing provisions or to the principle of the direct application of the new Act must be determined on a case-by-case basis, taking into account*

the specific circumstances of the case and the nature of the provisions subject to amendment; one must also take into account the consequences that the adoption of one principle or the other may entail (cf. the resolution of the seven-judge panel of the Supreme Administrative Court of 10 April 2006, ref. no. I OPS 1/06, ONSAiWSA 2006 No. 3, item 71) (VISA/Wa 8176/22).

Eighthly, it should be noted that the purely hypothetical assumption that the ongoing supervision referred to in Article 45a(4a) of the Act on Financial Instruments must be effective supervision, would stand in clear opposition to another of the principles of administrative liability, namely the individual nature of administrative liability. In this purely hypothetical situation, the investment fund company would, in fact, bear administrative liability for the actions of a third party, over which the investment fund company had no influence and could not have had any influence, where – it bears repeating – the investment fund company is equipped solely with private-law supervisory instruments (without administrative authority) and is not equipped with administrative-law instruments (i.e. supervisory instruments based on administrative authority).

The foregoing leads to the conclusion that it cannot, under any circumstances, be inferred from the wording of Article 45a(4a) in conjunction with Article 45a(4)(7) of the Act on Investment Funds that the ongoing supervision referred to in that provision is intended to be effective supervision. Such a position is, in fact, at odds both with the principles governing the interpretation of legal provisions and with the principles underpinning the structure of administrative liability. At this point – somewhat as an aside to the present discussion – it should be noted that the sole ‘argument’ in favour of the position that the ongoing supervision under Article 45a(4a) of the on investment funds is to be effective is the purely ‘judgemental’ position of the Polish Financial Supervision Authority (KNF), in which the Polish Financial Supervision Authority (KNF) directly and explicitly stated that this is solely the assessment of the UKNF and at no point indicated that this position constitutes a reference to provisions of generally applicable law.

It should be emphasised that this position – i.e. both the KNF’s position of 15 May 2018 and the KNF’s administrative decisions, which were challenged before the Provincial (Voivodship) Administrative Court in Warsaw, as well as the position of the Provincial (Voivodship) Administrative Court in Warsaw expressed in its judgment of 18 April 2024 – is particularly detrimental to trading practice. The hypothetical adoption and establishment of this position in practice will imply that a financial institution entrusting – by way of an outsourcing agreement – the performance of activities to a third party will bear full administrative liability for the actions of that entity, which will take place under the so-called ‘vicarious liability’ model and in breach of the aforementioned principles of administrative liability.

SUMMARY

The position – originally expressed by the Polish Financial Supervision Authority (KNF) and subsequently adopted by the Provincial (Voivodship) Administrative Court in Warsaw – as set out in the judgment of the Provincial (Voivodship) Administrative Court in Warsaw of

18 April 2024, appears to be particularly threatening to the day-to-day operations of financial institutions and their practice of outsourcing activities to third parties. A purely hypothetical acceptance of this position – and thus the assumption that the supervision exercised by a financial institution, acting as the so-called ‘outsourcer’, over the activities of the so-called ‘insourcer’ must be effective – would give rise to numerous adverse legal consequences which, should they materialise – may even lead to a reluctance on the part of financial institutions to entrust the performance of activities to third parties; such entrustment would, after all, entail an excessive risk of administrative liability for that financial institution.

It is conceivable, after all, that the so-called ‘insourcer’ might commit a breach of the law, over which the financial institution – despite exercising ongoing supervision over its activities – had no influence and could not have had any influence, and which the financial institution – despite exercising day-to-day supervision and exercising professional diligence in this regard – could not, under any circumstances, have prevented. In such a situation, such a breach of the law – which, it must be emphasised, was committed by the so-called ‘insourcer’ and over which the so-called ‘outsourcer’ – despite exercising ongoing supervision over the insourcer’s activities and exercising professional diligence – had no influence whatsoever over, nor could it have had any influence over, and could not have prevented, will be treated by the Polish Financial Supervision Authority (KNF) as an administrative offence on the part of the financial institution (the outsourcer) and will entail administrative liability on the part of that financial institution. In such a case, we shall be dealing with the administrative liability of the financial institution, which administrative liability will stand in clear opposition – as indicated above – to the principles governing the interpretation of substantive law, which provisions form the legal basis for the KNF to apply ex post supervisory measures, as well as in clear opposition to the principles of administrative liability. Such action by the KNF would, in turn, constitute a clear violation of the foundations upon which the structure of a democratic state governed by the rule of law is built.

It should be emphasised here that the above risk is all the more serious given that the article was not based on a purely doctrinal interpretation of the provision in Article 45a(4a) of the Act on Financial Instruments and the position set out in the academic literature, but on a non-final judgment of the Provincial (Voivodship) Administrative Court in Warsaw dated 18 April 2024, in which the Court upheld the KNF’s actions as correct, where the KNF had applied precisely such a law-making interpretation of the provision in Article 45a(4a) of the Act on financial investment institutions and held that ongoing supervision must be effective. In conclusion, I would like to express the hope that the above will be recognised by the Supreme Administrative Court, which will exercise its cassation powers in the aforementioned case and eliminate this – the position of the Polish Financial Supervision Authority (KNF) and the Provincial (Voivodship) Administrative Court in Warsaw, which is extremely detrimental to the functioning of financial institutions and, above all – in the author’s view – lacks sufficient basis in the linguistic interpretation and principles of application of the sanctioning provisions.

BIBLIOGRAPHY

Literature

- Boć, J. (1994). [In:] Boć, J. (ed.), *Administrative Law*, Wrocław.
- Chełmoński, A. (2005). [In:] Borkowski, A., Chełmoński, A., Guziński, M., Kiczka, K., Kieres, L., & Kocowski, T., *Administrative Economic Law*, Wrocław.
- Dumkiewicz, M. (2018). [In:] *The Investment Funds Act. Commentary. Volume I. Articles 1–157*, Kidyba, A. (ed.), Warsaw, Article 45(a), Lex/el.
- Ferran, E., Howell, E., & Steffek, F. (2023). *Principles of Corporate Finance Law*, 3rd Edition, Oxford University Press, Oxford.
- Fuchs, B. (2019). *Commentary on Article 353¹ of the Civil Code*. [In:] Fras, M., & Habdas, M. (ed.), *The Civil Code. Commentary. Volume III. Obligations. General Part (Articles 353–534)*, Warsaw.
- Gajek, Ł. (2018). *Financial penalties in the Broadcasting Act – a critical analysis*, Online Anti-trust and Regulatory Quarterly 2019, No. 3 (8).
- Krawczyk, A. (2019). [In:] Chróścielewski, W., & Kmiecik Z. (ed.), *Code of Administrative Procedure. Commentary*, Warsaw, Lex/el., commentary on Article 189b, point 3.
- Moloney, N. (2014). *EU Securities and Financial Markets Regulation*, Oxford University Press, Oxford.
- Morawski, L. (1997). *Principles of Legal Interpretation*, Toruń, pp. 202–203.
- Mroczkowski, R. (2011). *Supervision of Investment Funds*, Warsaw.
- Niżnik-Dobosz, I. (2011). *The Axiology of Sanctions in Administrative Law*. [In:] Stahl, M., Lewicka, R., & Lewicki, M. (ed.), *Administrative Sanctions*, Warsaw.
- Nowicki, D. K., & Peszkowski, S. (2015). *A Few Remarks on the Specific Nature of Administrative Financial Penalties*. [In:] Błachucki, M. (ed.), *Administrative Financial Penalties in a Democratic State Governed by the Rule of Law. Office of the Ombudsman*, Warsaw.
- Rodzinkiewicz, M., & Sarkowicz, J. (2023). *Commentary on Article 45a of the Investment Funds Act*. [In:] *The Investment Funds Act. Commentary* (series editor: Osajda K.; volume editor: Dybiński P.), Warsaw.
- Sobczak, J. (2021). [In:] *Freedom of economic activity. An attempt to assess Polish legal regulations*, Glumińska-Pawlic, J., & Przywora, B. (ed.), Warsaw.
- Sowiński, R. (2007). *Freedom and Statutory Freedom of Economic Activity*, Wrocław.
- Starościak, J. (1964). *Elements of the Science of Administration*, Warsaw.
- Szydło, M. (2005). *Freedom of economic activity*, Warsaw.

Case law of the Constitutional Tribunal

Judgment of the Constitutional Tribunal of 11 January 2000, reference number: K 7/99, OTK ZU 2000, No. 1, item 2.

Judgment of the Constitutional Tribunal of 4 July 2002, reference number: P 12/01, OTK-A 2002, No. 4, item 50.

Judgment of the Constitutional Tribunal of 26 November 2003, reference number: SK 22/02, OTK ZU 2003, No. 9A, item 97.

Constitutional Tribunal judgment of 5 May 2004, reference number: P 2/03; LEX.

Judgment of the Constitutional Tribunal of 9 October 2007, reference number: SK 70/06, Legalis.

Judgment of the Constitutional Tribunal of 22 September 2009, reference number: P 46/07, OTK ZU 2009, No. 8A, item 126.

Judgment of the Constitutional Tribunal of 18 July 2013, reference number: SK 18/09, Legalis.

Judgment of the Constitutional Tribunal of 1 July 2014, reference number: SK 6/12, Legalis.

Case law of the administrative courts

Judgment of the Supreme Administrative Court of 30 March 2004, reference number: GSK 31/04; CBOSA.

Judgment of the Supreme Administrative Court of 1 June 2004, reference number: GSK 30/04; CBOSA.

Judgment of the Supreme Administrative Court of 27 May 2005, reference number: II GSK 972/08; CBOSA.

Judgment of the Supreme Administrative Court of 6 March 2014, reference number: I OSK 653/13; Legalis.

Judgment of the Supreme Administrative Court of 18 April 2019, reference number: I OSK 1750/17; Legalis.

Judgment of the Supreme Administrative Court (NSA) of 22 November 2019, reference number: II GSK 1019/19; CBOSA; Judgment of the Provincial (Voivodship) Administrative Court (WSA) in Warsaw of 26 October 2011, reference number: VI SA/Wa 1410/11; CBOSA.

Judgment of the Provincial (Voivodship) Administrative Court in Warsaw of 4 December 2012, reference number: VI SA/Wa 1957/12; Legalis.

Judgment of the Provincial (Voivodship) Administrative Court in Warsaw of 20 November 2013, reference number: VI SA/Wa 2442/13; CBOSA.

Judgment of the Provincial (Voivodship) Administrative Court in Warsaw of 21 September 2017, reference number: IV SA/Wa 1300/17, CBOSA.

Judgment of the Provincial (Voivodship) Administrative Court in Olsztyn of 9 July 2020, reference number: II SA/Ol 293/20; CBOSA.

Judgment of the Provincial (Voivodship) Administrative Court in Warsaw of 27 October 2020, reference number: VI SA/Wa 42/20, CBOSA.

Judgment of the Provincial (Voivodship) Administrative Court in Warsaw of 15 July 2021, reference number: VI SA/Wa 179/21; CBOSA.

Judgment of the Provincial (Voivodship) Administrative Court in Łódź of 23 July 2021, reference number: II SA/Łd 203/21; LEX.

Judgment of the Provincial (Voivodship) Administrative Court in Warsaw of 4 January 2022, reference number: VI SA/Wa 2129/21; CBOSA.

Judgment of the Provincial (Voivodship) Administrative Court in Warsaw of 22 August 2023; case number: VI SA/Wa 8176/22; Legalis.

Judgment of the Provincial (Voivodship) Administrative Court in Warsaw of 18 April 2024, case number: VI SA/Wa 8336/22; VI SA/Wa 8336/22 – Judgment of the Provincial Administrative Court in Warsaw of 18 April 2024 (nsa.gov.pl) [accessed: 29.12.2025].

Case law of the ordinary courts

Judgment of the Court of Appeal in Gdańsk of 18 November 2015, reference number: III AUa 940/15, LEX.

Judgment of the Regional Court in Szczecin of 19 March 2020, case number: III AUa 580/19, LEX.

Judgment of the Regional Court of Appeal in Szczecin of 29 April 2021, case number: III AUa 15/21, LEX.

Judgment of the Supreme Court of 10 June 1999, reference number: II UKN 685/98, OSN 2001, No. 17, item 655.

Judgment of the Supreme Court of 25 June 2007, case number: II UK 236/06, OSNP 15–16/2008/233.

Judgment of the Supreme Court of 20 March 2014, reference number: II CSK 290/13, OSNC 2015/4, item 43.

Judgment of the Supreme Court of 24 September 2014, case number: III SK 59/13, Legalis No. 1079955.

Resolution of the Supreme Court of 21 January 2016, reference number: III SZP 4/15, Legalis.

Judgment of the Supreme Court of 6 October 2016, case number: III SK 51/15, Legalis.

Order of the Supreme Court of 26 October 2016, reference number: III SK 75/15, Legalis.

Court of Competition and Consumer Protection

Judgment of the Court of Competition and Consumer Protection (SOKiK) of 15 April 2019, case no. XVII AmE 92/17, Legalis no. 2252765.

Other

Position of the Polish Financial Supervision Authority on investment fund companies outsourcing the management of closed-end investment fund portfolios; Position_of_the_Polish_Financial_Supervision_Authority_on_the_outsourcing_of_fund_portfolio_management_61766.pdf [accessed: 29.12.2025].