

NAUKI PRAWNE / LEGAL SCIENCES

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THE OBLIGATION OF ENTREPRENEURS TO PERFORM TASKS FOR THE ARMED FORCES OF THE REPUBLIC OF POLAND

Abstract: The aim of these scientific considerations are issues related to the participation of entrepreneurs in the duties specified by the Constitution for the defense of the Republic of Poland. The article undertakes a comprehensive analysis of current legal regulations imposing on entrepreneurs a number of duties related to the implementation of tasks of a defense nature for the Armed Forces of the Republic of Poland. The author analyzes issues related to the organization of the process of implementing defense tasks for the army, the method of their execution, benefits in kind imposed on entrepreneurs in times of peace, mobilization and war, and the financing of the indicated defense tasks.

Keywords: administrative law, entrepreneurs, national defense

OBOWIAZEK REALIZACJI PRZEZ PRZEDSIĘBIORCÓW ZADAŃ NA RZEC SIŁ ZBROJNYCH RZECZYPOSPOLITEJ POLSKIEJ

Streszczenie: Celem niniejszych rozważań naukowych są zagadnienia związane z udziałem przedsiębiorców w określonych w drodze konstytucyjnej obowiązkach na rzecz obrony Rzeczypospolitej Polskiej. W artykule podjęto się kompleksowej analizy aktualnych przepisów prawnych nakładających na przedsiębiorców szereg obowiązków związanych z realizacją zadań o charakterze obronnym na rzecz Sił Zbrojnych RP. Autor poddaje analizie zagadnienia związane z organizowaniem procesu realizacji zadań obronnych na rzecz wojska, sposobem ich wykonywania, świadczeniami rzeczowymi nakładanymi na przedsiębiorców w czasie pokoju, mobilizacji i w czasie wojny, oraz finansowaniem wskazanych zadań obronnych.

Słowa kluczowe: prawo administracyjne, przedsiębiorcy, obrona narodowa

Introduction

At the outset of considerations, it should be noted that in the megasystem of the capitalist economy, entrepreneurs play a significant role, which consists in reforming or revolutionising the pattern of production through the use of new

ideas or, generally speaking, the hitherto unrecognised technical possibility of producing a new commodity or producing a known commodity by means of new methods, by making available new sources of supply of raw materials or new outlets for the manufactured production, through organisational changes in industry, etc.¹

The contemporary defence needs of the state are so enormous that meeting them is only possible if all the material resources of the state, including those outside the ranks of the army (military administration)², are used to supply the army. This is, of course, due to the fact that the demands of the armed forces are often not possible through the army's own actions, so that the army's own resources are sometimes insufficient³. Besides, the First World War already proved the high degree to which economic life participates in direct military actions by participating in the supply of materials and products to the army, so much so that the outcome of combat operations remained dependent on the supply of the army by private entities, including entrepreneurs⁴.

In economic and political conditions, the effectiveness of defence preparations without the participation of entrepreneurs is impossible, which means that the proper preparation and implementation of defence tasks by entrepreneurs fundamentally conditions the achievement of defence readiness by executive components of the state defence system, and thus influences the effectiveness of the response in the event of the occurrence of a politico-military crisis⁵.

In the course of performing tasks in the field of state defence, military authorities may demand necessary assistance from entrepreneurs and other entities, while these are obliged, within the scope of their activities, to provide such assistance⁶. Undoubtedly, the imposition of an obligation by an administrative body on an entrepreneur as an addressee of an administrative decision always constitutes a potential nuisance and annoyance⁷, which, however, is dictated by overriding objectives in the form of ensuring security of the general public through organisational actions of the authorities in favour of defence. The constitutional restriction on the conduct of economic activity, which is of an exceptional nature

¹ See J.A. Schumpeter, *Kapitalizm, socjalizm, demokracja*, translated by M. Rusiński, Warszawa 2009, p. 162.

² Cf. W. Lidwa, D. Nowak, G. Lewandowski, *Prawno-organizacyjne zasady działania administracji publicznej i organów dowodzenia sił zbrojnych w warunkach zewnętrznego zagrożenia państwa i w czasie wojny*, „Wiedza Obronna” 2021, No. 4(277), pp. 51–65; M. Wojciszko, G. Lewandowski, *Współdziałanie (współpraca) Sił Zbrojnych RP z administracją publiczną podczas reagowania obronnego*, „Wiedza Obronna” 2023, No. 3(284), pp. 1–36.

³ See M. Konarski, *Constitutional Public Burdens as Part of the Defence Economy*, „Przegląd Prawno-Ekonomiczny” 2023, No. 2, pp. 79–100.

⁴ See S. Sosabowski, *Gospodarcza konstytucja obrony państwa*, „Bellona” 1927, No. 1(28), p. 44.

⁵ See M. Kuliczkowski, *Przedsiębiorcy w procesie przygotowań obronnych w Polsce. Stan prawny i organizacyjny przygotowań – próba systematyzacji*, „Wiedza Obronna” 2022, No. 4(281), pp. 71–86.

⁶ Article 9 of the Act of 11 March 2022 on defence of the Homeland (Journal of Laws 2024, item 248).

⁷ See the Judgment of the Provincial Administrative Court in Białystok of 8 November 2016, Ref. No. II SA/Bk 616/16; the Judgment of the Supreme Administrative Court of 18 December 2018, Ref. No. II OSK 250/17.

and exclusively due to an important public interest⁸, is deemed to fulfil the scope of tasks imposed on entrepreneurs, which include supporting the efforts of the Armed Forces in the performance of their duty to protect the independence of the state and the indivisibility of its territory and to ensure the security and inviolability of the borders⁹.

Constitutional duties related to the tasks for the defence of the state are an important manifestation of care for the common good, to which all citizens of the Republic are obliged, including entrepreneurs¹⁰. Each of the OECD/EU member states individually shapes its defence policy within the framework of its internal legislation, including with regard to the performance of tasks by entrepreneurs for the benefit of the army or the use of benefits in kind for the defence of the state¹¹. Under Polish legislation, an entrepreneur is understood to be a natural person, a legal person or an organisational unit that is not a legal person, to which legal capacity is granted by law, performing business activity. Entrepreneurs are also partners in a civil partnership within the scope of their business activity¹². At the same time, it should be noted that the Act on defence of the homeland excludes foreign persons and foreign entrepreneurs from the circle of providers, i.e. a foreign person performing economic activity abroad and a Polish citizen performing economic activity abroad¹³.

The act of 23 August 2001¹⁴, in force in Poland for many years, despite several updates, was not able to meet both contemporary political, military and economic challenges, as well as expectations enabling the systemic imposition

⁸ Article 22 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483).

⁹ See *Obrona Ojczyzny. Komentarz*, ed. by H. Królikowski, Warszawa 2023, p. 1171.

¹⁰ See K. Kozłowski, *Obywatelski obowiązek „obrony Ojczyzny” w świetle postanowień Konstytucji RP z 1997 r.*, „Przegląd Prawa Publicznego” 2020, No. 7–8, pp. 196–214.

¹¹ See M. Konarski, *Rekwizycje wojskowe w prawie francuskim*, „Opolskie Studia Administracyjno-Prawne” 2022, No. 1(20), pp. 75–97; M. Piechowicz, *Ewolucja Wspólnej Polityki Bezpieczeństwa i Obrony UE w kontekście teorii integracji oraz realizowanych działań*, „Przegląd Politologiczny” 2023, No. 1(28), pp. 37–51; J.M. Fiszer, *Reforma i ewolucja Wspólnej Polityki Bezpieczeństwa i Obrony Unii Europejskiej w latach 2016–2023*, „Politeja” 2024, No. 1(88), pp. 121–137.

¹² Article 4(1) and (2) of the Act of 6 March 2018 – Entrepreneurs’ Law (Journal of Laws 2023, item 221, 641, 803, 1414 and 2029). Cf. P. Wechta, *Przedsiębiorca w teorii Josepha A. Schumpetera*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 1997, No. 4, pp. 123–134; M. Etel, *Prawo przedsiębiorców – nowa jakość i stare problemy*, „Acta Universitatis Wratislaviensis” 2019, Tome 329, pp. 65–77; H. Nowicki, K. Kucharski, *Pojęcie działalności gospodarczej w Prawie Przedsiębiorców*, „Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego” 2021, No. 1(18), pp. 185–204; K. Zapolska, *Kształtowanie się pojęcia przedsiębiorcy i przedsiębiorstwa w prawie cywilnym oraz prawie gospodarczym w Polsce*, „Miscellanea Historico-Iuridica” 2024, No. 2(23), pp. 46–71.

¹³ Article 3(7) of the Act of 6 March 2018 on the principles of participation of foreign entrepreneurs and other foreign persons in economic turnover on the territory of the Republic of Poland (Journal of Laws 2022, item 470). Cf. A. Malarewicz-Jakubów, *Przedsiębiorcy zagraniczni prowadzący działalność gospodarczą w Polsce*, in: *Państwo, gospodarka, prawo. Księga dedykowana Profesorowi Cezaremu Kosikowskiemu z okazji jubileuszu pracy naukowej na Wydziale Prawa Uniwersytetu w Białymstoku*, ed. by A. Piszcz, M. Olszak, M. Etel, Białystok 2015, pp. 103–111.

¹⁴ The Act of 23 August 2001 on the organisation of tasks for state defence performed by entrepreneurs (Journal of Laws No. 122, item 1320).

of tasks for state defence, exercising supervision over their performance, and motivating entrepreneurs to perform them. In view of the above, the Polish legislator therefore decided to amend the hitherto binding regulations in the area of the organisation of tasks for state defence performed by entrepreneurs, including those of particular economic and defence significance. In this way, a number of provisions relating to the obligations of entrepreneurs for the Armed Forces were included in the Act of 2022, which, according to the legislator's assumption, is to comprehensively regulate issues concerning the broadly understood defence of the Republic of Poland¹⁵.

The provisions of the act and sub-statutory acts constituting the subject of our analysis provide for the possibility of imposing tasks for defence on each entrepreneur by the Minister of National Defence on the basis of an administrative decision concerning the performance of production, repairs or provision of services for the state's defence in conditions of a threat to the state's security and in wartime, as well as the maintenance in a state of permanent state defence readiness of production, repair or service capacities necessary for the performance of tasks included in the Plan for securing the needs of the Armed Forces implemented by entrepreneurs. The performance of these tasks, on the other hand, takes place on the basis of a contract (defining, inter alia, the manner of performance and financing of these tasks in the state of permanent defence readiness, while all works related to the preparation for the performance of these tasks, which are of a planning nature, will be financed from the entrepreneur's own funds) concluded with the entrepreneur by the body that issued the decision imposing the obligation to perform them.

Organisation of tasks performed by entrepreneurs for the Armed Forces

Tasks performed by entrepreneurs for the Armed Forces include: 1) performance of production, repairs or provision of services in conditions of a threat to state security or in wartime; 2) maintenance in peacetime of production, repair or service capacities necessary for the performance of the tasks just indicated 3) militarisation; 4) protection of objects of particular importance for state security or defence; 5) other tasks performed for the benefit of the Armed Forces and allied troops¹⁶.

¹⁵ The Act of 11 March 2022 on defence of the Homeland (Journal of Laws, item 655). See K. Chochowski, *Ustawa o obronie Ojczyzny – nowa jakość bezpieczeństwa państwa?*, „Rocznik Nauk Społecznych” 2023, No. 4(51), pp. 187–202; U. Staśkiewicz, *Obowiązek obrony Ojczyzny w świetle polskich regulacji prawnych*, „Prawo i Więź” 2024, No. 5(52), pp. 747–767.

¹⁶ Regulation of the Council of Ministers of 28 April 2022 on militarisation (Journal of Laws, item 1198). Cf. the Judgment of the Provincial Administrative Court in Bydgoszcz of 19 February 2024, Ref. No. II SA/Bd 1325/23. See B. Rosa, A. Zalewski, *Militaryzacja*, „Wiedza Obronna” 2006, No. 3, pp. 104–147; S. Demedziuk, *Rola przedsiębiorców o szczególnym znaczeniu gospodarczo-obronnym w Polsce: teoria i praktyka*, „Wiedza Obronna” 2017, No. 1–2, pp. 181–201.

Tasks for the Armed Forces are imposed on the entrepreneur by way of an administrative decision, issued by the Minister of National Defence (MND), who may amend or revoke the decision in the event of circumstances causing that its performance is not in the interest of the Armed Forces or is impossible by the entrepreneur.

If the execution of the decision is impossible, the entrepreneur shall submit a request to the Ministry of Defence to amend or revoke the decision, justifying it by the impossibility of performing tasks for the Armed Forces. The Minister shall, within 30 days from the date of receipt of the application, assess its validity and either reject the application or issue a decision upholding, revoking or amending the decision.

The performance of tasks concerning production, repair or provision of services to the Armed Forces in conditions of a threat to state security or in wartime, as well as the maintenance in peacetime of production, repair or service capacities necessary for the performance of tasks, shall take place on the basis of a contract concluded with the entrepreneur by the Ministry of Defence.

Other tasks performed for the Armed Forces and allied forces are imposed on the entrepreneur by means of an administrative decision issued by a competent government administration body in agreement with MND. In turn, the execution of these tasks takes place pursuant to an agreement concluded with the entrepreneur by the authority that issued the decision imposing such tasks, within the framework of specific material and financial commitments.

However the tasks of the entrepreneur in the scope of militarisation include supplementing its needs in terms of personnel, equipment and materials resulting from the structure of the unit intended for militarisation or militarised and other undertakings in the scope of organisational and mobilisation preparations. Nevertheless the tasks of entrepreneurs in the field of protection of objects of particular importance for the security or defence of the state refer to construction objects, equipment, installations, services included in the uniform list of objects, installations, equipment and services included in the critical infrastructure¹⁷ and tasks from the area of critical infrastructure protection¹⁸.

The planning document for the implementation of tasks is the Plan for securing the needs of the Armed Forces implemented by entrepreneurs, hereinafter referred to as the "Plan", which defines the tasks that can be imposed on entrepreneurs implementing tasks for the Armed Forces, the production and service capabilities of entrepreneurs covered by the Plan, a list of cooperators and subcontractors with a breakdown into foreign and domestic suppliers of materials, raw materials, components of assemblies, subassemblies and equipment to secure the execution of tasks, and a list of needs concerning the creation of strategic reserves for

¹⁷ Article 5 of the Act of 22 August 1997 on the protection of persons and property (Journal of Laws 2021, item 1995).

¹⁸ Article 6(7) of the Act of 26 April 2007 on crisis management (Journal of Laws 2023, item 122). See more K. Stec, *Wybrane prawne narzędzia ochrony infrastruktury krytycznej w Polsce*, „Bezpieczeństwo Narodowe” 2011, No. 19, pp. 181–197; M. Barć, *Rodzaje ochrony infrastruktury krytycznej*, „Rocznik Bezpieczeństwa Morskiego” 2021, Special Issue, pp. 1–15.

a period of at least 1 month after the launch of the Plan by entrepreneurs executing tasks for the Armed Forces¹⁹.

The Plan is developed for a period of 5 years and for the next period not more than 12 months before the expiry of the period covered by the previous Plan. Work on the draft Plan is undertaken by the MND²⁰. In the event that an update requires a change in its structure or will cause difficulties in the use of the Plan. The Minister of National Defence, while developing the Plan, takes into account the national interests of the Republic of Poland in the field of national security, the international obligations of the Republic of Poland, the needs of the Armed Forces resulting from the analysis and estimation of the risk of execution of tasks in the conditions of a threat to national security and in the time of war, as well as the possibilities of placing tasks for the Armed Forces with entrepreneurs.

The decision to launch the Plan for securing the needs of the Armed Forces realised by entrepreneurs is made in the form of a decree by the Prime Minister on the proposal of the Ministry of Defence. The decree specifies the reason for activation of the Plan, its scope of activation, entrepreneurs at which the Plan is activated, and the date of its activation with a view to securing the state defence in conditions of an external threat to state security²¹. In the case of activation of the Plan, an entrepreneur performs tasks for the Armed Forces with priority over other undertakings resulting from its business activity.

The Polish legislator has also provided for the possibility of the implementation of tasks by entrepreneurs for the special services. Pursuant to the adopted regulations, the Ministry of Defence, on the basis of an application submitted by the Minister of the Coordinator of Special Services, may express consent to the realisation of tasks for the special services²². Upon acceptance of the application, the Coordinator of Special Services submits to the MND a list of the needs of special services in the field of production and repair of military equipment resulting from the analysis and estimation of the risk of the implementation of tasks in conditions of a threat to state security and during war, to be secured within the framework of the Plan. Tasks for special services are imposed on the entrepreneur by an administrative decision issued by the Minister of National Defence. The performance of tasks takes place on the basis of a contract concluded with the entrepreneur by the administrator of the budgetary part indicated by the Coordinator of Special Services, for the benefit of which the entrepreneurs will perform the tasks included in the Plan. The administrator of the budgetary part indicated by the Coordinator of Special Services shall grant a targeted subsidy

¹⁹ Article 28a(1) of the Act of 17 December 2020 on Strategic Reserves (Journal of Laws 2024, item 1598, consolidated text of 30 October 2024).

²⁰ Regulation of the Minister of Defence of 22 April 2022 on the development of the Plan for securing the needs of the Armed Forces implemented by entrepreneurs (Journal of Laws, item 949).

²¹ Cf. W. Kitler, *Prawno-organizacyjne aspekty funkcjonowania państwa w warunkach zewnętrznego zagrożenia bezpieczeństwa państwa i w czasie wojny*, „Wiedza Obronna” 2021, No. 4(277), pp. 13–33.

²² Article 4(2)(3) of the Act of 9 June 2006 on the Military Counterintelligence Service and the Military Intelligence Service (Journal of Laws 2024, item 1405, consolidated text of 24 August 2024).

for entrepreneurs performing tasks for special services, taking into account the limit of financial resources provided for this purpose in the Budget Act²³.

We should return for a moment to the aforementioned securing of the needs of the Armed Forces carried out by entrepreneurs. This Plan may be implemented either partially or in its entirety. Selective activation of the Plan is considered to be the activation of the potential of entrepreneurs performing tasks for the Armed Forces in order for them to perform the tasks in the field of production, repair or provision of services included in the Plan, consisting in the activation of the potential of only selected entrepreneurs in order for them to perform all or some of the tasks, as well as the activation of the potential of all entrepreneurs in order for them to perform selected tasks. Full activation of the Plan is considered to be the implementation of all tasks by all entrepreneurs included in the Plan.

Selective activation of the Plan or its full activation may take place in the case of the emergence of an external threat to the security of the state or in time of war, and the tasks to be performed by entrepreneurs may be performed: in the case of activation of the Plan to the full extent with the use of the structure and potential of the militarised unit²⁴ – if the entrepreneur has its posts, and in other cases with the use of the peacetime structure.

The application of the MND, concerns selective or full launch of the Plan. The application should contain, in particular, the indication of the task to be performed with justification, the sources of financing of the tasks to be performed by entrepreneurs after the activation of the Plan, the indication of the entrepreneurs at which the Plan is activated, and the indication of the date of activation of the Plan. The Minister of Defence shall inform entrepreneurs about the launch of the Plan and the scope of tasks to be performed.

Only an entrepreneur who meets all the statutory requirements may be admitted to perform tasks for the Armed Forces. In particular, the entrepreneur must possess adequate production, repair, or service capacities enabling the execution of the specified tasks. Furthermore, an entrepreneur who is a natural person must not have been validly convicted of offences gravely infringing the legal order, including in particular: participation in an organised criminal group or association established for the purpose of committing a criminal or fiscal offence; trafficking in human beings; bribery or paid protection; financing of offences of a terrorist nature; offences of a terrorist nature; offences against economic turnover; offences against the credibility of documents; the use of child labour; and fiscal offences²⁵.

An entrepreneur performing tasks for the Armed Forces shall be obliged to submit written information to the Ministry of Defence in the event of dissolution or liquidation of the entrepreneur, transfer of the registered office of the

²³ See *Obrona Ojczyzny. Komentarz*, pp. 1183–1184.

²⁴ Cf. M. Kulickowski, *Militaryzacja szczególną formą realizacji zadań obronnych: wybrane problemy przygotowań do militaryzacji*, „Wiedza Obronna” 2011, No. 2, pp. 67–98.

²⁵ The Act of 6 June 1997 – Penal Code (Journal of Laws of 2025, item 383, consolidated text of 26 March 2025); the Act of 15 June 2012 on the effects of entrusting work to foreigners residing in the territory of the Republic of Poland in violation of regulations (Journal of Laws, item 1745).

entrepreneur, deletion of the subject of the entrepreneur's activity affecting the performance of tasks for the Armed Forces, and loss of the possibility to use or dispose of, make a donation, change of use or abandonment of the component of production, repair or service capacity declared by the entrepreneur as necessary for the performance of tasks for the Armed Forces. An entrepreneur entrusted with the performance of tasks for the Armed Forces, upon the occurrence of any circumstance rendering the continued fulfilment of statutory obligations impossible, shall forthwith, and in any case no later than within 14 days from the occurrence thereof, notify the Ministry of Defence in writing accordingly.

Manner of performance of tasks by entrepreneurs under the defence obligation

The performance of tasks under the state defence duty is the responsibility of all authorities and government administration and other state bodies and institutions, local government bodies, entrepreneurs, non-governmental organisations and other entities, as well as every citizen, to the extent specified in the laws²⁶.

The performance of tasks within the framework of state defence preparations in the scope of operational planning takes place by means of drawing up, within a new planning cycle, the Defence Response Plan of the Republic of Poland by the Ministry of Defence on the basis of arrangements adopted in the national security strategy²⁷. The Prime Minister imposes operational tasks on the authority by approving the Defence Response Plan of the Republic of Poland, taking into account the competence of the authority in question, its forces and resources, as well as the forces and resources of the organisational units subordinated to the authority or supervised by it and entrepreneurs. As part of defence programming, a Plan for securing the needs of the Armed Forces implemented by entrepreneurs is also drawn up²⁸.

According to the provisions of Polish law, the execution of defence tasks consists in: 1) creation of organisational conditions for planning and execution of defence tasks; 2) co-ordination of planning and execution of defence tasks; 3) co-operation of public administration bodies, entrepreneurs, other organisational units and non-governmental organisations in planning and execution of defence tasks; 4) co-operation of public administration bodies with territorial executive

²⁶ Article 7 of the Act of 11 March 2022 on defence of the Homeland (Journal of Laws 2024, item 248).

²⁷ See T.J. Kęsoń, *Planowanie obronne i cywilne w Polsce – uwarunkowania prawne a proces realizacji*, „De Securitate et Defensione. O Bezpieczeństwie i Obronności” 2020, No. 1(6), pp. 50–74.

²⁸ Regulation of the Council of Ministers of 14 January 2025 on the conditions and mode of planning and financing of tasks performed within the framework of state defence preparations realised by government administration bodies, local government bodies and entrepreneurs (Journal of Laws, item 73).

bodies of MND in planning and execution of defence tasks; 5) cooperation of public administration bodies with medical entities supervised by MND in planning and execution of defence tasks in the area of medical security of the Armed Forces of the Republic of Poland and allied forces; 6) provision of conditions for transferring information and decisions concerning planning and execution of defence tasks at all levels of public administration²⁹.

In the performance of defence tasks, entrepreneurs are obliged to take into consideration the defence needs of the State. This obligation encompasses, in particular, the maintenance, reconstruction, and modernisation of the national defence system, including the Armed Forces of the Republic of Poland. It further extends to the preparation of subordinate or supervised organisational units for the execution of defence tasks assigned to them during specific states of defence readiness.

Entrepreneurs are likewise required to ensure preparedness for the uninterrupted functioning of public administration bodies, other entrepreneurs, organisational units, and non-governmental organisations, as well as to provide support to the Armed Forces of the Republic of Poland and to allied forces during heightened states of defence readiness. Finally, they are obliged to contribute to the preparation of the population and to the establishment of conditions ensuring its protection in the event of war.

The creation of organisational conditions for the planning and execution of defence tasks, taking into account the type of tasks, as well as the capabilities of their executors, consists in ensuring: 1) efficiency, continuity and timeliness of operations in public administration bodies, entrepreneurs and other organisational units, as well as in non-governmental organisations in particular states of state defence readiness; 2) feasibility of performing defence tasks, including their activation and development of structures and systems created for the purposes of their execution, as well as continuity of operations of bodies and their executive structures; 3) performance of tasks for the needs of the Armed Forces of the Republic of Poland and allied forces; 4) the functioning of information and communication systems ensuring the safety of the performance of defence tasks, including the protection of the collection and transmission of information and the execution of documents; 5) the division, in accordance with the competence, of defence tasks performed in peacetime and the related scopes of activities, as well as changes in the structure of the division of defence tasks between subordinate and supervised organisational units and units in particular states of state defence readiness.

The establishment of organisational conditions for the planning and execution of defence tasks, hereinafter referred to as “the Tasks”, shall be effected by means of the development of the requisite organisational structures, the proper

²⁹ Regulation of the Council of Ministers of 21 April 2022 on the manner of performing tasks within the framework of defence duty (Journal of Laws item 875). Cf. the Judgment of the Provincial Administrative Court in Rzeszów of 22 June 2022, Ref. No. II SAB/Rz 47/22.

conduct of personnel policy, the preparation of adequate infrastructure, and the provision of information and communications technology systems therefor³⁰.

Co-operation of entrepreneurs in planning and execution of defence tasks consists in ensuring optimal conditions for their execution and includes exchange of experience and information on planning and execution of defence tasks, co-ordination of actions concerning planning and execution of defence tasks at the same decision-making level, initiating and undertaking inter-departmental or regional co-operation, integrating efforts and cooperation in the use of material, service and training base and medical potential, and sharing data necessary to determine the possibility of medical security of the Armed Forces of the Republic of Poland and allied troops in particular states of state defence readiness (state of permanent readiness and state of full defence readiness)³¹.

In-kind services of entrepreneurs for the Armed Forces in peacetime, in the event of mobilisation and in wartime

Benefits of this kind, which are obligatory for the defence of the state by various entities outside the state administration structures, have a long tradition in the Polish lands³². Contemporary legal regulations provide that an obligation may be imposed on *entrepreneurs* to provide benefits in kind, consisting in the handing over for use of their real property and movable assets for the purposes of preparing state defence or combating natural disasters, liquidating their effects and crisis management. Benefits in kind may be provided to the Armed Forces, units intended for militarisation and organisational units performing tasks for the needs of state defence or combating natural disasters, elimination of their effects and crisis management³³.

According to the regulations, the object of in-kind benefits cannot be telecommunications equipment and networks necessary for the implementation of decisions imposed on telecommunications entrepreneurs by the President of the

³⁰ Cf. G. Mąkosa, *Zarządzanie bezpieczeństwem krajowych systemów teleinformatycznych*, „Studia Bezpieczeństwa Narodowego” 2020, No. 17(10), pp. 129–146; A. Wochnowicz, *Cyberprzestrzeń w systemie militarnym bezpieczeństwa państwa*, „Cybersecurity and Law” 2023, No. 2(10), pp. 51–69.

³¹ Regulation of the Council of Ministers of 18 March 2025 on state defence readiness (Journal of Laws, item 355). Cf. A. Misiuk, *Rola administracji publicznej w zakresie obronności państwa*, „Przegląd Nauk o Obronności” 2017, No. 3, pp. 31–52.

³² See M. Konarski, *Public Burdens for the Defence of the Polish State on the Example of the Obligation to Hand Over Means of Transport in the Event Mobilisation is Announced or During a War*, „Wojskowy Przegląd Prawniczy” 2020, No. 3(295), pp. 43–60; idem, *Świadczenia na rzecz wojska w czasie pokoju w okresie II Rzeczypospolitej na przykładzie dostarczania mechanicznych środków przewozowych*, „Acta Universitatis Mariae Curie-Skłodowska, Sectio G (Ius)” 2021, No. 1(68), pp. 17–42.

³³ Regulation of the Council of Ministers of 29 August 2024 on benefits in kind for defence in time of peace (Journal of Laws, item 1387). See G. Lewandowski, *Świadczenia na rzecz obrony w procesie pozamilitarnych przygotowań obronnych państwa. Stan aktualny oraz kierunki rozwoju*, „Wiedza Obronna” 2019, No. 4(269), pp. 77–104.

Office of Electronic Communications³⁴, as well as production, repair or service capacities of the entrepreneur.

The duration of performance of benefits in kind may not exceed, at any one time, in the case of taking the subject of the benefit in order to check the mobilisation readiness of the Armed Forces – 48 hours; and in connection with military exercises – 7 days. The imposition of the obligation to provide benefits in kind may take place a maximum of 3 times a year, but in the amount of 7 days – only once. The time necessary for the delivery of the object of benefit to the indicated place and its return to the place of rest (storage), but not more than 2 hours, shall be included in the time for the performance of benefits in kind of 48 hours.

The holder of the object of performance, when forthwith called upon to provide such performance, shall be obliged to deliver the same for use in a serviceable condition, together with all relevant documentation pertaining thereto, therewith. The recipient of the object of performance is obliged to use it in a manner that corresponds to its characteristics and purpose. The recipient shall bear the ordinary costs and other burdens of maintaining the item, and any expenditure or outlay made by him on the item shall not be reimbursed. The recipient of the object of performance, shall be held fully liable for any loss or damage thereto, as well as for any harm arising from its use in a manner contrary to its inherent properties or intended purpose, thereunder.

The recipient, shall be entitled forthwith to receive a lump sum in respect of the use of the service item, the amount of which shall correspond to any damage incurred as a result of its provision, together with an allowance reflecting the applicable rate of depreciation thereunder. The lump sum for the use of the object of benefit in kind shall be paid by the organisational unit for whose benefit it was provided³⁵.

Each year, the Ministry of Defence issues a decree on necessary in-kind benefits for defence falling in a given calendar year. According to the adopted assumptions for 2026, enabling the implementation of defence tasks related to the use of in-kind benefits takes place through the indication of demand by the military³⁶. The discussed draft provides for a demand for 400 properties (buildings or their parts) – for the needs of government administration bodies and local government bodies performing tasks related to conducting military qualification³⁷; and 192 motor vehicles and 26 trailers (semi-trailers) and

³⁴ Article 40(1) of the Act of 12 July 2024 – Electronic Communications Law (Journal of Laws, item 1221).

³⁵ See *Obrona Ojczyzny. Komentarz*, pp. 1139–1140.

³⁶ Draft Regulation of the Minister of Defence of 13 June 2025 on essential in-kind benefits in 2026 for the defence, No. in the list of legislative works: 84.

³⁷ The estimated cost of securing premises for the military qualification conducted annually was calculated by assuming the following values: 400 real estate (buildings or parts thereof) – for the needs of government administration bodies and local government bodies performing tasks related to conducting military qualification; PLN 2.05 – the amount of a daily lump sum for the use of objects of benefits in kind. To calculate the costs, the amount of the daily lump sum rate was increased by the projected according to the Budget Act for the year 2025, in which it was

15 machines with the necessary equipment – for the needs of organisational units of the Armed Forces of the Republic of Poland performing tasks related to conducting military exercises, including those organised in the mode of immediate appearance of reserve soldiers, and checking the mobilisation readiness of the Armed Forces³⁸.

In the opinion of the Ministry of Defence, the regulation will have a negligible impact on the competitiveness of the economy and entrepreneurship, including the functioning of entrepreneurs, and in particular micro-, small and medium-sized entrepreneurs only in a special situation, requiring the possible use of real estate and movable property owned by them for the purposes of conducting military qualification or performing defence tasks. In spite of these assurances, every year administrative courts hear a number of complaints filed by entrepreneurs against decisions to make them subject to the obligation to provide benefits in kind³⁹.

Also in the event of the announcement of mobilisation and in wartime, entrepreneurs may be obliged to provide benefits in kind, consisting in handing over their real property and movable assets for use by the Armed Forces or organisational units performing tasks for the needs of state defence⁴⁰. In the event of the occurrence of the indicated circumstances, the obligation to provide personal and in-kind benefits is imposed by the commune head (mayor, city president) on the basis of ad hoc applications submitted by bodies and heads of organisational units, as well as commanders of military units. The decision on the imposition of the obligation to provide benefits shall be given the order of immediate enforceability on the date specified therein. The commune head (mayor, city president) in special situations may also impose the obligation to provide personal or in-kind services in the form of announcements or by other means.

Details of the imposition of personal and in-kind benefits on entrepreneurs are set out in a decree of the Council of Ministers, which defines the procedure for imposing the obligation of personal and in-kind benefits in the event of the

announced that the projected average annual consumer price index in 2025 will amount to 105%; 120 m² – estimated area used by one district medical commission; PLN 98,400 – estimated daily cost of securing premises as part of the military qualification conducted annually; 30 days – averaged working time of a single commission, adopted on the basis of past experience. Based on the above data, the averaged total cost of securing premises for conducting military qualification in 2026 will be PLN 3,211,185.60 (rounded upwards) PLN 3,212,000.00.

³⁸ The product of the following values was used to calculate the costs related to the collection of transport means: the number of planned limits of in-kind services; the average time of using the objects of in-kind services; the amount of a daily lump sum for using the objects of in-kind services. The amount of costs related to the collection of: motor vehicles – at the level of PLN 120,941.28; trailers (semi-trailers) – at the level of PLN 8,062.75; machines – at the level of PLN 6,600.06 thousand. Therefore, the total cost of utilisation of the planned limit will amount to PLN 135 604.09, (after rounding up) PLN 136 000.00.

³⁹ Cf. the Judgment of the Provincial Administrative Court in Łódź of 4 November 2022, Ref. No. II SA/Łd 555/22; the Judgment of the Provincial Administrative Court in Bydgoszcz of 19 February 2024, Ref. No. II SA/Bd 1325/23; the Judgment of the Provincial Administrative Court in Poznań of 10 January 2025, Ref. No. II SA/Po 536/24.

⁴⁰ The Judgement of Provincial Administrative Court in Gdańsk of 16 April 2025, Ref. No. III SA/Gd 437/24. Cf. S. Sosabowski, *Gospodarcza konstytucja obrony państwa*, pp. 48, 54, 58.

announcement of mobilisation and during war, specimens of administrative decisions, applications and notices and certificates issued in matters of personal and in-kind benefits, conditions and procedure for payment for the use of objects of in-kind benefits, the procedure and manner of determining and paying compensation for damage to them, and the procedure for payment of a lump sum and cash dues for the performance of personal benefits, as well as documents submitted for their payment⁴¹.

It should also be noted that entrepreneurs may be subject to certain special obligations in the interest of national defence. In particular, they may be required to adapt their real estate and movable property to the needs of the State defence, provided that such adaptation does not alter their inherent characteristics or intended purpose. The same obligation may apply with respect to buildings that have been constructed, reconstructed, or extended, as well as to manufactured movable property, again in a manner that preserves their properties and purpose.

Entrepreneurs may further be obliged to maintain, or where necessary relocate, production, repair, and service capacities that are essential for the performance of tasks connected with the security or defence of the State. They may also be called upon to execute mobilisation tasks for the benefit of the Armed Forces, as well as to collect, store, and maintain items required for the proper performance of such activities.

Financing of tasks of entrepreneurs for the Armed Forces

Entrepreneurs, upon whom defence tasks have been imposed for the benefit of the Armed Forces, shall be entitled to submit an application forthwith for financing, in connection with the performance of such tasks, of the costs associated with maintaining production, repair, or service capacity necessary for the execution of tasks pertaining to production, repair, or service for the Armed Forces thereunder⁴². The costs, are covered for entrepreneurs at their request by granting a targeted subsidy from the budget of the Ministry of Defence, while the works related to the conduct of defence preparations for the performance of these tasks, which are of a planning nature, are financed from the entrepreneur's own funds. In turn, targeted subsidies for entrepreneurs are granted by MND, taking into account the limit of financial means provided for this purpose in the Budget Act.

The targeted subsidy granted to the entrepreneur in the scope of covering costs may be intended only to cover the costs of the entrepreneur to whom it has been granted or refers to costs incurred, paid and resulting from depreciation

⁴¹ Regulation of the Council of Ministers of 28 August 2024 on personal and material benefits for defence in the event of the announcement of mobilisation and during war (Journal of Laws, item 1354).

⁴² See *Obrona Ojczyzny. Komentarz*, pp. 1204–1205.

or amortisation deductions made and entered by the entrepreneur in a given calendar year in the books of accounts or books of income and expenditure.

A targeted subsidy in the scope of cost coverage shall be allocated to an entrepreneur on whom an administrative decision has imposed a task for the Armed Forces, who has submitted an application for the allocation of a targeted subsidy and who has timely submitted and obtained approval of a report on the use of a targeted subsidy and cleared the subsidy awarded, where such a subsidy was received, for the period of 3 years preceding the submission of the application for subsidy.

The transfer of the targeted grant to the entrepreneur to cover costs shall take place after the conclusion of an agreement with MND⁴³. Subsidy agreements are governed by the provisions on public finance⁴⁴, and in the event of a return of an intentional subsidy not used on time or used contrary to its purpose, or collected improperly or in an excessive amount, it shall be returned to the State Budget by 31 January of the following year or within 21 days from the date specified in the provisions, respectively. In turn, subsidies granted from the state budget which have been used inconsistently with their intended use or which have been collected unduly or in an excessive amount shall be returned to the state budget, together with interest at the rate specified for tax arrears, within 15 days from the date on which the circumstances were established⁴⁵.

An application for a targeted subsidy shall include at least information on the entrepreneur, the amount of subsidy requested and the number of a separate bank account or a separate account in a co-operative savings and credit union intended for recording financial operations related to the received targeted subsidy.

The application shall be accompanied by a number of documents, in particular a summary cost sheet; a list of production, repair or service capacities – on an electronic carrier in an editable form; information on the costs of peacetime maintenance of production, repair or service capacities – on an electronic carrier in an editable form; a list of unit labour intensity of task execution – confirmed by an authorised representative of an organisational unit of the national defence ministry competent in supervising the quality of execution of defence products; and a declaration by the applicant on fulfilment of the indicated requirements.

The entrepreneur shall submit a report to MND on the use of the targeted subsidy, in which it shall indicate at least information data on the entrepreneur, data on the amount of costs incurred and information on the amount of the targeted subsidy granted. The report shall be accompanied by at least: 1) a sheet of collective costs for the settlement of the subsidy; 2) a list of production, repair or service capacities – on an electronic carrier in an editable form; 3) information on the costs of maintaining production, repair or service capacities during peacetime – on an electronic carrier in an editable form; 4) bank statements from a separate bank account or a separate account in a co-operative savings

⁴³ See *ibidem*, pp. 1207–1208.

⁴⁴ Article 150 of the Act of 27 August 2009 on public finance (Journal of Laws 2024, item 1530, consolidated text of 16 October 2024).

⁴⁵ *Ibidem*, Articles 168 and 169.

and credit union intended for recording financial operations with the balance as at 31 December of the reporting year and with the balance as at the date of preparation of report; 5) certified true copies of accounting evidence and, in the case of repayment of unused subsidy or interest accrued on a separate bank account or a separate account in a co-operative savings and credit union, a transfer confirming that such an operation has been performed; 6) a report of an auditor on the evaluation of the report with respect to verification of accounting and financial documentation concerning the use of the targeted subsidy.

At the stage of drafting the draft budget act for the following year, the Ministry of Defence shall submit to the competent ministers and the minister in charge of public finance proposals for expenditure limits to cover the costs of task implementation.

In order to determine the manner of granting the targeted grant to the entrepreneur, the formula shall be applied:

$$D_P = D_B \times \frac{W_Z}{\Sigma W_P} \text{ [PLN]}$$

where: D_P – denotes the amount of the targeted subsidy to which the entrepreneur is entitled, D_B – denotes the amount of budget funds allocated for the maintenance of production, repair or service capacity to perform tasks for the Armed Forces, W_Z – stands for labour intensity of tasks for the Armed Forces, to be performed by the entrepreneur, verified by an authorised representative of the organisational unit of the national defence department competent in supervising the quality of performance of defence products, ΣW_P – stands for the total labour intensity of tasks for the Armed Forces, performed by all entrepreneurs applying for the purpose-specific subsidy⁴⁶.

The costs of performing tasks for the Armed Forces and special services included in the Plan for securing the needs of the Armed Forces realised by *entrepreneurs* and incurred by the entrepreneur will be reduced for this entrepreneur by the value of raw materials and materials received within the strategic reserves necessary to secure their realisation⁴⁷.

In 2024, the Supreme Audit Office (SAO, in Polish: NIK) negatively assessed the system of granting subsidies by the Minister of National Defence to entrepreneurs to finance the costs of maintaining their production, repair or service capacities during peacetime for the circumstances of performing tasks for the Armed Forces in conditions of a threat to state security or in wartime. Despite the changes introduced in the system of subsidies for entrepreneurs (in the annual amount of approximately PLN 200 million), being a response to the conclusion of the previous SAO audit, the system of subsidies still requires

⁴⁶ Regulation of the Minister of Defence of 24 May 2022 on the granting and settlement of a targeted subsidy to cover costs incurred by entrepreneurs performing tasks for the Armed Forces of the Republic of Poland (Journal of Laws, item 1187).

⁴⁷ See *Obrona Ojczyzny. Komentarz*, p. 1208.

corrections, especially the manner of distribution of funds and supervision of their disbursement and reliability of settlements⁴⁸. In accordance with the above remarks, SAO proposes to modify the system of granting subsidies to entrepreneurs who have been assigned tasks for the Armed Forces, functioning in the Ministry of National Defence. In the opinion of the SAO, entrepreneurs, i.e. the main recipients and beneficiaries of the programme, should be included in the works (analyses, consultations) aimed at preparing new rules for the distribution of funds from these subsidies. Leaving aside the essence of the subsidy granted annually, i.e. securing production capacities for the performance of tasks during a threat to state security and in wartime, the added value of the work undertaken on the reconstruction of the existing subsidy system should be the achievement of a higher number of tasks accepted for implementation by entrepreneurs in relation to the needs reported by MND⁴⁹.

Conclusion

In conclusion to the above considerations, several emerging problems should be noted. Firstly, it is necessary to point to the subsidiary and exceptional character of the services of entrepreneurs for the defence of the state, which, despite its constitutional character, should be applied in special situations, primarily those connected with the announcement of general mobilisation and in wartime. This means that one should exclude, as far as possible, situations in which defence tasks are imposed on entrepreneurs in peacetime, as this neither serves the principle of economic freedom, nor significantly increases the defence potential of the state, but only constitutes a significant organisational burden for their business activity. It should be borne in mind that the decision to impose a benefit obligation on entrepreneurs is only exercised in times of mobilisation and war, while in peacetime the object of the benefit remains in the possession of the entitled person without restrictions or hindrances to its use or even disposal. However, as said before, the numerous rulings of the administrative courts in this respect testify to the non-materiality of this phenomenon.

Secondly, it should be emphasised that apart from the already mentioned administrative bodies, also the President of the Republic of Poland, guarding the sovereignty and security of the state, the inviolability and indivisibility of its territory, may turn to *entrepreneurs* for information that is important for the security and defence of the state⁵⁰. Certainly, such a solution has its profound patriotic sense, but it should be borne in mind that modern entrepreneurs, sometimes conducting business of a global nature, may be exposed to the

⁴⁸ The Supreme Audit Office, *Informacja o wynikach kontroli: Wykonanie budżetu państwa w 2023 r. w części 29 – Obrona Narodowa*, Warszawa 2024, p. 6.

⁴⁹ *Ibidem*, p. 8.

⁵⁰ Article 24(1)(9) of the Act of 11 March 2022 on defence of the Homeland (Journal of Laws 2024, item 2480).

disclosure of trade secrets, which would obviously undermine the general principle of economic freedom.

Finally, it should be emphasised that the participation of entrepreneurs in the performance of tasks for the broadly understood defence of the state is not, after all, of a one-sided nature, as it is in the interest of all persons conducting business activity in the territory of the Republic of Poland to preserve state sovereignty and protect business property against possible seizure or destruction by a military aggressor. This objective is served by the inclusion of entrepreneurs in the system of universal state defence, which should be regarded as a well-thought-out normative solution that has been sufficiently implemented by the Polish legislator.

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