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Public debt limit of the EU Member States and its impact on polish legal system – considerations in the context of public finance stability

Limit zadłużenia publicznego państw członkowskich Unii Europejskiej i jego wpływ na polski porządek prawny – rozważania w kontekście stabilności i bezpieczeństwa finansów publicznych

Abstract: The author's goal is to determine the consequences of implementing treaty solutions concerning public debt to the Polish Constitution and to define the differences between the methodology of counting public debt in the European Community and Polish legal order. The raised issues concern important problems from the substantive and practical point of view, therefore the study's content is important for science and practice.

The research methodology was based on the analysis of the EU and Poland's normative solutions, opinions expressed in the international and national literature on the subject, and the case law of the Polish Constitutional Tribunal. The paper applies mostly the dogmatic-analytic and legal-comparative method with reference to available statistical data on Poland's public debt.

The study allowed the author to gain an understanding of the significance of fiscal rules implemented at the EU level to ensure stability. Article 216(5) of the Constitution of the Republic of Poland indicates that the treaty solutions regarding the reference value (public debt-to-GDP ratio) were reenacted. However, until this day, the EU and Poland's debt measurement methods do not fully correspond. In order to counteract excessive debt incursion, a state is required to take not only efficient actions but also ones that are adequate and, to some extent, flexible. This is an expression of acceptance of the EU's preventive assumptions. However, there is still no full correlation in the methodology of calculating public debt in the EU and the Republic of Poland.

Keywords: public debt, fiscal rules, public debt limit

Streszczenie: Celem artykułu jest ustalenie konsekwencji implementacji rozwiązań traktatowych dotyczących zadłużenia publicznego do Konstytucji RP oraz określenie różnic pomiędzy metodologią liczenia długu publicznego we

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wspólnotowym i polskim porządku prawnym. Podjęta problematyka dotyczy ważkich z merytorycznego i aktualnych z praktycznego punktu widzenia zagadnień, dlatego też treść opracowania ma znaczenie zarówno dla nauki, jak i praktyki.

Metodologia badań została oparta na analizie rozwiązań normatywnych obowiązujących w UE i Polsce, opiniach wyrażonych w międzynarodowej i krajowej literaturze przedmiotu oraz orzecznictwie Trybunału Konstytucyjnego. W artykule zastosowano głównie metodę dogmatyczno-analityczną i prawno-porównawczą w odniesieniu do dostępnych danych statystycznych dotyczących długu publicznego w Polsce.

W wyniku prowadzonych badań ustalono znaczenie reguł fiskalnych wprowadzonych na szczeblu unijnym dla zapewnienia bezpieczeństwa systemu finansów publicznych. W najbliższej perspektywie, dążąc do przeciwdziałania nadmiernemu zadłużaniu się, państwo musi podjąć skuteczne, adekwatne i jednocześnie elastyczne działania. Aktualna sytuacja społeczno-gospodarczą państw członkowskich UE wskazuje na spowolnienie ekonomiczne. Treść art. 216 ust. 5 Konstytucji RP wskazuje na powielenie rozwiązań traktatowych dotyczących wartości odniesienia (relacji zadłużenia publicznego do PKB). Jest to wyraz akceptacji założeń unijnych o charakterze prewencyjnym. Nadal jednak zauważa się brak pełnej korelacji w zakresie metodologii liczenia długu publicznego w UE i RP.

Słowa kluczowe: dług publiczny, reguły fiskalne, limit zadłużenia publicznego

Introduction

A wise concern for public finance stability, which, to a large extent, determines a country's economic condition, is each government's obligation. Each government is obligated to undertake reasonable actions to control its public debt and the debt-to-gross domestic product (GDP) ratio. This is particularly true in the current situation when in response to the COVID-19 pandemic, significant restrictions were imposed that affect not only the GDP dynamics but also the public sector revenue and expenditure in individual EU Member States. As the example of the Republic of Poland (Poland) shows, when the latter was adversely affected, the foreseen budget for 2020 becomes threatened.

Article 216(5) of the Constitution of the Republic of Poland of 2 April 1997¹ (Constitution) indirectly sanctions public finance management rules by reference to the State Public Debt (SPD), which is a fundamental notion of the public finance law. The legislator, well-aware of budget deficits and excessive public debt in many countries, established a constitutional limit on debt that is convergent with the EU legal order's premises. It is a unique solution in the history of con-

1 Constitution of the Republic of Poland of 2 April 1997 (Dz.U. 1997, no. 78 item 483 as amended).

stitutionalism² since the restriction expressed in Article 216(5) of the Constitution is absolute and unconditional. Moreover, due to its mathematical precision, it is also measurable, evident, and demonstrable.³ Crossing the threshold of SPD to GDP ratio specified by the statute is considered a threat to efficient operations of the state economy. Therefore, specific instruments were implemented at the statutory level in the form of quantitative and qualitative fiscal restraints⁴ to prevent excessive public debt.⁵ However, these are not the only fiscal rules in place since others, from outside the Polish legal order, also safeguard budget sustainability and monitor budgetary procedures.⁶

The solutions adopted through EU legal acts are partly reflected in the Constitution and in other binding sources of law. However, some differences regarding methodology and terminology which affect the declared public debt level can still be found.

1. Public debt limit of the EU Member States – a normative perspective

The EU Member States (Member States) are obliged to develop an economic and financial environment that would allow them to meet their public tasks.⁷ However, it is worth noting that on the grounds of Article 14 of the Treaty on the Functioning of the European Union⁸ (TFEU), no clear line can be drawn between Member States' competences and exclusive EU competences.⁹ In the spirit of integration, Member States

- 2 W. Sokolewicz, *Komentarz do rozdziału X Konstytucji*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki, Warszawa, 2007, p. 17.
- 3 T. Dębowska-Romanowska, *Prawo finansowe. Część konstytucyjna wraz z częścią ogólną*, Warszawa 2010, p. 118.
- 4 G. Koits, S. Symansky, 'Fiscal Policy Rules', *IMF Occasional Paper*, 162, Washington 1998, p. 2.
- 5 M. Buti, G. Guidice, *EMU-s fiscal rules: what can and cannot be exported*, European Commission 2002, p. 3ff.
- 6 A. Alesina, R. Perotti, 'Deficits and Budget Institutions', in: *Fiscal Institutions and Fiscal performance*, eds. J.M. Poterba, J. van Hagen, London: National Bureau of Economic Research, Inc., 1999, p. 15.
- 7 L. Flynn, 'Competition Policy and Public Services in EC Law after Maastricht and Amsterdam Treaties', in: *Legal Issues of the Amsterdam Treaty*, eds. D. O'Keefe, P. Twomey, Oxford: Hart Publishing, 1999, p. 185; L. Hancher, Community, 'State and Market', in: *The Evolution of EU Law*, eds. P. Craig, G. de Búrca, Oxford 1999, pp. 730-731.
- 8 Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26 October 2012, pp. 47-390.
- 9 B. van Apeldoorn, *Transnational Capitalism and the Struggle Over European Integration*, London – New York: Routledge, 2002, p. 79; J.L. Buendia Sierra, *Exclusive Rights and State Monopolies under*

acknowledged that their economic policies are of common interest to all states and should be coordinated. One of the elements of the EU's coordination of economic policies is to avoid excessive government deficits that affect public debt, hence also the stability of the financial markets.¹⁰ Thus, one might venture to say that state budget policies should primarily correspond to the country's actual economic situation and threats to its sustainable development.

The ratio of government debt to GDP adopted in the Constitution expresses compliance with the budgetary discipline adopted by the EU, specifically Article 126 TFEU (Article 104 of the Treaty on European Union and the Treaty establishing the European Community¹¹) and Article 1 of the Protocol on the Excessive Deficit Procedure (EDP) annexed to the aforementioned Treaties (Protocol).¹² It should be underpinned that in the EU nomenclature, two definitions of general government sector debts were used, i.e., a legal definition applied in the Protocol on the excessive deficit procedure (TFEU, Protocol, Council Regulation (EC) No. 479/2009¹³) and a static definition (Council Regulation (EC) No. 2223/96,¹⁴ Regulation (EU) of the European Parliament and the Council No. 549/2013¹⁵). For the purpose of this paper, the first definition is applied.

According to the general rule formulated in Article 126(1) TFEU, Member States shall avoid excessive government deficit. The overall

EC Law. Article 86 (Formerly Article 90) of the EC Treaty, Oxford: Oxford University Press, 1999, pp. 333-334; U. di Fabio, 'Some Remarks on the Allocation of Competences Between the European Union and its Member States', *Common Market Law Review*, no. 6, 2002, pp. 1289-1301, Thesis 3, Lex [2020-03-19].

- 10 A. Nowak-Far, 'Komentarz do art. 121 i 126 TFUE', in: *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Vol. II (art. 90-222)*, eds. K. Kowalik-Bańczyk, M. Szwarc-Kuczer, A. Wróbel, Warszawa: Wolters Kluwer Polska, 2012, Lex [2020-03-17].
- 11 Treaty on European Union and the Treaty establishing the European Community, OJ C 321E, 29 December, 2006, pp. 1-331.
- 12 Z. Ofiarski, 'Komentarz do art. 72', in: *Ustawa o finansach publicznych. Komentarz*, M. Karlikowska, W. Miemiec, Z. Ofiarski, K. Sawicka, Wrocław 2010, pp. 200, 241.
- 13 Council Regulation (EC) No. 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (Codified version), OJ L 145, 10 June 2009, pp. 1-9.
- 14 Council Regulation (EC) No. 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community, OJ L 310, 30 November 1996, pp. 1-469.
- 15 Regulation (EU) No. 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European, OJ L 174, 26 June 2013, pp. 1-727.

budgetary situation and the size of government debt shall be monitored by the European Commission (Commission), which examines budgetary discipline on the basis of two criteria linked to fiscal rules.¹⁶ The first criterion is to determine whether the ratio of the planned or actual government deficit to GDP exceeds the reference value, that is 3% of the planned or actual government deficit to GDP measured at market price. However, this rule does not apply in cases where the ratio has declined substantially and continuously and has reached a level close to the reference values, or alternatively, when the excess over the reference value is exceptional and temporary, and the ratio remains close to the reference value. In the Protocol, the deficit is defined as the net borrowing of general government as defined in the European System of Accounts (ESA). However, particularly in face of the current situation, it must be underlined that government deficit is not considered an 'exceptional circumstance'; that is a circumstance that is beyond the control of Member States and affects the states' financial stability. This expressly implies that deficits are within the control of individual states.¹⁷

Secondly, the Commission examines a state's compliance with budgetary discipline based on whether the public debt-to-GDP ratio exceeds the set reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace. In this case, the reference value is a 60% debt-to-GDP (at market price) ratio. The government debt is defined as the total gross debt at nominal value outstanding at the end of the year and consolidated between and within all sectors of the general government.¹⁸ Government debt instruments held as assets by other general government units are not included in the calculation of government debt. Government debt consists of debt titles, i.e., liabilities of general government in the following categories: currency and deposits, debt securities and loans as defined in ESA 2010.

16 G. Koits, S. Symansky, *Fiscal...*, p. 2.

17 J.V. Louis, 'The no-bailout clause and rescue packages', *Common Market Law Review*, no. 4, 1999, pp. 971-986, Thesis 3, Lex [2020-03-19].

18 K.M. Szmaj, 'Państwowy dług publiczny – analiza pojęcia i wnioski prawnosystemowe', *Przegląd Legislacyjny*, no. 4, 2014, p. 26.

Hence, general government debt comprises debt of the sub-sectors central government, regional government, local government and social security funds, with the exclusion of trade operations as defined in ESA 2010.¹⁹ This definition differs from the one adopted in Polish nomenclature. This means that the size of public debt calculated in accordance with EDP methodology is different from the one calculated according to rules adopted in Poland (Table 1). Poland's government debt is computed according to the convergence criteria of the Maastricht Treaty, including the fiscal criterion.²⁰ Moreover, even within the EU legal order, there is no uniform definition of government debt. Apart from the aforementioned 'EDP debt', there is the ESA 95 reference framework on government debt – 'ESA 95 debt' – which differs conceptually and includes a wider range of liabilities than EDP.²¹ Government debt calculated according to ESA 95 is higher than EDP.²²

2. Constitutional public debt limit in Poland in the context of the EU treaties

The public debt ceiling specified in the Constitution follows the general rule of the treaty regulations. In particular, Article 126(5) of the Constitution provides that it is not permissible to contract loans or provide guarantees and social securities that can generate a public debt exceeding the 3/5 threshold of debt-to-GDP. Thus, the Polish legislator decided that the EU government debt limit is the highest permissible and should not be crossed. In other words, there is a competence norm in place that authorizes the government to incur liabilities only up to the 3/5 threshold of the debt-to-GDP ratio. These constitutional

19 M. Bitner, 'Pojęcie państwowego długu publicznego w art. 216 ust. 5 Konstytucji RP i znaczenie jego interpretacji dla polskiego porządku prawnego', in: *Konstytucyjne uwarunkowania tworzenia i stosowania prawa finansowego i podatkowego*, eds. P.J. Lewkowicz, J. Stankiewicz, Białystok: Temida 2, 2010, pp. 261-262.

20 P. Walczak, *Zmiany w finansach publicznych 2019. Rozdział II. Katalog tytułów dłużnych*, point 1.2, Warszawa: C.H. Beck, 2019, Legalis [2020-03-17].

21 M. Józwiak, 'Pojęcie długu. Statystyka długu publicznego. Metodologia ustalania zadłużenia', in: *Zadłużenie jednostek samorządu terytorialnego. Wyzwania w obliczu nowej perspektywy finansowej UE*, point 1.3, ed. P. Walczak, Warszawa: C.H. Beck, 2014, Legalis [2020-03-19].

22 K. Marchewka-Bartkowiak, 'Problem długu publicznego w Unii Europejskiej ze szczególnym uwzględnieniem kryteriów z Maastricht', *Studia Biura Analiz Sejmowych*, no. 3, 2010, pp. 182-183.

clauses are preventive in nature and purpose.²³ Furthermore, the state should not even get close to the indicated threshold. However, Article 216(5) of the Constitution does not incorporate treaty resolutions regarding Member States' government deficits. Yet, from the context of Article 220(2) of the Constitution, which provides that government deficit cannot be covered by contracting loans from the state's central bank, this "omission" should be considered justified.

The case law of the Constitutional Tribunal²⁴ points out that state public debt has not been expressly defined in Article 216(5) of the Constitution. SPD comprises not only the budget deficit of the central and local government for a given year, but also the unsold treasury bonds and other securities and unpaid loans taken to cover deficits from previous years. The Act of 27 August 2009 on Public Finance²⁵ (PFA) stipulates that GDP shall be calculated at the nominal value of liabilities of the public finance sector after the elimination of mutual liabilities between the subsectors.²⁶

Because of the reference to GDP incorporated in the Constitution, the GDP computing methodology was regulated in the Act on the method of calculating the value of gross domestic product.²⁷ The method of calculating annual GDP is based on the estimation of three equal macroeconomic categories which define GDP through:

- the size of production activity (GDP is calculated in market prices and is equal to the sum total of the added value of domestic production units increased by a tax on products and decreased by the amount of production subsidies);
- the final result of production activity (GDP is as a sum total of final demand, i.e., consumption, accumulation and balance of international trade exchange);

23 P. Pomorski, 'Komentarz do art. 86 UFP', in: *Ustawa o finansach publicznych. Komentarz*, ed. P. Smoleń, Warszawa: C.H. Beck, 2012, p. 522.

24 Judgement of the Constitutional Tribunal of 4 May 2004, K 40/02, *Orzecznictwo Trybunału Konstytucyjnego Series A* 2004, no. 5, item 38.

25 Act of 27 August 2009 on Public Finance (consolidated text Dz.U., 2019, item 869, as amended).

26 B. Kucia-Guściora, 'Rola ministra właściwego do spraw finansów publicznych w kształtowaniu zakresu państwowego długu publicznego. Wybrane problemy', *Roczniki Nauk Prawnych*, vol. XXVII, no. 4, 2017, pp. 42-43.

27 Act of 26 October 2000 on the method of calculating the value of gross domestic product (Dz.U., 2000, no. 114, item 1188, as amended).

- the sum total of primary income (GDP is calculated as a sum total of primary income of domestic units obtained by institutional sectors operating within the territory of Poland and the net primary income of the foreign sector).

These solutions correlate with EU regulations.²⁸

3. Strengthening compliance with the EU fiscal rules by enshrining them in the Constitution and differences in public debt calculation methodology in Poland and the EU

Incorporating treaty solutions in the Constitution means, on the one hand, that the Polish legislator decided to take necessary steps to ensure that admissible debt-to-GDP ratio is maintained in the public finance sector, and on the other hand, foresaw that any violation of the debt limit rule would be the responsibility of relevant authorities.²⁹

It must be emphasized that the anchoring of EU regulations in basic law is proof that the Polish legislator saw them as rightful, needed, and beneficial to common interests and, consequently, to the stability of the public finance sector. Guided by the treaty principles, the Polish legislator unarguably and significantly restricted the public authorities' freedom using a well-defined debt ceiling based on a mathematical relation.³⁰ This solution deserves a positive assessment, but one should not forget that some economic occurrences are unpredictable as they depend not only on the country's financial situation, but also on global markets. In case of the global financial slowdown, public authorities who, *de facto*, have no influence on the domestic and global crisis will still have to comply with the absolute constitutional ban on breaching the public debt limit.³¹

28 Reasoning for the government draft act on the method of calculating the value of gross domestic product, Paper 1879, The Sejm of the III term, p. 2, [http://orka.sejm.gov.pl/RejestrD.nsf/wgdruk/1879/\\$file/1879.pdf](http://orka.sejm.gov.pl/RejestrD.nsf/wgdruk/1879/$file/1879.pdf) [2020-03-17].

29 P.J. Lewkowicz, M. Tyniewicz, 'Ocena unijnych i krajowych regulacji prawnych ograniczających dług publiczny', in: *Prawo europejskie – 5 lat doświadczeń w polskim prawie finansowym*, ed. H. Litwińczuk, Warszawa: Wiedza i Praktyka, 2010, p. 75.

30 W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Kraków: Zakamycze, 2002, p. 299.

31 E. Chojna-Duch, *Zagadnienia...*, pp. 241-243.

Prudential thresholds constitute an obligatory procedure, the purpose of which is to avoid violation of the constitutional limit on debt and to restore the debt-to-GDP ratio to one that complies with Article 126(5) of the Constitution. Hence, the above measures constitute specific financial and legal instruments of supervisory nature. They supplement Poland's basic law and the treaty provisions. Application of the aforementioned instruments should be considered as needed and advisable in light of the treaty obligations stemming from Poland's membership to the EU. Member States should ensure at the national level such budget solutions that will safeguard the efficacy of excessive deficit procedures.³² Given these premises, the fiscal rules set out in PFA should be considered supplementary to the principle of pursuing public finance stability and sustainability set out in Article 216 (5) of the Constitution. In the event that consecutive prudential thresholds (55% and 60% of debt-to-GDP ratio) are crossed, the Polish legal order foresees a number of specific actions that should be taken. At the same time, it must be observed that there is no public document that would ban the undertaking of preventive measures prior to the threshold breach, i.e., as part of prior preventive auctions that counteract the violation of the debt-to-GDP threshold.

It should be noted that, according to FPA, prudential thresholds do not apply in the event of martial law, a state of emergency or a state of natural disaster in the entire territory of the Republic of Poland. These are extraordinary states specified in the Constitution. If ordinary constitutional measures are not sufficient, in cases of encroaching upon the country's sovereignty or in situations particularly threatening to the country's operations, limitations regarding the increase of public debt do not apply. It is a well-justified solution since the increase of some spending (hitherto being subject to the prudential and remedial procedure) may become necessary to remove, for example, the effects of a natural disaster or a state of emergency of any kind, which, however, does not exclude the obligation to restore the restrictions once

32 S.L. Greer, N. Fahy, H.A. Elliott et al., *Everything you always wanted to know about European Union health policies but were afraid to ask. Fiscal governance and what it means for health systems*, London: WHO Regional Office for Europe, 2014, p. 112; S. Korkman, *Economic Policy in the European Union*, Basingstoke: Palgrave Macmillan, 2005, pp. 62-66.

the reason for introducing a state of emergency ceases to exist.³³ It must be borne in mind that each of the states of emergency must be assessed with regard to the principle of proportionality and adequacy. It is the aim behind the implementation of extraordinary measures that is the most important and it is based on this aim that the decision whether people's freedoms and rights should be limited is made. These rules should also be applied taking into account the timeframe and geographical scope of the area covered by the state of emergency. It has been pointed out in the literature that "it is not just about the prohibition to continue imposing freedom limitations after a state of emergency is lifted, but also about an express order that limitations must be stopped once they have become needless, even if a state of emergency has not been lifted."³⁴

To conclude, since the public debt limit is regulated by the Constitution, it is significantly more difficult to abstain from implementation of SDP (EDP) brake instruments. It is also relatively more difficult to revoke solutions that challenge public authorities (e.g., in view of the social policy in place).

However, what deserves critical attention, is the fact that information on the stock of public debt and its relation to GDP is announced by the Minister of Public Finance by 31 May every of consecutive year (Article 38 PFA).³⁵ This causes significant delays in the initiation of the constitutional public debt brake mechanism. Such belated information does not support prompt remedial responses aimed at reducing the excessive deficit.

In 2019, SPD approached the level of one trillion PLN (Table 1). Admittedly, such an excessive increase of government debts is caused by years of unsustainable fiscal policy, i.e., recurring, unpaid budget deficits, and the lack of sustainable management of accumulated public funds due to the social welfare programs implemented over the last years that burden the state. In the face of the economic slowdown, partial shutdowns and restrictions imposed to grapple with the cor-

33 T. Dębowska-Romanowska, *Prawo...*, p. 119.

34 M. Safjan, L. Bosek, *Konstytucja RP. Tom II. Komentarz do art. 87-243 (komentarz do art. 228)*, Warszawa 2016, Legalis, Thesis 24 [2020-03-17].

35 B. Kucia-Guściora, 'Komentarz do art. 38 UFP', in: *Ustawa o finansach publicznych. Komentarz*, ed. P. Smoleń, Warszawa: C.H. Beck, 2012, pp. 334-336.

onavirus pandemic in Poland, maintaining the planned government budget balance is rather doubtful.

Table 1. SPD and EDP over the 2015-2019 period

Year	Poland				
	SPD (in tn PLN)	EDP (in bn PLN)	Debt of the government subsector	SDP/GDP ratio (in per cent)	EDP/GDP (in per cent)
2015	877,3	917,8	844,2	49	51,3
2016	965,2	1006,3	934,9	52,1	54,2
2017	961,8	1003,4	931,7	48,5	50,6
2018	984,3	1034,3	953,1	46,5	48,9
2019	990,9	1045,1	956,8	43,6	46,0

Source: own study based on: Quarterly report on public finance in the 4th quarter of 2015 and the whole of 2015, no. 2/2016, Quarterly report on public finance in the 4th quarter of 2016 and the whole of 2016, no. 2/2017, Quarterly report on public finance in the 4th quarter of 2017 and the whole of 2017 r., no. 2/2018, Quarterly report on public finance in the 4th quarter of 2018 and the whole of 2018, no. 2/2019, Quarterly report on public finance in the 4th quarter of 2019 and the whole of 2019, no. 2/2020, <https://www.gov.pl/web/finanse> [2020-10-19].

In consequence of Article 216(5) of the Constitution and the treaty resolutions, prudential and remedial procedures, as specified in Article 86–87 PFA, and other fiscal regulations (e.g., Article 112aa PFA) are implemented in Poland at the statutory level. Thereby, the obligation to counteract excessive deficit and excessive public debt accumulation has been normatively regulated. To be met, this obligation will require well-coordinated and far-reaching policies at the EU and state levels.³⁶

As it comes to basic differences in the EU and Polish debt calculation methodology, one should bear in mind that in the case of the latter, liabilities of public finance units specified in Article 9 PFA are included in public debt computation, whilst the funds kept by the Bank Gospodarstwa Krajowego (BGK – Polish National Development Bank), including the National Road Fund and Railway Fund are excluded. It means that, for example, that banks, companies incorporated under Polish law, and enterprises are not included in the sector.

³⁶ Council Recommendation (EU) 2015/1184 of 14 July 2015 on broad guidelines for the economic policies of the Member States and of the European Union (OJ L 192, 18 July 2015, p. 27): Council Recommendation 2015/1184.

In contrast, EDP takes into account entities identified along with the criteria of their functions and financing means. SPD encompasses liabilities that are due since the dominant accounting model used in Poland is cash-based accounting. In contrast, the EU methodology is based on accrual accounting under which liabilities are recorded as an excess or deficit of the general government sector. Another difference is that under the Polish methodology, the potential public debt is not included in the SPD calculation as chargeable against the constitutional debt limit, whereas in the EDP methodology, in some circumstances (as a result of the assumption of debt), it can be included in the calculation of public debt.

The debt-to-GDP ratio is used to gauge a country's financial condition. This ratio, calculated according to the Polish methodology, is always lower than the values generated by the EU computing method (Table 1). This is the result of, i.a., different exchange rate valuation principles of foreign borrowings, which are considered liabilities due to their economic effect and risk, and the result of net debt, i.e., liabilities minus financial assets.³⁷ Consequently, depending on which methodology is applied, the public debt ceiling may be deemed as crossed or not. The answer to which of the above debt-to-GDP methodologies is more appropriate or relevant is highly subjective. However, what is certain and also confusing is that in Poland, two definitions of government debt are being used simultaneously, which definitely blurs the transparency of public finance and hinders data comparison.

Conclusions

It is indisputable that the EU Member States should manage their fiscal policies in such a way as to minimize the need to apply supra-national fiscal rules.³⁸ The rule expressed in Article 216(5) of the Constitution is borne out of respect for the overriding values of public finance stability and protection against an excessive debt of public-

37 K. Marchewka-Bartkowiak, 'Konsekwencje różnicowania metodologii pomiaru długu publicznego w Polsce', *Analizy Biura Analiz Sejmowych*, no. 11, 2013, p. 1.

38 F. Amtenbrink, J. de Haan, 'Economic governance in the European Union: Fiscal policy discipline versus flexibility', *Common Market Law Review*, no. 5, 2003, pp. 1075-1106, Thesis 1, Lex [2020-03-19].

sector entities which at the EU level are equated with Member States (e.g., Article 126 TFEU).

The fact that the treaty provisions on government deficit and debt have been embedded in the Constitution, which is the document with the highest legal authority in Poland, makes them, on the one hand, truly sustainable and unconditional, and on the other, dependent on current fiscal policies of public authorities. The constitutional debt limit is also proof of the aspiration to standardize (at least in part) the national and supranational legal order.³⁹ This puts the state of public finance in Poland in a positive light. The present content of Article 216(5) of the Constitution enhances Poland's credibility and the attractiveness of debt financial instruments offered by the state.

It is also worth adding that since fiscal rules provided by the EU are a powerful tool ensuring financial stability and preventing financial crises,⁴⁰ then the postulate to incorporate provisions of Article 216(5) of the Constitution in ordinary law seems very reasonable.⁴¹ There is a solidly grounded opinion expressed in Constitutional Tribunal case law that the 'good' understood as durable stability of public finance 'ranks so high in the hierarchy of constitutional values that it is protected by constitutional restriction, that is an absolute prohibition of excessive public debt.'⁴²

Concurrently, the analysis of the Polish legal order leads to the conclusion that the public debt brake mechanisms applied by the legislator operate with a significant delay. In view of the above, treaty provisions and Article 216(5) Constitution should be interpreted dynamically, i.e., the closer the debt-to-GDP ratio is to the constitutional limit, the more decisive actions should be taken by public authorities, based, of course, on well-defined fiscal rules, i.e., compliant with the goals of financial and economic policy, and to be verifiable, transparent and regulated in a legal statutory act.⁴³ The postulate to avoid excessive government deficits expressed in Article 126(1) TFEU, along with the

39 J. Ritzén, J. Haas, 'A Sustainable Euro Area with Exit Options', *Institute of Labor Economic. Policy Paper Series*, no. 120, 2016, p. 13.

40 D. Hodson, 'Crisis, Change and Continuity', in: *Policy-Making in the European Union*, eds. H. Wallace, M.A. Pollack, A.R. Young, Oxford: Oxford University Press, 2015, p. 184.

41 M. Bitner, *Pojęcie...*, p. 266.

42 Judgement of the Constitutional Tribunal of 4 May 2004, K 40/02...

43 W.H. Buiter, *Ten commandments for a fiscal rule in E(M)u*, London, 2003, p. 6.

Protocol and the reaffirming and more specific provisions of Regulation No. 479/2009 should be understood in this spirit.

In the face of the present global economic slowdown, which is increasingly perceived as another financial crisis in Poland, the need to preserve budgetary sustainability and public finance stability becomes a top priority.⁴⁴ The measures taken at this specific time must be well-balanced and rational, and at the same time, they have to comply with important values embedded both in the Constitution and the EU treaties, values that need to be optimally reconciled.⁴⁵ The poor conditions of public finance may lead to the implementation of restrictions that affect social and economic wellbeing. Actions taken by public authorities should not “lead to burdening specific professions and sections of the population with the discomfort and challenges caused by economic recession and collapse of government budget balance.”⁴⁶

The condition of the national economy can be evaluated using different measures, among which the most common is the said debt-to-GDP ratio. A country’s internal situation and the position of Member States on the global market depends on a variety of factors (regional and global economic situation, the country’s level of development, GDP structure). Therefore, it is not possible to pinpoint a debt-to-GDP threshold that would be objective, optimal and universally applicable throughout all EU states. The debt-to-GDP ratio of 60% noted as a prudential limit for EU states is an average value based on EU experience. According to Eurostat data, a total of 14 Member States recorded a debt-to-GDP ratio higher than 60% as of the end of 2018.

In the context of the assumptions presented hereinabove, it is worth noting the incredible aptness of a proverb coined by Ovid *principiis obsta, sero medicina paratur* (“resist from the very beginning, the cure is prepared too late”). Polish and EU legislators’ concern to provide public authorities with legal debt brake mechanisms should be appreciated. Concurrently, we should not forget that these mechanisms should serve as effective instruments that keep public debt dynamic and its relation to GDP under control. Preventive measures are nec-

44 J. Ritzen, J. Haas, *A Sustainable...*, pp. 19-22.

45 Judgement of the Constitutional Tribunal of 26 November 2001, K 2/00, Dz.U., 2001, no. 138, item 1566.

46 Ruling of the Polish Constitutional Tribunal of 29 January 1992, K 15/91, *Rejent*, no. 2, 1992, p. 187.

essary as some circumstances and factors affecting macroeconomic equilibrium cannot be anticipated. However, even though some of these factors are beyond the control of public authorities, the results of their hitherto rational management of public funds may mitigate the effects of economic slowdown and, consequently, strengthen the stability of the public finance sector.

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