

CHAPTER 5

POLAND: PUBLIC FINANCES EVEN MORE COMPLICATED



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Abstract

The issue of public finance in Poland has been regulated on the grounds of numerous legal acts and considering various hierarchical levels of law sources. In relation to the financial management of both state and local government units, public finance has its essential foundations in the Constitution of the Republic of Poland. Recent events related to the COVID-19 pandemic and the ongoing economic crisis have resulted in a great deal of attention being paid to broader issues relating to public finance in Poland, including fiscal sustainability, public debt, and budget balance. This comprised activity in the field of new legislative solutions, as well as a different approach to the application of specific solutions in the practice of shaping and implementing the budget of the state and budget local government unit. The changes that were introduced were aimed at mitigating the economic consequences of the pandemic; however, it should be assumed that many of them will become a permanent feature of the legal order in Poland.

Keywords: *public finances, budget, fiscal rule, budget balance, public debt deficit*

1. Introduction

Legal regulations relating to the issues of public finance and the public finance sector in Poland constitute a large group of legal acts located at various levels of the hierarchy of legal sources. The provisions covered in Chapter X, 'Public Finances',

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of the Constitution of the Republic of Poland of 2 April 1997¹ refer to the basic principles and institutions underlying the functioning of public finances. The regulations covered by the Constitution are detailed and supplemented by numerous provisions of the rank of Acts and the executive Acts issued to them.² The Act of 27 August 2009 on Public Finance is of fundamental importance in this respect.³ The scope of this regulation covers the following issues: public funds, their classification and management principles, the catalogue of public finance sector units and the rules underlying their functioning, the issues of openness and transparency of public finance, the objectives and coordination of management control, and internal audits in public financial sector units. The Public Finance Act also regulates the issue of public debt and deficit, the rules for financing the borrowing needs of the state budget, the applied prudential and remedial procedures, the rules for incurring liabilities by public finance sector entities (excluding the State Treasury), and the rules for issuing treasury securities. In addition, the scope of the Act covers the issues of long-term planning and the principles of shaping the content of the budget, the level of detail required in this case, and the procedure for its development, adoption, and implementation. A separate part of the Act covers the provisions regulating state budget expenditures, their classification, and their purpose. Another subject of regulation by the Public Finance Act is the budget of European funds and the rules for its implementation. The provisions specifying the principles of providing banking services to the state budget and public finance sector entities should also be mentioned. Further, the Act regulates the principles of financial management for local government units, including the principles of shaping the budget's content and adopting and implementing the budgets of communes, powiats, and voivodeships.⁴

It should be highlighted that the term 'sector of public finance' first appeared in Polish law in the Act of 26 November 1998 on Public Finance,⁵ in which the entities constituting this sector were indicated. However, the term and essence of the public finance sector were not explicitly defined in this Act. Moreover, the provisions of the Public Finance Act that is currently in force focus only on the catalogue of entities included in this sector. The term 'public sector' has also not been unambiguously defined. However, there is no doubt that it constitutes, *inter alia*, a category with a broader scope of entities given that it includes public institutions and associations that use public funds in their activities, as well as non-public institutions

1 Journal of Laws, No. 78, item 483 as amended.

2 See: Borodo, 2010, pp. 28–29; Ofiarski, 2010a, pp. 11–18; Ofiarski, 2010c, pp. 175–176; Ruśkowski, 2010b, pp. 16–20.

3 Consolidated text: Journal of Laws of 2023, item 1270 as amended (hereinafter: p.f.a.).

4 Kosikowski, 2007, pp. 13–16; Kosikowski, 2010a, pp. 17–23; Lipiec-Warzecha, 2011, pp. 17–25; Dzwonkowski, 2014, pp. 17–19; Nowak-Far and Frysztak, 2019, pp. 6–16; Mierzwa, 2012, pp. 11–12.

5 Consolidated text: Journal of Laws of 2003, No. 15, item 148 as amended.

that are oriented primarily toward meeting public needs in addition to for-profit activities.⁶

The Public Finance Act also includes provisions explaining the meaning of basic concepts, including the normative definition of public finance. According to Art. 3 of this Act, public finance includes processes related to the collection of public funds and their distribution, in particular: (i) the collection of public revenue and income, (ii) spending public funds, (iii) financing the borrowing needs of the state budget, (iv) incurring liabilities involving public funds, (v) the management of public funds, (vi) public debt management, and (vii) settlements of the budget of the European Union.

The current Public Finance Act is the third consecutive regulation adopted in this respect, with the normative concept of public finance being similarly defined in the previously applicable laws.⁷ In individual regulations, the mechanism of collecting public funds and their distribution was indicated as the basis for the overall definition, whereas the differences concern the processes indicated in the more detailed definitions.⁸ What is subject to criticism in the literature on the subject is that uniform terminology has not been maintained.⁹ At the same time, it should be noted that the above-mentioned definition of public finance remains open and indicates only some of the activities covered by the process of collecting and distributing public funds. As such, this definition does not sufficiently specify these activities and does not fully take into account the economic essence of public finance.¹⁰ In the Polish literature on the subject, there are also arguments that the Public Finance Act's provisions do not, in fact, contain a definition of public finance but only define their objective scope. At the same time, however, they emphasise the nature of these provisions as it relates to the bilateral processes of collecting and distributing public funds.¹¹

Polish literature on this topic is characterised by a diverse approach to defining public finance.¹² In addition to the frequent references to the normative definition quoted above, attention is also paid to definitions developed by the economic sciences. In the latter case, public finance regulations refer to specific money flows in the economy. Subjecting money flows to these regulations aims to ensure, on the one hand, the possibility for the public budget to obtain funds to finance goods and services, and on the other hand, to define the principles of its operation, including those related to the execution of expenses.¹³ Emphasising the economic aspect of

6 Mikos-Sitek, 2010, pp. 35–37.

7 Public Finance Act of 26 November 1998 (consolidated text: Journal of Laws of 2003, No. 15, item 148 as amended), Art. 3, and Public Finance Act 30 June 2005 (Journal of Laws of 2003, No. 249, item 2104 as amended), Art. 6.

8 Differences in this respect occur primarily in relation to the Public Finance Act of 1998.

9 See: Ruśkowski, 2010a, p. 31.

10 Mierzwa, 2012, pp. 63–66; Kosikowski, 2010a, p. 34; Kosikowski, 2007, p. 18.

11 See: Chojna-Duch, 2010, pp. 11–12; *Lipiec-Warzecha, 2011, p. 31; Sołtyk, 2017, pp. 10–11.*

12 For example, see: Chojna-Duch, 2010, pp. 9–10.

13 See: Nowak-Far and Frysztak, 2019, pp. 17–18, and the literature cited therein. See also: Majchrzycka-Guzowska, 2016, p. 13.

public finance is related to the frequently appearing definition that stipulates it as public monetary resources and operations undertaken with these resources, as well as to references to legal regulations that define the rules for performing these operations.¹⁴

Referring to several basic aspects of the definitions of public finance that appear in the related Polish literature, attention should also be paid to inseparable issues regarding planning, recording, reporting, and control. The importance of these processes in defining public finance is emphasised by Ruśkowski, who draws attention to the particular complexity of the issue. Defining finance as the phenomena related to the collection and spending of funds, Ruśkowski emphasises that only when the listed financial operations are carried out by public law entities can we talk about the concept of public finance.¹⁵

Dębowska-Romanowska also highlights the complexity of the currently formulated definitions of public finance, analysing them jointly on three levels, as follows: (i) a group of legal institutions (public finance legal system), (ii) a mechanism for collecting and spending public resources (i.e. a management mechanism), and (iii) a financial resource that actually exists and is subject to distribution (centralised public financial resources).¹⁶

Aligning the definition of public finance with the process of collecting revenues and making expenditures by public entities, Dębowska-Romanowska also notes the state coercion that accompanies the process of collecting revenues, which is applied to the extent and in the manner specified by law.¹⁷

Public finance is, therefore, an important element of a state's fiscal policy. It comprises the process of collecting public funds and spending them by public entities for purposes related to the focus of their activity. It is characterised by an element of coercion that is present in the process of collecting public revenue. The processes typical of public finance in Poland are shaped by the provisions of law in force at various levels of the hierarchy of sources of law, including the provisions of the Constitution.

14 See: Dębowska-Romanowska, 2010, p. 7; Lipiec-Warzecha, 2011, p. 31. See also: Gaudemet and Molinier, 2000, p. 17.

15 See: Ruśkowski, 2008, p. 21. See also: Kosikowski, 2007, pp. 18–21; Maśniak, 2009, pp. 128–132.

16 Dębowska-Romanowska, 2010, p. 8.

17 Dębowska-Romanowska, 2010, p. 7.

2. Constitutional foundations of the functioning of public finance

2.1. Range of adjustment

Provisions concerning the issue of public finances are contained in various parts of the Constitution of the Republic of Poland of 2 April 1997, with Chapter X, entitled 'Public Finances' (Arts. 216–227) being entirely devoted to them. The provisions of the Constitution of the Republic of Poland regulate several issues, including, above all, cases in which the issues of public finance require the regulation of the rank of an Act. They also regulate issues related to the state budget, the Budget Act, and the procedure for its adoption, as well as the financial management of local government units. In this case, another subject of regulation is the matter of public levies, including, above all, taxes. In addition, the Constitution's provisions refer to basic issues related to the functioning of the state's central bank.¹⁸

2.2. Public debt and the budget deficit

The Constitution of the Republic of Poland covers the institution of public debt and the budget deficit. The relevant regulations primarily address issues related to the shaping of principles that are the basis for a safe financial economy. According to Art. 216 para. 5 sentence 1 of the Constitution of the Republic of Poland, it is forbidden to take out loans or grant financial guarantees and sureties as a result of which the state public debt will exceed three-fifths of the value of the annual gross domestic product (GDP). As such, this provision establishes the permissible limit of state public debt and, at the same time, introduces a ban on exceeding it, assuming the relation to the value of annual GDP as the basis for assessing an acceptable level.

An extension of the regulation covered by Art. 216 para. 5 of the Constitution of the Republic of Poland is Art. 220, which details solutions that are important from the perspective of the principle of budgetary balance and its protection. According to the jurisprudence of the Constitutional Tribunal, the balance of public finances is a constitutionally protected value, and the measures taken by the state to protect it must comply with the rules set out in the Constitution.¹⁹ At the same time, the Constitutional Tribunal emphasises that the targets of these norms are

18 See: Kosikowski, 1997, p. 157; Dzwonkowski and Gliniecka, 2013, pp. 14–18; Mikos-Sitek and Zapadka, 2021, pp. 3–5.

19 Judgement of the Constitutional Tribunal of 4 December 2000, K 9/00, Jurisprudence of the Constitutional Tribunal 2000, No. 8, item 294; See also: Judgement of the Constitutional Tribunal of 27 February 2002, K 47/01, Jurisprudence of the Constitutional Tribunal, Series A, 2002, No. 1, item 6; Judgement of the Constitutional Tribunal of 24 November 2009, SK 36/07, Jurisprudence of the Constitutional Tribunal, Series A, 2009, No. 10, item 151.

public authorities, which are obliged to manage the condition of public finances, an important determinant of which is the level of public debt in relation to GDP as a significant factor determining the state's economic condition. Underlining public authorities' obligation is the establishment of a constitutional debt limit. Taking into account various factors affecting this limit, the legislator indicates additional prudential procedures in the provisions of the Public Finance Act. The above-mentioned provisions of the Constitution of the Republic of Poland, therefore, prohibit public authorities responsible for taking out loans and granting financial guarantees and sureties from taking these actions if they would lead to exceeding the constitutional debt limit (Art. 216 para. 5 of the Constitution of the Republic of Poland). These norms are also addressed to the Sejm, which cannot establish a budget deficit greater than that provided for in the draft Budget Act (Art. 220 para. 1 of the Constitution of the Republic of Poland). In the context of the case under consideration, the Constitutional Tribunal also emphasises that the above-mentioned provisions do not imply a prohibition of undertaking 'savings' activities that would precede exceeding the constitutional debt limit, nor a prohibition of undertaking such activities before exceeding other established prudential thresholds (see: Art. 86 of the Public Finance Act). However, this thesis should be considered applicable to all activities of public authorities related to shaping the level of budget deficit and public debt.²⁰

However, Art. 220 para. 2 of the Constitution of the Republic of Poland introduces the principle according to which the Budget Act may not provide for covering the budget deficit by incurring liabilities with the state's central bank. Consequently, the above-mentioned provision constitutes a protection against excessive deficit – for this reason, the said rule has been included in the Constitution of the Republic of Poland in one provision – in conjunction with the principles discussed above, resulting from Art. 220 para. 1. On the other hand, the provision refers to another constitutionally protected value as it relates to the financial independence of the central bank of the state, which is one important aspect of the bank's implementation of its primary objective related to responsibility for the value of Polish currency (see: Art. 227 para. 1 of the Constitution of the Republic of Poland).²¹ Art. 220 of the Constitution of the Republic of Poland, therefore, refers to the principle of budgetary balance and the rules strengthening its protection. Meanwhile, para. 1 of the above-mentioned provision is related to the course of work on the Budget Act and its planning nature. It also refers to the role of the Council of Ministers in this process, which is related to the exclusive legislative initiative the Council has in this case, as well as its responsibility for the state budget implementation stage. Apart from the protective function related to maintaining budget balance, para. 2 is also important

20 Judgement of the Constitutional Tribunal of 12 December 2012, K 1/12, Jurisprudence of the Constitutional Tribunal, Series A, 2012, No. 11, item 134.

21 See: Dębowska-Romanowska, 2016, pp. 1534–1535; Banaszak, 2009, pp. 944–946; Kosikowski, 1997, p. 159.

in the process of guaranteeing the independent monetary policy of Poland's central bank.²²

2.3. Local government units

The provisions of the Constitution of the Republic of Poland primarily provide for the competences of local governments related to participation in the exercise of public authority. At the same time, Art. 16 para. 2 states that a significant part of public tasks vested in local government under the laws should be performed on its own behalf and under its own responsibility. This is confirmed by the content of further provisions of the Constitution of the Republic of Poland that concern the functioning of local government in Poland and specify the scope of public tasks entrusted to it (see: Arts. 163 and 166).²³ Marking the organisational and functional separation of local government, the provisions of the Constitution of the Republic of Poland guarantee its independence within the framework of statutory public tasks, including financial independence.²⁴

Consequently, Art. 16 results in the principle of decentralising public authority and is the basis for the functioning of local government in Poland. Regulations in force in this regard at the Act level, which specify the tasks of local government units in detail, create a framework for their activity. This also applies to other aspects of their functioning.²⁵

The consequence of the division of public tasks between government administration bodies and local government units is the division of public revenues. As indicated above, one of the manifestations of the independence of local government units is financial independence, which can be guaranteed to these units by providing them with sufficient financial resources for the tasks they perform. In this case, financial resources are one of the measures ensuring local government units' ability to perform the entrusted public tasks, in addition to appropriate systemic solutions and administrative tools.

At the same time, attention should be paid to the key relationship between the amount of public income at the disposal of local government units and their ability to perform their tasks.²⁶ If local government units undertake a significant part of public tasks, the performance of which depends on the state of their public funds, it is necessary to consider the scope of the entrusted tasks and ensure sufficient income when defining the rules for operations at each level of local government.

22 The issue of public debt and budget deficit is discussed in detail later in this chapter.

23 See also: Decision of the Constitutional Tribunal of 30 November 1999, TS 104/99, Jurisprudence of the Constitutional Tribunal 2000, No. 1, item 21.

24 Banaszak, 2009, pp. 114–115.

25 Banaszak, 2009, p. 114.

26 Judgement of the Constitutional Tribunal of 20 February 2002, K 39/00, Jurisprudence of the Constitutional Tribunal, Series A, 2002, No. 1, item 4.

Taking the above into account, the provisions of the Constitution of the Republic of Poland guarantee that local government units share in public income in accordance with the tasks assigned to them (Art. 167 para. 1). These provisions also establish the principle according to which changes in the scope of tasks and competences of local government units should be accompanied by appropriate changes in the distribution of public revenue (Art. 167 para. 4). Similar regulations are also included in the constitutional laws in force in Poland.²⁷

In circumstances when the scope of tasks performed by local government units changes, the legislator may make changes guaranteeing the possibility of increasing the income of these units, depending on the nature of the tasks. The legislator may also provide funds in the form of a special-purpose subsidy. As such, a reduction in the income of local government units may occur in the event of a decrease in the scope of tasks they perform. Disputes regarding the adequacy of changes in the distribution of public revenues introduced by the legislator as a consequence of a change in the scope of tasks are to be resolved by the Constitutional Tribunal, which should take into account the principles discussed above, as well as the level of available resources in the context of the current situation of the state.²⁸

Art. 167 para. 2 of the Constitution of the Republic of Poland lists the basic categories of local government unit income, which include: own income, general subsidies from the state budget, and targeted subsidies from the state budget. Attention should be paid to the interpretation problems that arise in the classification of the individual income categories of local government units in the context of Art. 167 para. 2, which provides for subsidies from the state budget only. The provision referred to in para. 3 specifies that the sources of local government unit income are defined by law.²⁹ However, an open catalogue of the incomes of these units covered by the provisions of the Act on the Income of Local Government Units does not solve this problem given that not all local government unit income categories can be considered as own income, and subsidies used by local government units are not always special-purpose subsidies from the state budget.³⁰ Taking into account

27 See: Act of 8 March 1990 on commune self-government (consolidated text, Journal of Laws of 2023, item 40, as amended); Act of 5 June 1998 on powiat self-government (consolidated text: Journal of Laws of 2022, item 1526, as amended); Act of 5 June 1998 on voivodeship self-government (consolidated text: Journal of Laws of 2022, item 2094, as amended).

28 See: Judgement of the Constitutional Tribunal of 23 October 1995, K 4/95, Jurisprudence of the Constitutional Tribunal 1995, No. 2, item 11; Judgement of the Constitutional Tribunal of 23 October 1996, K 1/96, Jurisprudence of the Constitutional Tribunal 1996, No. 5, item 38; Judgement of the Constitutional Tribunal of 12 April 2005, K 30/03, Jurisprudence of the Constitutional Tribunal, Series A, 2005, No. 4, item 35; Judgement of the Constitutional Tribunal of 31 May 2005, K 27/04, Jurisprudence of the Constitutional Tribunal, Series A, 2005, No. 5, item 54. See also: Banaszak, 2009, pp. 758–759.

29 See: Act of 13 November 2003 on the income of local government units (consolidated text: Journal of Laws of 2022, item 2267).

30 For example, subsidies from the National Fund for Environmental Protection and Water Management.

the above doubts, it would be advisable to clarify the wording of Art. 167 para. 2 because it does not sufficiently refer to the applicable law in this respect. The provision of Art. 167 para. 3 of the Constitution of the Republic of Poland requires that the sources of local government unit income be specified in the Act; however, this does not mean that the content of this Act may be inconsistent with Art. 167 para. 2.³¹

Art. 168 of the Constitution of the Republic of Poland expresses the tax authority of local government units, granting them the right to determine the amounts of local taxes and fees. This provision is, therefore, a supplement to the above-mentioned constitutional provisions concerning the financial independence of local government units as the ability to levy tax is an important element of financial power. However, the right to determine the amount of local taxes and charges is not unlimited in this case because, in accordance with the above-mentioned provisions, it must be exercised within the limits set by the Act. This is consistent with the interpretation of this provision in connection with Art. 217 of the Constitution of the Republic of Poland.³²

3. Financial management of the state and financial management of local government units

Financial management by public entities is related to the implementation of specific public tasks at both the government and local government administration levels. The goal of the activity of the state and local government units in this area is to satisfy social needs. This requires appropriate financial outlays, the accumulation of which is based on the implementation of public tasks that aim to meet this goal. However, the scope of the tasks entrusted and performed has a significant impact on the amount and structure of the income collected and the expenses incurred. Financial management by public entities takes place on the basis and within the limits of the law (Art. 7 of the Constitution of the Republic of Poland), which, while determining their competences, leaves a certain scope of freedom to make decisions and creates conditions for operating on the basis of financial independence.³³

Resulting from the above-mentioned Art. 7, the principle of legalism requires that the activities of public authorities be based on specific legal provisions. As

31 See: Mikos-Sitek, 2019, p. 733.

32 See: Skoczył and Piątek, 2016, p. 933, and the literature cited therein. See also: Judgement of the Constitutional Tribunal of 28 November 2013, K 17/12, Jurisprudence of the Constitutional Tribunal, Series A, 2013, No. 8, item 125. At this point, reference is made to the constitutional foundations of financial management by local government units. This issue is discussed in detail later in this chapter.

33 Dębowska-Romanowska, 2010, pp. 21–23.

such, activities related to the exercise of public authority require specific legal bases that provide legitimacy for the exercise of the granted competences.³⁴ In the Polish literature on this subject and the jurisprudence of the Constitutional Tribunal, it is noted that from Art. 7 implies the obligation to define the competences of public authorities within the provisions of generally applicable law, which cannot be presumed. Attention is also drawn to the prohibition of their arbitrary execution.³⁵ The public authorities that are the targets of these provisions should be understood broadly in this case: they comprise all entities exercising public authority, including local government units.³⁶ The principle of legality resulting from these provisions and the taking of actions by public authorities according to the existing legal basis should also be referred to the principle of exclusivity of the act (see, primarily: Art. 216 para. 1 of the Constitution of the Republic of Poland).³⁷

In discussing financial management by the state and local government units, in addition to the applicable legal norms defining their competences and the rules for their implementation (statutory competence norm), we should also consider the planning basis for financial management in the form of a public financial plan (Budget Act,³⁸ budget resolution of local government units³⁹). Attention should also be paid to the state's position as the primary and independent entity of public finances, which means that the financial authority of other public entities derives from the state. In accordance with the generally accepted assumptions in the science of financial law, the provisions of the Republic of Poland's current Constitution define the rules for dividing financial power between the state and local government and the main attributes related to deciding on and collecting income, implementing expenses, and conducting financial management.⁴⁰

Art. 15 of the Constitution of the Republic of Poland emphasises that the territorial system of the state should ensure the decentralisation of public authority (the

34 Banaszak, 2009, p. 57; Judgement of the Constitutional Tribunal of 21 February 2001, P 12/00, Jurisprudence of the Constitutional Tribunal 2001, No. 3, item 47, decision of the Constitutional Tribunal of 4 October 2011, P 9/11, Jurisprudence of the Constitutional Tribunal, Series A, 2011, No. 8, item 86.

35 Banaszak, 2009, pp. 57–58; Resolution of the Constitutional Tribunal of 10 May 1994, W 7/94, Jurisprudence of the Constitutional Tribunal 1994, No. 1, item 23; Judgement of the Constitutional Tribunal of 14 June 2006, K 53/05, Jurisprudence of the Constitutional Tribunal, Series A, 2006, No. 6, item 66; Judgement of the Constitutional Tribunal of 4 December 2001, SK 18/00, Jurisprudence of the Constitutional Tribunal 2001, No. 8, item 256.

36 See: Decision of the Constitutional Tribunal of 22 May 2007, SK 70/05, Jurisprudence of the Constitutional Tribunal, Series A, 2007, No. 6, item 60; Judgement of the Constitutional Tribunal of 29 October 2009, K 32/08, Jurisprudence of the Constitutional Tribunal, Series A, 2009, No. 9, item 139.

37 Dębowska-Romanowska, 2010, pp. 116–117; Banaszak, 2009, pp. 57, 927–928; Ofiarski, 2016, pp. 1465–1466.

38 See: Art. 219 of the Constitution of the Republic of Poland and Art. 109 p.f.a.

39 See: Art. 211 p.f.a.

40 Dębowska-Romanowska, 2010, pp. 29–33.

principle of the decentralisation of public authority). The basic territorial division of the state should consider existing social, economic, and cultural ties and ensure that territorial units are able to perform the tasks assigned to them. As emphasised above, the division of public tasks between government administration and local government, and thus the participation of local government units in the exercise of public authority, is also related to their share of public revenues in accordance with the scope of the tasks they perform (principle of adequacy). Providing financial resources is one of the basic elements for guaranteeing the ability to perform public tasks. Pursuant to Art. 16 para. 2 of the Constitution of the Republic of Poland, local government in Poland performs a significant part of the public tasks assigned to it by law on its own behalf and under its own responsibility. This is important in the context of local government units conducting independent financial management, which is manifested by the annual setting of budget assumptions, as well as the decisions taken by local government bodies regarding budget resolutions and the implementation of the budget in accordance with the rules deriving from the regulations in force.⁴¹

Regarding the legal personality of local government units, Art. 165 para. 1 of the Constitution of the Republic of Poland is of particular importance. This article grants local government units legal personality and the right to property and other property rights, thus guaranteeing their implementation of public tasks. Granting legal personality and property ownership is the basis for separating local government units from other public law entities and an important element of recognising their independence, which is subject to judicial protection (Art. 165 para. 2 of the Constitution of the Republic of Poland).⁴²

Local government in Poland operates on three levels: commune, powiat, and voivodeship. The basis for its functioning is specified in the provisions of the Constitution of the Republic of Poland (Arts. 163–172) and political Acts.⁴³ In terms of financial management, the Public Finance Act of 27 August 2009⁴⁴ and the Act of 13 November 2003 on the Income of Local Government Units are especially significant.⁴⁵

41 Szewczuk, 2008, pp. 217–221.

42 See: Bach-Golecka and Golecki, 2016, p. 892.

43 Act of 8 March 1990 on municipal self-government (consolidated text: Journal of Laws of 2023, item 40, as amended); Act of 5 June 1998 on powiat self-government (consolidated text: Journal of Laws of 2022, item 1526, as amended); Act of 5 June 1998 on voivodeship self-government (consolidated text: Journal of Laws of 2022, item 2094, as amended). See also: Borodo, 2008b, pp. 36–37.

44 Consolidated text: Journal of Laws of 2023, item 1270, as amended.

45 Consolidated text: Journal of Laws of 2022, item 2267, as amended.

4. Public debt and budget deficit – current regulations and the state of affairs

4.1. National public debt

Polish literature points out that the issue of finances is fundamental for the functioning of the state. Consequently, appropriate importance should be attached to the level of regulation at which the application of the basic principles, as well as key solutions and institutions in this area, is recognised. Such regulation should be durable and based on constitutional provisions.⁴⁶ Public debt in Poland had, and still currently has, its basis in constitutional regulations, which, over time, have increasingly referred to the fundamental issues relating to public debt.

The Constitution of 3 May 1791 highlighted the powers of the Sejm in the scope of incurring public debt, excluding them in relation to the executive power.⁴⁷ Art. 8 of the Act of 17 March 1921 of the Constitution of the Republic of Poland,⁴⁸ however, it only contained a provision according to which the manner of exercising parliamentary control of state debt is determined by a separate Act, and referred in this respect to the Act of 25 September 1922 on control over the state's debts.⁴⁹ A similar scope of regulations existed in the Constitutional Act of 23 April 1935,⁵⁰ which determined participation in exercising control over the state's debts (Art. 31) and the Senate's right to take part in this process (Art. 46) as aspects of the Sejm's control over the government. In the post-war period, constitutional regulations did not consider the issue of public debt, which appeared – to a limited extent – at the level of statutory regulations.⁵¹

Of particular importance for the legal regulation of public debt and the budget deficit was the adoption of the Constitution of the Republic of Poland of 1997, which introduced significant regulations to protect the state against excessive debt for the first time. The provisions of the Constitution of the Republic of Poland include the requirement to regulate the rank of the Act in relation to taking out loans and the granting of financial guarantees and sureties by the state (Art. 216 para. 4).⁵² They also define the permissible limit of state public debt, which is tantamount to the practical prohibition of exceeding, in this case, three-fifths of the value of the annual GDP (Art. 216 para. 5 of the Constitution of the Republic of Poland).⁵³ It should

46 Ofiarski, 2010c, p. 175.

47 Sarnecki, 1997, pp. 24–25.

48 Journal of Laws, No. 44, item 267, as amended.

49 Journal of Laws, No. 89, item 805.

50 Journal of Laws, No. 30, item 227, and the Act of 2 January 1936 on the exercise of parliamentary control over the State's debts (Journal of Laws No. 2, item 3).

51 Ofiarski, 2010a, p. 139; Ofiarski, 2016, p. 1466.

52 See: Act of 8 May 1997 on sureties and guarantees granted by the State Treasury and certain legal persons (consolidated text: Journal of Laws of 2023, item 926, as amended).

53 Dębowska-Romanowska, 2010, pp. 118–119.

be noted that these provisions fulfil an important function related to preventing excessive state debt in the following years. With regard to the issue of calculating the value of annual GDP, the Constitution of the Republic of Poland introduces the requirement for regulation at the statutory level.⁵⁴

Pursuant to Art. 221 of the Constitution of the Republic of Poland, legislative initiative in the Act on Contracting Public Debt and the Act on Granting Financial Guarantees by the State is vested exclusively in the Council of Ministers. The basis for this solution is its constitutional responsibility for protecting the interests of the State Treasury, including the implementation of competences related to the preparation of the annual draft Budget Act and the implementation of the budget. Within 5 months following the end of the budget year, the Council of Ministers submits a report to the Sejm on the implementation of the Budget Act, together with information on the state's debt. After considering the submitted report and hearing the opinion of the Supreme Audit Office, the Sejm adopts a resolution on granting or refusing to discharge the Council of Ministers (Art. 226 of the Constitution of the Republic of Poland). The provisions of the Constitution of the Republic of Poland also introduce mechanisms that provide protection against an excessive deficit. In this respect, Art. 220 para. 1 prohibits increasing expenditure or limiting revenues planned by the Council of Ministers, which results in the Sejm establishing a larger budget deficit than that provided for in the draft Budget Act. However, according to the principle introduced in para. 2 of this article, the budget law cannot provide for covering the budget deficit by incurring a liability with the central bank of the state. It should be noted that while Art. 220 para. 2 of the Constitution of the Republic of Poland only mentions the Budget Act, the prohibition covered by this provision applies to all Acts.⁵⁵

The regulations and principles covered by the provisions of the Constitution of the Republic of Poland have been detailed in Poland in the public finance laws in force over the years. Following the establishment of the current Constitution, the Public Finance Act of 26 November 1998 was adopted,⁵⁶ with issues related to state's public debt being covered by Chapter II (Arts. 36–47). This Act was in force until the end of 2005 and was replaced by the Act of 30 June 2005 on public finances,⁵⁷ which retained a similar division of the matters covered by its regulation (Arts. 68–94). Since 1 January 2010, the Act of 27 August 2009 on public finances, which, like previous Acts, regulates the issue of state public debt under Chapter II (Arts. 72–102), has applied.⁵⁸

There is no uniform definition of public debt in the Polish literature. This issue is related to the complex nature of public debt and the need for analysis in both the legal and economic fields. However, its essence should be seen as a lack of

54 See: Act of 26 October 2000 on the method of calculating the value of the annual gross domestic product (consolidated text: Journal of Laws of 2021, item 151).

55 Ofiarski, 2010a, p. 145.

56 Consolidated text: Journal of Laws of 2003, No. 15, item 148, as amended.

57 Journal of Laws No. 249, item 2104, as amended.

58 Journal of Laws No. 157, item 1240, as amended – original text; consolidated text Journal of Laws of 2023, item 1270, as amended.

adjustment to public needs and the ratio of the related expenses to the amount of financial resources at the state's disposal. The phenomenon of public debt is also related to the situation of limited sources of income and the inability to reduce public expenditure.⁵⁹ According to the definition most often proposed in the literature, public debt comprises the total financial liabilities of public sector entities due to legal and financial events, which are diversified from an economic and legal perspective, as well as shortfalls resulting from financing the surplus of public expenditure over and above public revenues that has been accumulated in previous periods.⁶⁰ It is rightly pointed out that most definitions of public debt formulated in the Polish and foreign literature emphasise its connection with taking out public loans, which are an important source of debt, although not the only source.⁶¹

In the current Public Finance Act of 2009, the legislator did not include a legal definition of state public debt, unlike both the Public Finance Act of 1998 (see Art. 9) and the Public Finance Act of 2005 (see Art. 10).⁶² Art. 72 of the current Public Finance Act defines the material scope of state public debt and lists the debt titles that constitute it. Pursuant to this provision, state public debt covers the various liabilities of the public finance sector, as follows: (i) issued securities covering monetary receivables, (ii) credits and loans taken out, (iii) accepted deposits, and (iv) due liabilities: (iva) resulting from separate Acts and final court judgements or final administrative decisions, (ivb) recognised as undisputed by the relevant public finance sector entity that is the debtor.

As a result of the amendment to Art. 72 of the Personal Income Tax Act, which entered into force on 1 January 2019, a new Section 1a was added to this provision. This section clarifies that the debt titles listed in points 1–3 above include financial liabilities arising from legal relationships whose name corresponds to these debt titles and from other legal relationships that produce economic effects similar to those arising from securities relating to monetary receivables, credit and loan agreements, and accepted deposits.⁶³

The provisions of the Public Finance Act include the definition of the deficit and surplus of the public finance sector. In general terms, the difference between public

59 Chojna-Duch, 2010, p. 259.

60 See: Panfil, 2009, pp. 79–80; Chojna-Duch, 2010, p. 260; Kosikowski, 2010a, pp. 218–219.

61 See: Owsiak, 1993, p. 330; Panfil, 2009, pp. 79–80; Borodo, 2010, pp. 211–212; Gaudemet and Molinier, 2000, pp. 371–372.

62 Pursuant to Art. 9 of the Public Finance Act of 1998: '1. State public debt is understood as the nominal debt of entities from the public finance sector, determined after eliminating financial flows between entities belonging to this sector. 2. The debt of the State Treasury means the nominal debt of the State Treasury'. However, in accordance with Art. 10 of the Public Finance Act of 2005: '1. State public debt is understood as the nominal value of the debt of the public finance sector units, determined after eliminating mutual obligations between the units of this sector. 2. The State Treasury debt is understood as the nominal value of the State Treasury debt'.

63 See: Act of 14 December 2018 amending the Public Finance Act and certain other acts (Journal of Laws of 2018, item 2500); para. 3 of the Regulation of the Minister of Finance of 28 December 2011 on the detailed method of classifying debt titles included in the state public debt (consolidated text: Journal of Laws of 2023, item 58). See also: Ofiarski, 2010a, pp. 165–167.

revenues and public expenditure determined for the accounting period is called the budget result (balance). Pursuant to Art. 7 para. 1 p.f.a., a positive difference in this case is a surplus, whereas a negative difference is a deficit of the public finance sector. Public revenues and public expenditures, as well as the surplus or deficit of the public finance sector, are determined after eliminating financial flows between the units of this sector (principle of consolidation, Art. 7 para. 2 p.f.a.).

However, it should be noted that the concepts of the deficit and surplus of the public finance sector have a broader scope than those of budget deficit and surplus, which refer to public funds collected and spent within a specific budget (state or local government unit).⁶⁴ Art. 113 para. 1 p.f.a. concerns the method of calculating the level of deficit and surplus in relation to the state budget. It also determines the sources of financing the state budget deficit and other borrowing needs in the state budget, including revenues from: (i) the sale of Treasury securities on the domestic and foreign markets; (ii) loans taken out from domestic and foreign banks; (iii) loans; (iv) the privatisation of State Treasury assets; (v) amounts derived from repayments of credits and loans granted; (vi) state budget surpluses from previous years; (vii) a surplus of the European funds budget, which is the source of the repayment of state budget liabilities incurred to cover the European funds budget deficit (Art. 118 para. 4 p.f.a.); and (viii) other financial operations (Art. 113 para. 2 p.f.a.).

The modern understanding of the principle of budget balance, which is based on the postulate of pursuing a rational financial policy and intermediate concepts such as the deadlock theory, assume the existence of a budget deficit while considering the application of specific rules related to shaping the level of this deficit, including maintaining a specific limit. This issue was discussed above in relation to public debt, where the limit is set at 60% of annual GDP. This rule is a constitutional principle in Poland (Art. 216 para. 5 of the Constitution of the Republic of Poland) but is also included in the provisions of the Public Finance Act (Art. 74 para. 1). According to the standards applicable in the European Union, in the event of a budget deficit, the limit is 3% of the annual GDP. This value has not been transcribed directly in Polish regulations and is in accordance with the provisions of Art. 126 of the Treaty on the Functioning of the European Union (TFEU) and Art. 1 of the Protocol on the Excessive Deficit Procedure Annexed to the Treaty.⁶⁵ Art. 126 of the TFEU and the provisions of the Protocol define the excessive deficit procedure and impose an obligation on EU Member States to avoid it. Competences related to supervising the development of the budgetary situation and the amount of deficit and public debt in these countries have been imposed on the European Commission, which is guided in its activities by the assessment of the criteria listed in Art. 126 para. 2 of the TFEU.

⁶⁴ Kornberger-Sokołowska, 2019, pp. 37–39.

⁶⁵ See also: 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 Union, OJ L 174, 26.6.2013, 1–727.

The current Public Finance Act also allows for the possibility of a deficit in the budget of European funds. Pursuant to Art. 117 para. 1 p.f.a., this budget is an annual plan of income and refundable expenses intended for the implementation of programmes financed with European funds, excluding funds intended for the implementation of technical assistance projects and specific categories included among agricultural funds (expenditures under the European Agricultural Guarantee Fund⁶⁶). The plan includes income from the implementation of programmes financed with European funds and expenses for the implementation of such programmes – which are in part subject to reimbursement (Art. 117 para. 2 p.f.a.). The budget of European funds constitutes part of the state budget (Art. 110 points 4–6 p.f.a.).

Neither the budget deficit nor the surplus of European funds are included in the deficit or surplus of the state budget, respectively. Despite the legal separation of the European funds budget deficit, no own sources of financing have been introduced for it: the budget deficit of European funds is financed as part of the borrowing needs of the state budget. Consequently, the costs of servicing liabilities incurred to cover them will comprise expenses of the state budget as costs of servicing the debt of the State Treasury (see: Art. 76 point 1b and Art. 124 para. 5 p.f.a.).⁶⁷

Art. 118 para. 4 p.f.a. determines the allocation of the surplus of the European funds budget, indicating the repayment of state budget liabilities incurred to cover the deficit that occurred in the European funds budget. This provision has been criticised in the literature because the consequence of its application may be a situation in which free funds on the European funds budget accounts (resulting from a surplus) cannot be used to repay previously incurred liabilities of the State Treasury. This, in turn, creates a need to incur further obligations. The issue of keeping separate records of liabilities incurred to finance the budget deficit of European funds also seems to be a problem.⁶⁸

In the scope of the issues discussed, public debt management is also of particular importance. The literature on the subject indicates three basic models of solutions used in practice in this area. The government (ministerial) model is characterised by locating the public debt management process within the structures of one of the ministries (applicable in Poland but also, for example, in Spain and Greece). In the case of the banking model, public debt management is delegated to the central bank (e.g. Cyprus, Denmark). The agency model, in contrast, assumes entrusting public debt management to specialised institutions that exercise a high degree of autonomy in the scope of tasks performed, while also maintaining government control (e.g. Belgium, France, Germany).⁶⁹

In connection with the public debt management model adopted in Poland, the provisions of the Public Finance Act provide for several competences of the Minister

66 See: Art. 5 para. (3) of Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management, and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013, OJ L 435, 6.12.2021, 187–261.

67 Misiąg, 2019, pp. 428–429; Tyniewicki, 2010, p. 388; Mikos-Sitek, 2020, pp. 278–279.

68 Misiąg, 2019, p. 429.

69 Lipiec-Warzecha, 2011, pp. 403–404.

of Finance. These competences are primarily related to control over the public finance sector in terms of compliance with the principle that holds that the state public debt cannot exceed 60% of the value of the annual GDP. The Minister of Finance also supervises the status of the State Treasury debt (Art. 74 paras. 1 and 2 p.f.a.). However, the competences entrusted to the Minister of Finance as a whole are much more complex. Their scope also includes developing a four-year strategy for managing the State Treasury debt and influencing the state public debt. This strategy is presented to the Council of Ministers for approval, and the Council of Ministers then presents it to the Sejm along with a justification for the draft Budget Act. Pursuant to Art. 75 para. 1 p.f.a., the Minister of Finance prepares the strategy while considering, in particular: (i) debt management conditions related to the macroeconomic stability of the economy, (ii) analysis of the level of state public debt, (iii) forecasts of the level of state public debt and State Treasury debt, (iv) forecasts of the costs of servicing the State Treasury debt, (v) shaping the debt structure, and (vi) forecasts and analyses of undue liabilities under State Treasury sureties and guarantees.

The Minister of Finance is also authorised to take actions to finance the borrowing needs of the state budget, which, based on applicable regulations, can be understood as the need for the financial resources required to finance the deficit (state budget and the budget of European funds) and expenditures of the state budget (see: Art. 76 p.f.a.). The borrowing needs of the budget are, therefore, related to the budget policy pursued in the state, and their financing has a direct impact on the public debt.⁷⁰

To finance the borrowing needs of the state budget, and in connection with managing the debt of the State Treasury, the Minister of Finance is authorised to carry out specific financial operations, including: (i) incurring financial liabilities on behalf of the State Treasury, in particular by issuing securities and taking out loans and credits on the domestic and foreign markets; (ii) repayment of the liabilities referred to in point 1 above; (iii) carrying out other financial operations related to debt management, including operations related to financial derivative instruments; and (iv) management of the budget surplus of European funds (see: Arts. 77 et seq. p.f.a.).

Prudential and restructuring procedures are instruments aimed at controlling the size of the state public debt. They define the rules of conduct in the event of an increase in the state public debt and reaching a level that may affect compliance with the limit set by the provisions of the Constitution of the Republic of Poland (Art. 216 para. 5; see also Art. 74 para. 1 p.f.a.). The factor that determines the application of a specific procedure is the value of the ratio of state public debt to GDP at the end of the budget year (in accordance with the annual announcement of the Minister of Finance, see: Art. 38 p.f.a.). Subsequent procedures provide for obligations to take specific actions that reduce the ratio of state public debt to GDP.⁷¹ The provisions of the Polish Public Finance Act currently provide for two ranges for this ratio, designating the necessary actions and measures. If the ratio of the amount of

⁷⁰ Szmaj, 2019, p. 291.

⁷¹ Mikos-Sitek, 2011, p. 85.

state public debt to GDP is greater than 55% and less than 60%, then: (i) For the next year, the Council of Ministers adopts a draft Budget Act in which: (ia) no state budget deficit is expected, or the level of difference between the state budget's revenues and expenditures is assumed to ensure that the ratio of the State Treasury debt to GDP expected at the end of the financial year covered by the draft Act will be lower than the ratio announced by the Minister of Finance in accordance with Art. 38 of the Public Finance Act, there is no increase in the remuneration of employees in the state budget sphere, including employees of the units referred to in Art. 139 para. 2 p.f.a. (Chancellery of the Sejm, Chancellery of the Senate, Chancellery of the President of the Republic of Poland, Constitutional Tribunal, Supreme Audit Office, Supreme Court, Supreme Administrative Court together with voivodeship administrative courts, National Council of the Judiciary, common judiciary, Ombudsman, Ombudsman for Children, National Broadcasting Council, President of the Office for Personal Data Protection, Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, National Electoral Office, and the National Labour Inspectorate), (ib) the indexation of annuities and pensions cannot exceed the level corresponding to the increase in prices of consumer goods and services announced by the Central Statistical Office for the previous financial year, (ic) a ban on granting loans and credits from the state budget is introduced, with the exception of instalments of loans and credits granted in previous years, (id) no increase in expenses is expected in the units referred to in Art. 139 para. 2 p.f.a. (listed above) at a level higher than in government administration; (ii) The Council of Ministers reviews state budget expenditure financed with funds from foreign loans and multi-annual programmes; (iii) The Council of Ministers presents a restructuring programme, which is aimed at reducing the ratio of state public debt to GDP, to the Sejm; (iv) The expenditure of a local government unit's budget, specified in the budget resolution for the following year, may be higher than the revenues of this budget increased by the budget surplus from previous years and free funds, only by the amount related to the implementation of tasks co-financed from European funds; (v) The Council of Ministers reviews the applicable regulations in order to present proposals for legal solutions affecting the level of state budget revenues, including those regarding the application of tax rates on goods and services; (vi) The State Fund for the Rehabilitation of Disabled Persons receives a targeted subsidy from the state budget for the implementation of a task related to the reimbursement of costs to employers who employ disabled persons within a specified scope (Art. 26a of the Act of 27 August 1997 on the vocational and social rehabilitation and employment of disabled persons),⁷² to the amount of up to 30% of the funds planned for the implementation of this task for a given year; (vii) Government administration bodies may enter into new obligations for the preparation of investments if they are provided with financing using public funds from the European Union budget, non-repayable funds from aid granted by Member States of the European Free Trade Association,

72 Consolidated text: Journal of Laws 2022, item 100 as amended.

and funds other than those mentioned above from non-refundable foreign sources, at the maximum allowable level specified in the regulations or procedures relating to a given type of investment, not less than 50% of the total costs. These limitations do not apply to: (vii) construction or reconstruction of national roads in order to remove the threat of road safety violations, (viii) investments financed from the National Road Fund and intended to finance the renovation, construction or reconstruction of national roads destroyed or damaged due to floods, carried out by the General Director of National Roads and Motorways in the years 2010–2012,⁷³ (ix) the preparation, implementation, construction, or operation of electronic toll collection systems referred to in Art. 13i of the Act of 21 March 1985 on public roads,⁷⁴ (x) liabilities due to compensation for real estate taken over under the Act of 10 April 2003 on special rules for the preparation and implementation of investments in the field of public roads.⁷⁵

However, in a situation where the ratio of the amount of state public debt to GDP is equal to or greater than 60%: (i) The solutions listed in points 1 and 2 and 5–7 above apply; (ii) No later than one month from the date of announcing the ratio of state public debt to GDP, the Council of Ministers presents a restructuring programme, which is aimed at limiting this ratio to below 60%, to the Sejm; (iii) The expenditure of a local government unit's budget, specified in the budget resolution for the following year, may not be higher than the revenues of this budget; (iv) Starting from the seventh day after the date of announcement of the ratio of state public debt to GDP, public finance sector units may not grant new sureties and guarantees.

Another instrument aimed at maintaining the level of state public debt at an appropriate level is the restructuring programme prepared by the Council of Ministers. This programme is initiated when the ratio of state public debt to GDP exceeds the designated limits (see: Art. 86 para. 1 points 2c and 3b, in connection with Art. 87 p.f.a.). The provisions of the Public Finance Act do not stipulate the exact form in which the restructuring programme should be prepared, although they do specify its content.

The restructuring programme should indicate the reasons for the change in the ratio of state public debt to GDP and define a programme of actions aimed at reducing this ratio. The requirements set out in the provisions of the Public Finance Act in relation to this programme concern, in particular, proposals for legal solutions affecting the level of expenses and expenditures in the public finance sector. In addition to delineating the causes and corrective measures, the recovery programme should also include a three-year forecast regarding the ratio of state public debt to GDP, along with the expected development of the country's macroeconomic situation.

Art. 88 p.f.a. specifies cases where the procedures discussed above are not followed. This article applies to exceptional situations in the country, which are most

73 See: Art. 37 para. 1 of the Act of 24 June 2010 on special solutions related to removing the effects of the flood of 2010 (Journal of Laws No. 123, item 835, as amended).

74 Consolidated text: Journal of Laws of 2023, item 645 as amended.

75 Consolidated text: Journal of Laws of 2023, item 162.

often related to additional expenses in the state budget. Exclusions concern the introduction of martial law, a state of emergency, and a state of natural disaster across the entire territory of the Republic of Poland (see: Arts. 228 et seq. of the Constitution of the Republic of Poland).⁷⁶

The Minister of Finance's competences on the sphere of managing public debt also involve exercising control by checking the implementation of the obligations arising from Art. 86 p.f.a. In this case, the Minister has the right to request additional information from public finance sector entities about their current and forecast debt and debt structure. However, if he detects any irregularities, he informs the authorities supervising the activities of these entities (Art. 74 paras. 3–5 p.f.a.).

In the case of the implementation of prudential and restructuring procedures, it is of particular importance to establish uniform rules for calculating the value of liabilities covered by the state public debt (debt titles, Art. 72 paras. 1 and 2 p.f.a.). This applies primarily to reporting obligations on public debt, including those related to the publication of information on the amounts and ratios of public debt to GDP.⁷⁷ Pursuant to Art. 73 para. 1 p.f.a., state public debt is calculated as the nominal value of liabilities of public finance sector units after eliminating mutual liabilities between units of this sector (consolidation of liabilities).

The nominal value of liabilities constituting the debt titles comprising state public debt is calculated as the amount of the principal benefit under any securities issued or loans and credits taken out, payable on the date of their redemption or on the due date of the liability. Where mature liabilities are indexed or capitalised, the nominal value corresponds to the initial nominal value, taking into account the capital increase resulting from indexation or capitalisation. The value of accepted deposits is calculated according to the nominal value understood as the amount of capital that the debtor is obliged to pay to the creditor, in accordance with the conditions specified in the contract, in the event that the deposit is liquidated. The nominal value of the deposit is the value on which interest is calculated. The value of liabilities due includes the amount of liabilities whose payment deadline has expired and are not time-barred or cancelled, excluding interest. However, this value does not apply to liabilities arising from the granting of sureties and guarantees due to the addition of interest to the amounts of the sureties and guarantees granted.⁷⁸ Art. 73 p.f.a., which specifies the rules for calculating the nominal value of liabilities constituting debt titles, also applies to calculating the amounts of undue liabilities under sureties and guarantees that are not included in the state public debt (Art. 73 para. 4 p.f.a.).⁷⁹

76 See: Tyniewicki, 2020, pp. 288–289; Borodo, 2008a, pp. 116–117; Ofiarski, 2010a, pp. 139–140; Lipiec-Warzecha, 2011, p. 450.

77 Szmaj, 2019, pp. 282–283.

78 See: paras. 2–4 of the Regulation of the Minister of Finance of 30 March 2010 on the detailed method of determining the value of liabilities included in the state public debt, State Treasury debt, and the value of liabilities under sureties and guarantees (Journal of Laws No. 57, item 366).

79 Para. 5 of the Regulation of the Minister of Finance of 30 March 2010.

The value of liabilities denominated in foreign currencies is converted into Polish currency in such a way that their nominal value is determined by conversion into Polish currency at the average exchange rate of foreign currencies announced by the National Bank of Poland, applicable on the last business day of a given reporting period.⁸⁰

The category of tools used to limit the increase in state debt and maintain an acceptable level of public finance sector deficit also includes the so-called ‘stabilising expenditure rule’ (Art. 112aa p.f.a.), which was introduced by the Act of 8 November 2013 amending the Act on public finances and amending certain Acts.⁸¹ The primary goal of implementing this solution into the Polish legal system was to expand the catalogue of tools for strengthening macroeconomic stability on subsequent levels of practical solutions.⁸² This complemented the existing system of fiscal rules based on the constitutional debt limit and prudential thresholds regulated by the provisions of the Public Finance Act. The basis for introducing these changes was the implementation of the provisions of Council Directive 2011/85/EU of 8 November 2011 on the requirements for the budgetary frameworks of the Member States into Polish law.⁸³

By establishing detailed rules regarding the properties of the budgetary framework of EU Member States, this directive obliges them to introduce a numerical fiscal rule into their national legal orders. The rule is intended to effectively support, from a multi-annual perspective, the general government sector’s implementation of the obligations regarding budgets arising from the Treaty on the Functioning of the European Union (maintaining the level of the general government sector’s deficit and debt below the reference values of 3% and 60% of the annual GDP, respectively) while creating conditions conducive to economic growth (Art. 5 of Directive 2011/85/EU). Pursuant to Art. 6 of Directive 2011/85/EU, numerical fiscal rules for individual countries should include: (i) a definition of the purpose and scope of the rules; (ii) effective and timely monitoring of compliance with the rules, based on credible and independent analysis carried out by independent bodies or bodies that are functionally independent from the budgetary authorities of the Member States; (iii) the consequences of failure to comply with these rules.

The stabilising expenditure rule determines the method of calculating the maximum limit of public finance sector units’ expenditure for each financial year (Art. 112aa para. 1 p.f.a.). It should be noted that the scope of operation of the expenditure rule in the Polish Public Finance Act is limited in terms of both its subject (see: Art. 112aa para. 3) and objective (see: Art. 112aa para. 3).

With the Act of 13 July 2023 amending the Public Finance Act and certain other acts,⁸⁴ Art. 112a¹ was also newly added to the Public Finance Act. This article

80 Para. 6 of the Regulation of the Minister of Finance of 30 March 2010.

81 Journal of Laws of 2013, item 1646 as amended.

82 See: Justification for the draft act of 8 November 2013 amending the Public Finance Act and amending certain acts, Sejm of the 7th term, Sejm Form No. 1789 of 3 October 2013.

83 OJ L 306, 23.11.2011, 41–47.

84 Journal of Laws of 2023, item 1641.

introduced a mechanism relating to the result and debt of the general government sector into the Polish fiscal framework. The mechanism is activated if, in one of the years n or $n-1$, the most up-to-date forecast of the European Commission suggests that the reference value for at least one of the values indicated in the provision has been exceeded. The concept of fiscal adjustment, expressed as a percentage of GDP, was also established.

As part of this amendment to the Public Finance Act, other significant changes to the treatment of defence expenditure were introduced. In accordance with the ‘defence clause’ added in the algorithm for determining the expenditure limit that cannot be exceeded, these expenditures will be reflected in the result of the general government sector only at the time of the delivery of military equipment (see: Art. 112aa paras. 4a–4c p.f.a). The above rules apply for the first time to the draft Budget Act for 2024.

4.2. Public debt of local authorities

It is assumed that the main source of public debt of local government units is incurring long-term liabilities in the form of loans and credits and issuing securities. In addition, it is a consequence of the budget deficit and the lack of funds to cover it. Also important in this case are the rules of the functioning of the modern state; these rules assume the greater availability of high-quality public services, which is associated with increased investment expenditure.⁸⁵

As indicated above, local government units incur liabilities in the form of credits, loans, and the issuing of securities. The provisions of the Public Finance Act also specify a closed list of purposes for which these liabilities may be incurred, as follows: (i) covering the local government budget deficit occurring during the transitional year, (ii) financing the planned budget deficit of local government units, (iii) repayment of previously incurred liabilities arising from the issue of securities and loans and credits taken out, and (iv) advance financing of activities financed from funds from the European Union budget.

The implementation of legal activities related to incurring obligations takes place in accordance with the jurisdiction of local government authorities adopted in this case and the principles of the representation of local government units.

The provisions of the current Public Finance Act of 2009 specify several important solutions and mechanisms intended to serve the ongoing control and reduction of the deficit and debt of local government units. First, the sum of credits and loans taken out, other liabilities included in the debt title referred to in Art. 72 para. 1 point 2 p.f.a., and liabilities arising from the issued securities may not exceed the amounts specified in the budget resolution of the local government unit (Art. 91 para. 1 p.f.a.). The indicated limit is determined annually in the obligatory part of

⁸⁵ Ofiarski, 2010a, pp. 148–149; Borodo, 2008a, pp. 225–229; Sawicka, 2011, pp. 534–536; Owsiak, 2018, pp. 157–158.

the budget resolution of each local government unit (Art. 212 para. 1 points 6 and 6a p.f.a.). In addition, when incurring obligations to finance the planned budget deficit of local government units, repay previously incurred liabilities related to securities and incurred loans and credits, and pre-finance activities financed from funds from the EU budget, the executive body of local government units must obtain the opinion of the regional chamber of audit on the possibility of repaying the obligation (Art. 91 para. 2 p.f.a.). This obligation also applies to taking out loans from state special purpose funds and from state and local government legal persons for expenses related to investments and investment purchases (Art. 90 p.f.a.). The opinion of the regional chamber of audit is not required in the case of short-term liabilities if they are subject to repayment or redemption in the same year in which they were incurred or issued, and liabilities with a value not exceeding 0.5% of planned current income, provided that the sum of liabilities incurred in this respect in the budget year did not exceed 1% of planned current revenues (Art. 91 para. 3 p.f.a.). Further, the opinion of the regional chamber of audit regarding the possibility of repaying a credit or loan and purchasing securities is not binding for the executive body of a local government unit, which means that a negative opinion does not constitute an obstacle to incurring a financial obligation. This opinion is considered to be of a rather informative nature, which does not mean, however, that the applications it covers may be treated marginally by local government units in practice.⁸⁶

Pursuant to Art. 92 p.f.a., local government units may only incur liabilities whose servicing costs, if any, are incurred at least once a year provided that the discount on securities issued by local government units does not exceed 5% of the nominal value and that the capitalisation of interest is prohibited. These restrictions also apply to the case of taking out loans from state special funds and from state and local government legal persons for expenses related to investments and investment purchases (Art. 90 p.f.a.). However, they do not apply to situations where the purpose of incurring a liability is to cover the temporary budget deficit of local government units occurring during the year.⁸⁷

The provisions of the Public Finance Act also include the principle according to which public finance sector entities, excepting the State Treasury, may not incur financial liabilities in the form of loans or credits, issue securities, or grant sureties and guarantees whose nominal value due for payment on maturity, expressed in PLN, was not determined on the date the transaction was concluded. This restriction, covered by Art. 93 para. 1 p.f.a., is intended to reduce the risks associated with underdetermination of the nominal value of financial liabilities incurred by public finance sector entities, including local government units. The cases in which this limitation does not apply are determined by the Council of Ministers by way of a regulation (e.g. in the case of credits or loans denominated in foreign currencies taken out from international financial institutions of which the Republic of Poland

86 Stupienko, 2014, p. 239; Trykozko, 2010, pp. 187–188; Mikos-Sitek, 2023, commentary to Art. 91.

87 See: Trykozko, 2010, pp. 240–241.

is a member or with which it has signed a cooperation agreement, or those taken out from governments or government institutions of foreign countries, pursuant to agreements concluded by the Council of Ministers with the relevant government or government institution).⁸⁸

The Public Finance Act of 2009 also introduced significant changes in the debt and deficit of local government units. It primarily formulates the principle related to the need to balance the budget in its current part (the so-called ‘golden rule of public finances’). Pursuant to Art. 242, the decision-making body of a local government unit cannot adopt a budget in which the planned current expenses are higher than the planned current revenues plus revenues from: (i) the budget surplus of the local government unit from previous years, reduced by the funds specified in point 3 below; (ii) repayment of loans granted in previous years or funds from investments made in previous years; (iii) unused funds in the current account of the budget, resulting from the settlement of income and expenses financed therewith related to specific rules for budget implementation specified in separate Acts, and resulting from the settlement of funds from the European Union budget and subsidies for the implementation of a programme, project, or task financed with the participation of these funds.

Similarly, at the end of the financial year, the current expenses incurred cannot be higher than the current revenues increased by the categories of revenues listed above. The Public Finance Act establishes certain exceptions in this respect: in accordance with Art. 242 para. 3, the current expenditure incurred may be higher than the current revenue increased by the budget surplus from previous years only by the amount related to the implementation of current expenditure with the participation of funds from the European Union budget if these funds were not transferred in a given financial year. The provisions of the current Public Finance Act also resulted in a departure from quantitative debt limits and a transition to an individual debt ratio (see: Art. 243).⁸⁹

In the scope of the discussed issues, solutions related to long-term financial planning are also important. Local government units adopt a long-term financial forecast in the form of a resolution of the decision-making body of the local government unit, the obligatory part of which is the forecast of the debt amount. The multi-annual financial forecast is adopted for the period of the budget year and at least three subsequent years; in accordance with Art. 227 para. 2 p.f.a., the forecast of the debt amount is prepared for the period for which liabilities have been incurred and are planned to be incurred. This provision indicates the separation of the projected implementation time of projects and the repayment time of the debt incurred for their implementation. This is related to the possible longer repayment period for

⁸⁸ Regulation of the Council of Ministers of 17 December 2010 on cases in which restrictions do not apply to incurring certain financial liabilities by public finance sector entities, with the exception of the State Treasury (Journal of Laws No. 250, item 1678).

⁸⁹ Puchacz, 2009, pp. 53–54.

local government units' liabilities in relation to the deadline for completing individual tasks.⁹⁰ The period for which the forecast of the debt amount is prepared depends on the liabilities already incurred in the forecast, as well as on those indicated as planned to be incurred (which may be related, for example, to the sources for covering the local government unit's budget deficit). This approach to the objective scope of forecasting the amount of debt of specific local government units enables an assessment of their ability to repay the debt within the time horizon specified in the forecast and in relation to both existing and new debt (planned to be incurred in the base year). The forecast of the debt amount also takes into account all the data necessary to determine the permissible debt limit. The calculation of this limit for specific years is made in accordance with the formula specified in Art. 243 p.f.a.⁹¹

In terms of the debt management of a local government unit, solutions related to internal control are also important, with management control being particularly pertinent. Pursuant to Art. 68 p.f.a., management control in public finance sector units (including local government units) constitutes all activities undertaken to ensure the implementation of goals and tasks in a legal, effective, cost-effective, and timely manner. Its purpose is to ensure, in particular: (i) the compliance of activities with legal provisions and internal procedures, (ii) the effectiveness and efficiency of operation, (iii) the credibility of reports, (iv) resource protection, (v) the observation and promotion of the principles of ethical conduct, (vi) the efficiency and effectiveness of information flow, and (vii) risk management.

Competences related to the coordination of these activities lie with the relevant ministers and managers of individual units of the public finance sector, and in the case of local government units, the commune head, mayor, city president (in a commune), and the chairman of the management board of local government units (in a powiat or voivodeship).⁹² Management control standards provide for internal auditing. The related obligations do not apply to all local government units in Poland: audits are conducted in those units for which the amount of income and revenues or the amount of expenses and expenses included in the budget resolution exceeds PLN 40,000,000 (Art. 274 para. 3 p.f.a.).⁹³

In the case of the issues discussed, attention should also be paid to the activities of regional audit chambers, which supervise local government units' operations in the fields of financial matters and control financial management and public procurement.⁹⁴ Pursuant to Art. 11 para. 1 of the Act on Regional Chambers of Audit, their jurisdiction in the scope of supervisory activities includes resolutions and orders adopted by local government bodies regarding: (i) procedures for adopting the

90 Leńczuk, 2012, pp. 1021–1022.

91 Lachiewicz, 2010, p. 404.

92 See: Arts. 70–71 and Art. 276 p.f.a.

93 Poniatowicz, Salachna and Perło, 2010, pp. 175–184.

94 See: Art. 1 para. 2 of the Act of 7 October 1992 on Regional Chambers of Audit (consolidated text: Journal of Laws of 2023, item 1325) and Art. 171 para. 2 of the Constitution of the Republic of Poland.

budget and its amendments, (ii) the budget and its changes, (iii) incurring liabilities affecting the amount of a local government unit's public debt and granting loans, (iv) the principles and scope of granting subsidies from the budget of a local government unit, (v) local taxes and fees to which the provisions of the Tax Ordinance Act apply, (vi) discharge, and (vii) the multi-annual financial forecast and its changes.

The Public Finance Act provides for the issuance of opinions by regional audit chambers at the stages of creating and implementing local government unit budgets. The fundamental criterion for the operation of the regional chamber of audit in the course of analysing materials and shaping the content of opinions is compliance with the law (legality).⁹⁵

During supervisory proceedings, the board of the locally competent regional audit chamber may rule on the invalidity (in whole or in part) of the budget resolution. This occurs when the competent authority fails to remove the irregularities identified by the regional audit chamber within the prescribed deadline. If the budget resolution is declared invalid, the entire budget or the part affected by the invalidity is determined by the board of the chamber (see Art. 12 paras. 1–3 of the Act on Regional Chambers of Audit).⁹⁶

Negative opinions of the regional audit chamber on the draft budget of a local government unit and the budget implementation report are not binding; however, the executive body of the local government unit is obliged to present such opinions to the unit's decision-making body, together with a response to the allegations contained therein. It is possible to make an appeal regarding the opinion of the regional audit chamber to the executive body of the local government unit (see Art. 20 of the Act on Regional Chambers of Audit).

5. Management in crisis

The provisions of the Public Finance Act provide for mechanisms whose practical application depends on the occurrence of special circumstances. These solutions are of a diverse nature, which means their use also has significantly different premises. This applies, for example, to the institution of transferring expenses (Arts. 171–172 p.f.a., Art. 180 p.f.a. – Introduction of a state of emergency in the territory of the state or its part, Art. 180a p.f.a. – Declaration of a state of epidemic threat or a state of epidemic, Art. 180b – Initiation of the Security Plan needs of the Armed Forces implemented by entrepreneurs), blocking planned budget expenditures (Arts. 177–179 p.f.a. – Threat to the implementation of the Budget Act), the stabilising expenditure rule (Art. 112d p.f.a. – Exclusion of application in the event of, for example,

⁹⁵ See: Art. 171 para. 1 of the Constitution of the Republic of Poland.

⁹⁶ For more, see: Borodo, 2008a, pp. 252–254.

martial law and a state of emergency, a state of natural disaster, a state of epidemic throughout the territory of the Republic of Poland, Art. 112aa para. 4 letters a–d p.f.a. – Defence clause), and the application of prudential and sanitation procedures (Arts. 86–87 p.f.a., Art. 88 p.f.a. – Exclusion of the application in the event of the introduction of martial law, a state of emergency, and a state of natural disaster throughout the territory of the Republic of Poland).⁹⁷ These solutions also apply to the financial management of local government units.

The period of the COVID-19 pandemic and the ensuing economic crisis resulted in several changes to the application of the provisions of the Public Finance Act, in addition to many other legal Acts covering various spheres of the functioning of the state and local government units, including issues related to their financial management. The Act of 2 March 2020 on special solutions related to the prevention, counteracting, and combating of COVID-19, other infectious diseases and crisis situations caused by them is of key importance in this case.⁹⁸ The amendment of 31 March 2020⁹⁹ of this Act introduced multiple legal solutions to mitigate the economic effects of the pandemic. The amending Act also provided for the application of protective mechanisms targeting entrepreneurs that resulted from the introduced restrictions (e.g. standstill benefit, co-financing of employee remuneration and business costs, loans, tax facilities, and facilities related to the payment of social security contributions).¹⁰⁰

As a consequence of the above-mentioned provisions being in force, the Public Finance Act temporarily introduced numerous exemptions to the requirements applicable, for example, to changes in the financial plans of public finance sector entities that are intended to increase flexibility in managing public funds. These exclusions also concern the rules for awarding subsidies, including those awarded to local government units; the use of funds from the general reserve; the creation and allocation of funds from specific reserves; and the rules for transferring and blocking expenses. In addition, the changes applied to local government units, including, for example, the deadlines for adopting local government budget resolutions, increases in the limit of liabilities to cover the transitional budget deficit of local government units occurring during the year, balancing the budget in the current part, and the principles of shaping the individual debt ratio.

97 See also: Dębowska-Romanowska, 2010, p. 119.

98 Consolidated text: Journal of Laws of 2023, item 1327 as amended.

99 Act of 31 March 2020 amending the Act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them and certain other acts (Journal of Laws of 2020, item 568, as amended).

100 See: Justification of the draft act of 31 March 2020 amending the act on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them and certain other acts, Sejm of the 9th term, Sejm Form No. 299 of 26 March 2020.

6. Conclusions

The current Public Finance Act has introduced several significant changes in the field of public finances, in addition to completely new solutions, often dictated by the requirement to implement European Union law. The new solutions, which are discussed above, concerned long-term planning (at the level of the state and local government units), the application of a stabilising expenditure rule, changes in the construction of regulations relating to the definition of state public debt, and the budget of European funds, among other issues. The Public Finance Act of 2009 also introduced noteworthy changes regarding the debt and deficit of local government units, the adoption of the principle of balancing the budget in the current part, and the move away from quantitative debt limits toward an individual debt ratio.

The events of recent years related to the COVID-19 pandemic and the war in Ukraine, as well as the ongoing economic crisis, have resulted in even more attention being paid to issues of fiscal stability, public debt, and budget balance, which are of fundamental importance for the functioning of the state. As discussed above, fiscal stability is a constitutionally protected value in Poland (Art. 216 para. 5, Art. 220 of the Constitution of the Republic of Poland), and detailed regulations are covered by the provisions of the current Public Finance Act of 2009. The inclusion of the fiscal rule in the provisions of the Constitution means that exceeding the established level of 60% of annual GDP must be treated as a violation of the Constitution and, therefore, gives rise to specific obligations and liability among specific entities. The provisions of the Constitution of the Republic of Poland do not provide for any exceptions to the prohibition covered by Art. 216 para. 5 and should be understood as an absolute prohibition.¹⁰¹ As such, the provisions of the Public Finance Act that specify the rules for calculating the state public debt constitute the implementation of the obligation specified in Art. 216 para. 5 of the Constitution of the Republic of Poland. It should also be considered correct – in the discussed context – to indicate the debt of the public finance sector (Art. 9 p.f.a.) as an element of the definition of state public debt.¹⁰² It should be noted here that the limit for the budget deficit adopted in the European Union, set at 3% of annual GDP, is not expressly included in the provisions of Polish regulations and remains in accordance with the provisions of Art. 126 of the TFEU and Art. 1 of the Protocol on the Excessive Deficit Procedure.¹⁰³

The concept of the debt of the general government sector, which is a fiscal convergence criterion and is important for the issue of public debt, is included in Art. 1 para. 5 of 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

101 Dębowska-Romanowska, 2010, p. 119; Szmaj, 2019, p. 265; Bożek, 2021, pp. 73–75. See also: Art. 228 of the Constitution of the Republic of Poland.

102 Szmaj, 2019, p. 265.

103 Poland was subject to this procedure in 2004 and 2009. For more details, see: Kargol-Wasiluk, 2011, pp. 81–96.

Establishing the European Community.¹⁰⁴ Reference should also be made to the provisions of 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 Union (ESA 2010) in the context of the importance of the subjective and objective scopes of the mentioned concept due primarily to the existing differences in national regulations.¹⁰⁵

Pursuant to Art. 1 para. 5 of Regulation No. 479/2009, public debt means the total gross debt at the nominal value remaining at the end of the year in the public administration sector (S.13), excluding those liabilities that correspond to financial assets held by the public administration sector (S.13). In addition, Art. 1 para. 5 sentence 2 defines the scope of public debt (with an indication of the classification of ESA 2010 codes), stipulating that it consists of public sector liabilities in the following categories (debt titles): cash and deposits (AF.2), debt securities (AF.3), and loans (AF.4). In this case, public debt should, therefore, be understood as the gross debt of the general government sector, expressed as a nominal value, existing at the end of the year and consolidated within this sector. While it can be concluded that the provisions of the Polish Public Finance Act are largely consistent with the above definition of public debt (recognition of debt at a nominal value, gross recognition, consolidation of liabilities), several differences should be noted. In the field of debt titles, the Public Finance Act additionally lists liabilities arising from separate Acts and final court judgements or final administrative decisions that are recognised as undisputed by the relevant public finance sector entity that is the debtor. These liabilities are laid out in Art. 72 para. 1 point 4, which is related to the adopted cash method of calculating public debt. This method involves recording only those financial operations that result in the actual inflow and outflow of money from public authority accounts, as opposed to the ESA 2010 methodology that uses the accrual method, where the size of the transaction is determined at the time the liability arises or its due date.¹⁰⁶

As far as the scope of the definition of public debt is concerned, there is also a difference in the recognition of liabilities under guarantees and sureties. In the cases of both the cash method and the accrual method, potential liabilities arising from the above-mentioned debt titles do not constitute public debt. However, under the ESA 2010 methodology, after meeting certain criteria, the potential debt may become the debt of the entity that provides the guarantee or surety (the so-called 'presumption of debt assumption'). This usually occurs with a request to execute a guarantee or surety covering all or part of the guaranteed amount. Such an obligation may be treated as a debt title in accordance with the ESA 2010 methodology.¹⁰⁷

104 OJ L 145, 10.6.2009, 1–9, as amended.

105 OJ L 174, 26.6.2013, 1–727. See also: Walczak, 2017, p. 298; and in the previous legal status, Dębowska-Romanowska, 2010, pp. 120–121.

106 See: Pomorski, 2012, p. 482 and the literature cited therein.

107 Szmaj, 2019, p. 268. See also: Marchewka-Bartkowiak, 2013, p. 2.

However, the subjective scope of the concept of public debt in national and EU law shows differences in how the public finance sector is approached. Poland's Public Finance Act (Art. 9) indicates a catalogue of units constituting this sector. On the other hand, in accordance with the provisions of Regulation No. 549/2013, the general government sector includes all units of the general and local government sector and all non-market, non-commercial institutions that are controlled by these units. It also covers other non-market producers. These units are legal entities created through a political process with legislative, judicial, or executive powers over other institutional units in a given area. Their primary function is to provide goods and services to society and households on a non-market basis and to redistribute income and assets.

The provisions of Regulation No. 549/2013 also refer to the issue of financial management by general and local government units, which are usually entitled to obtain financial resources through mandatory transfers from other institutional units. In addition, to meet the basic requirements for an institutional unit, a general and local government unit must have its own financial resources obtained from income from other units or received in the form of transfers from other units of the sector and must be authorised to expend such financial resources in order to achieve its objectives. It must also be able to take out loans on its own account (points 20.05 – 20.07 of Annex A to Regulation No. 549/2013). From the above, it follows that the approach to the general government sector was based on the criterion of the activities conducted and the adopted method of financing the units constituting this sector. It should be acknowledged that the Public Finance Act provides for specific organisational and legal forms in which public finance sector units are created, which are characterised by specific rules for financing their activities, subject to the reservation introduced by Art. 8 para. 2 p.f.a. that they may be created on the basis of this Act or separate Acts.¹⁰⁸

However, full adaptation to the methodology covered by EU regulations would require a qualitatively significant change in the scope of national regulation, considering the fiscal rule arising from the Constitution of the Republic of Poland and the assessment of the effects of its compliance when changing the provisions of the Public Finance Act, including those regarding prudential and remedial procedures. Undoubtedly, such a change would increase the practical implementation of the principle of the transparency of public finances, but it would also mean the Polish legislator has less influence in determining the level of public debt and would reduce the possibility of taking into account specific national conditions.¹⁰⁹

108 Sawicka, 2010, pp. 35–80; Chojna-Duch, 2010, pp. 173–209; Borodo, 2010, pp. 47–54; Mikos-Sitek, 2010, pp. 301–312.

109 Szmaj, 2019, p. 266.

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