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KAMILA ŽMUDA-MATAN*

BANK GOSPODARSTWA KRAJOWEGO FUNDS AS ACTIVITIES DISTORTING THE PRINCIPLE OF TRANSPARENCY OF PUBLIC FINANCES – SELECTED ISSUES

Abstract

Bank Gospodarstwa Krajowego is a Polish development bank – the only such institution in Poland. Its mission is to support the sustainable socio-economic development of Poland. The subject of activity of Bank Gospodarstwa Krajowego is the implementation of tasks related to the management of government and EU funds and programs created, entrusted or transferred to BGK on the basis of laws or concluded agreements. These are in particular tasks related to the operation of over 30 funds and programs, such as the National Road Fund or the COVID-19 Prevention Fund. The activities of the funds of Bank Gospodarstwa Krajowego affect the basic elements of public finance in Poland, e.g. the principle of openness, transparency, detail, unity or transparency. This impact is assessed rather negatively. The above does not change the fact that the funds are an instrument that makes the financial economy more flexible, the practical importance of which has recently increased significantly. This makes it necessary to attempt to standardize the position of the funds in relation to public finance in the current sense. The analysis covered by the study refers in particular to selected Funds of Bank Gospodarstwa Krajowego, i.e. the COVID-19 Prevention Fund and the National Road Fund. The set goal implied the need to use a dogmatic research method, as well as a legal analysis of acts of generally applicable law.

* Kamila Žmuda-Matan, PhD, assistant professor at the Institute of Legal Sciences of the Faculty of Law and Administration of the University of Silesia in Katowice, legal adviser.
Contact email: kamila.zmuda-matan@us.edu.pl, ORCID: 0000-0002-5172-8945.

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1. Introduction

The activities of Bank Gospodarstwa Krajowego (hereinafter referred to as BGK) are carried out by the Bank and a group of organizationally related institutions. First of all, these are financial or auxiliary institutions related by capital and supervision, or subsidiaries or associates (hereinafter referred to as the BGK Group) that serve the purpose of BGK's mission. They complement the Bank's operations by conducting pro-development investment activities based on equity financing and asset management.

The activity of the BGK Group consists, first of all, of banking activity, in which lending and suretyship activities play an important role, as well as servicing accounts and deposits. It also consists of commissioned activities related to servicing the state and servicing government programs, as well as European Union programs. The last area is investment activity, carried out by entities of the Capital Group.

Bank Gospodarstwa Krajowego, as a Polish development bank, is the main partner of the state in servicing government socio-economic programs implemented to support entrepreneurship as well as infrastructural and housing investments at the national, regional and local level. In addition to banking activities, BGK actively cooperates with ministries competent in particular areas of the country's development, and with Polish development institutions. The Bank performs government tasks on the basis of acts and agreements with ministries, including through flow funds¹, created, entrusted or transferred to the Bank, for which, by law, BGK keeps separate accounting books and prepares separate elements of the financial statements [Report of the Management Board on the Activities of the Capital Group of Bank Gospodarstwa Krajowego in 2021: 11]. Pursuant to the provisions of the BGK statutes and separate laws and other legal acts, BGK is an organizational unit which, pursuant to relevant laws, manages the financial and operating policy of flow funds. It does

¹ Current flow funds within BGK include: COVID-19 Prevention Fund (FPCOV-19); National Road Fund (KFD); Railway Fund (FK); Inland Navigation Fund (FZŚ); Subsidy Fund (FD); Thermomodernization and Renovation Fund (FTiR); Student Loan Fund (FKS); Borrower Support Fund (FWK); Polish Science Fund (FPN); Tourist Returns Fund (TFZ); Interest Rate Subsidy Fund (FDO); National Guarantee Fund (KFG); Liquidity Guarantee Fund (FGP); Ecological Sureties and Guarantees Fund (EFPiG); Government Housing Development Fund (RFRM); Government Housing Fund (RFM); Medical Studies Credit Fund (FKSM).

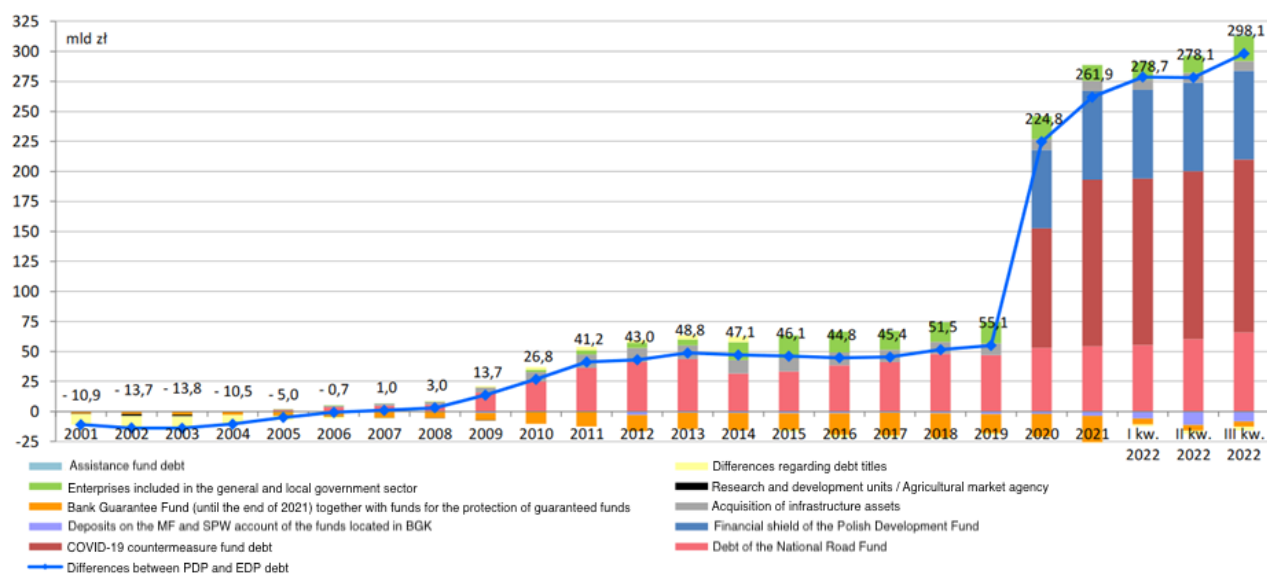
not control them, does not obtain economic benefits from their activities and does not bear credit risk related to these assets [Report of the Management Board on the Activities of the Capital Group of Bank Gospodarstwa Krajowego in 2021: 47].

The fund activity of Bank Gospodarstwa Krajowego, which has been carried out in recent years, has an increasingly significant impact on the basic elements of public finance in Poland, e.g. on the principle of openness, transparency, detail, unity or transparency, at the same time exerting a more flexible influence on the financial economy of the state.

Taking into account the financial criterion, it can be considered that the most important flow funds within the fund activities of Bank Gospodarstwa Krajowego are the National Road Fund and the COVID-19 Prevention Fund.

Chart 1

Differences between the debt of EDP and PDP, in the system 2001 - 2022, including the amount of debt of individual funds, including the COVID-19 Counteracting Fund and the National Road Fund



Source: [Debt of the Public Finance Sector Q3/2022].

2. COVID-19 Prevention Fund

In order to provide the funds necessary to finance and support the implementation of tasks related to counteracting COVID-19 by the Act of March 31, 2020 amending the Act on special solutions related to the prevention, counteracting and combating COVID-19, other

infectious diseases and situations caused by them, crisis and some other acts, article 65 (hereinafter: Act of March 31, 2020), the COVID-19 Counteracting Fund (hereinafter FPC), was established at Bank Gospodarstwa Krajowego.

According to Art. 2 sec. 2 of the Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them² - the term "counteracting COVID-19" should be understood as all activities related to combating infection, preventing the spread, combating and preventing of the aftermath, including socio-economic, of infections and infectious disease caused by the SARS-CoV-2 virus, hereinafter referred to as "COVID-19".

The COVID-19 Counteracting Fund is supplied with financial means from contributions from public finance sector entities, including, among others, executive agencies, budgetary economy institutions, state special purpose funds, the Social Insurance Institution and funds managed by it, and the Agricultural Social Insurance Fund and funds managed by the President Agricultural Social Insurance Fund and other state legal persons³. Payments cannot come from local government legal persons, with the exception of funds from subsidies from the budget and funds from the European Union budget and non-repayable funds from assistance provided by the Member States of the European Free Trade Association (EFTA) and funds from foreign sources not subject to refundable.

The Fund is also supplied with resources from the European Union budget⁴, which, with the consent of the European Commission, may be used to support the implementation of tasks related to counteracting COVID-19. The Fund may also be co-financed by contributions from the state budget, including the budget of European funds, and proceeds from treasury securities, transferred to the Fund by the minister responsible for public finance, at the request of the Prime Minister [Act of March 31, 2020: article 66].

The Fund may also be supplied with funds from loans taken out by BGK or bonds issued by BGK⁵, as well as funds transferred as a write-off to the Fund⁶ within the meaning of Art. 2

² According to Art. 2 - whenever the Act mentions "counteracting COVID-19", it means all activities related to combating infection, preventing the spread, prevention and combating the effects, including socio-economic, of infections and infectious disease caused by the SARS-CoV virus -2, hereinafter referred to as "COVID-19".

³ The spf units referred to in Art. 9 points 5-8 and 14 of the Act of August 27, 2009 on public finance.

⁴ The measures referred to in Art. 5 sec. 1 point 2 of the Act of August 27, 2009 on public finance.

⁵ Article 65 sec. 4 point 5 of the Act of March 31, 2020, amended by Art. 25 point 1 lit. a of the Act of October 27, 2022 on the preferential purchase of solid fuel for households, amending this Act as of November 3, 2022.

⁶ Within the meaning of Art. 2 point 10 of the Act of 27 October 2022 on emergency measures aimed at limiting electricity prices and supporting certain consumers in 2023 and within the meaning of Art.

point 10 of the Act on emergency measures aimed at limiting electricity prices and supporting certain consumers in 2023 and within the meaning of Art. 2 point 4 of the Act of 15 December 2022 on special protection of certain customers of gaseous fuels in 2023 due to the situation on the gas market, and also other revenues.

It should be emphasized that the legal nature of the sources supplying the Fund proves that these inflows constitute public funds within the meaning of Art. 5 sec. 1 of the Public Finance Act. As a consequence of the above, pursuant to Art. 4 sec. 1 point 2 of the Public Finance Act, the Fund as an entity using public funds or disposing of these funds should be subject to the provisions of the above-mentioned of the act [Kucia-Guściora 2020: 39]. The Fund may also be supplied with funds from bonds issued by Bank Gospodarstwa Krajowego in Poland and abroad for the benefit of the Fund [Act of March 31, 2020: Article 67 sec. 3] and other revenues.

According to the Act of March 31, 2020, the Fund's resources could be used for:

- 1) financing or subsidizing the implementation of tasks related to counteracting COVID-19;
- 2) redemption and payment of interest on bonds issued to the Fund by Bank Gospodarstwa Krajowego and covering the costs of their issue;
- 3) the return to Bank Gospodarstwa Krajowego of the funds transferred in the event of a shortage of funds on the Fund's account necessary for the timely handling of activities, together with remuneration in the amount agreed with the minister competent for public finance.

Therefore, it should be recognized that the original catalog of destinations was transparent. On the other hand, subsequent legislative solutions successively expanded the catalog of purposes for which the fund's resources may be allocated, e.g. for reimbursement of expenses incurred for the implementation of tasks related to counteracting COVID-19⁷, for granting loans⁸, for payments and handling of the carbon supplement⁹.

2 point 4 of the Act of December 15, 2022 on special protection of certain consumers of gaseous fuels in 2023 in connection with the situation on the gas market.

⁷ Article 78 point 1 lit. a of the Act of June 19, 2020 on subsidies to the interest rate of bank loans granted to entrepreneurs affected by the effects of COVID-19 and on simplified procedure for approval of the arrangement in connection with the occurrence of COVID-19, added to art. 65 sec. 5 point 4 of the Act of March 31, 2020, according to which the fund's resources may be used to reimburse expenses incurred for the implementation of tasks related to counteracting COVID-19.

⁸ Art. 5 point 1 of the Act of January 26, 2022 on special solutions to protect consumers of gaseous fuels in connection with the situation on the gas market, granting loans, added to Art. 65 sec. 5 point 5 of the Act of March 31, 2020, in connection with which the fund's resources may be used to grant loans.

⁹ Art. 19 of the Act of August 5, 2022 on the carbon additive, according to which in Art. 65 in sec. 5 in point 6 of the Act of March 31, 2020 amending the Act on special solutions related to the

The catalog of the Fund's resources was also extended by the Act on special solutions in the field of certain heat sources in connection with the situation on the fuel market¹⁰, expanded by the possibility of allocating the Fund's resources for payments and servicing of compensations for energy companies¹¹, allowances for households for the use of certain heat sources and allowances for certain non-household entities due to the use of certain heat sources referred to in Art. 1 of this Act.

The catalog of Fund allocations was then extended by the Act on special solutions for the protection of electricity consumers in 2023 in connection to the situation on the electricity market [Act of 7 October 2022 on special solutions to protect electricity consumers in 2023 in connection with the situation on the electricity market: Article 48] and made it possible to dispose of the Fund's financial means for the payment and handling of compensation¹², and the electricity allowance¹³ referred to in Art. 27 of this Act. The spectrum of possible allocations of the Fund's resources was further extended in October 2022 [Act of 27 October 2022 on preferential purchase of solid fuel for households: Art. 25.1.b.] by the Act on preferential purchase of solid fuel for households, enabling the payment of compensation for solid fuel. The next extension is December 2022 [Act of 15 December 2022 on special protection of certain consumers of gaseous fuels in 2023 in connection with the situation on the gas market] and another allocation for the payment and handling of compensation related to the maximum prices of electricity and gaseous fuels.

It is significant that the Fund's resources may be used to finance or co-finance the implementation of tasks related to counteracting COVID-19 or reimbursement of expenses incurred for the implementation of tasks related to counteracting COVID-19¹⁴, also in the case when the Act or separate regulations provide for financing of such tasks from the state

prevention, counteraction and combating of COVID-19, other infectious diseases and crisis situations caused by them, and some other acts, in which another possible allocation of the Fund's resources was indicated, this time for payments and handling of the carbon allowance referred to in Art. 2 sec. 1 of the Act on the carbon allowance.

¹⁰ Article 48 of the Act of September 15, 2022 on special solutions for certain heat sources in connection with the situation on the fuel market, according to which art. 65 in sec. 5 in points 7 and 8 of the Act of March 31, 2020.

¹¹ Energy companies referred to in Art. 3 sec. 1 and 2 of the Act of September 15, 2022 on special solutions for certain heat sources in connection with the situation on the fuel market.

¹² The compensation referred to in Art. 12 sec. 1 and art. 15 sec. 3 of the Act of October 7, 2022 on special solutions to protect electricity consumers in 2023 in connection with the situation on the electricity market.

¹³ The electrical allowance referred to in Act of 7 October 2022 on special solutions to protect electricity consumers in 2023 in connection with the situation on the electricity market.

¹⁴ Regarding the measures referred to in par. 5 points 1 and 4 of the Act.

budget, including in the form of payments or subsidies from the state budget [Act of March 31, 2020: Art. 65 sec. 6a].

The Fund is serviced in banking by Bank Gospodarstwa Krajowego, on the terms set out in the agreement concluded between the Bank and the Prime Minister. According [Act of March 31, 2020: Article 65 sec. 2], the Prime Minister concludes an agreement with Bank Gospodarstwa Krajowego specifying in particular the rules for making payments from the Fund's resources for financing or co-financing of tasks related to counteracting COVID-19, and the rules for concluding agreements between Bank Gospodarstwa Krajowego and administrators of budgetary parts.

On the basis of a disbursement order submitted to Bank Gospodarstwa Krajowego by the Prime Minister, disbursements are made from the Fund's resources. The President of the Council of Ministers may authorize the administrator of the budget part or the minister in charge of a specific department of government administration to submit instructions for payment from the Fund's resources, in accordance with the Act of 4 September 1997 on government departments [Act of September 4, 1997 on government administration departments], while specifying the scope of this authorization [Act of March 31, 2020: Art. 65 sec. 3].

The commissioning of tasks financed under the Fund, in compliance with the act establishing the Fund, is possible by the supervising Minister to selected subordinate and supervised units of the public finance sector, as carrying out tasks related to counteracting COVID-19, while ensuring support from the Fund.

The time frame for the operation of the COVID-19 Counteracting Fund has not been specified in the establishing act. It was indicated in the justification that this period will depend on the epidemiological situation in the country and its impact on the economy and the public finance sector. In the years 2020-2021, the objective assigned to the Fund was clear, although very generally defined, while in the following years its use may raise certain doubts. In the period from March 2020 to November 2022, legal regulations relating to the COVID-19 Counteracting Fund, contained in the Act amending the Act on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them and some other acts, have been amended several times. It should be emphasized that in the original form of the Act of March 31, 2020, other infectious diseases and crisis situations caused by them, and some other acts, the COVID-19 Prevention Fund was in the form of a state earmarked fund, it was therefore a unit of the public finance sector within the meaning of Art. 9 of the Public Finance Act. The change in

the legal form of the COVID-19 Counteracting Fund was made by the Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus [Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus: Art. 75]¹⁵ and entered into force on 18 April 2020. From that date, the Counteracting Fund COVID-19 is not a state special purpose fund, nor is it another form or entity classified as a public finance sector entity. Importantly, the above-mentioned exclusion of the Covid-19 Prevention Fund from the public finance sector was not related to a change in the nature of the tasks to be performed by the Fund. Both in the original legal status and in the legal status after exclusion from the public finance sector, the Fund operates to finance or subsidize the implementation of tasks related to counteracting COVID-19. Moreover, the exclusion of the Fund from the public finance sector obtained by the discussed change did not affect in any way the legal nature of the sources of financing its revenues, which are also public funds within the meaning of Art. 5 sec. 1 of the Public Finance Act.

3. National Road Fund

Another important flow fund within the fund activities of Bank Gospodarstwa Krajowego is the National Road Fund, hereinafter referred to as KFD. The fund was established at Bank Gospodarstwa Krajowego as a result of the amendment of the Act of 27 October 1994 on toll motorways and the National Road Fund, made on 14 November 2003. At the same time, under the same act, a stable and efficient source of financial support for KFD was created in the form of a fuel surcharge. The Fund started functioning on 1 January 2004. The National Road Fund established in Bank Gospodarstwa Krajowego operates on the basis of the Act on Toll Motorways and the National Road Fund [Act of 27 October 1994 on toll motorways and the National Road Fund: Art. 39]. The fund supports the implementation of the government program for the construction of national roads, including streamlining the investment process of building national roads and increasing the efficiency of the use of public funds. Above-mentioned act indicates, among others the following sources of funding for the Fund: fuel surcharge, motorway tolls, electronic tolls, funds from non-refundable foreign sources (e.g. EU funds), credits or loans taken out for the Fund by BGK, proceeds from bonds issued for the Fund by BGK, investments of the Fund's resources in participation

¹⁵ In the justification to the government draft act on special support instruments in connection with the spread of the SARS-CoV-2 virus, there is no indication of the reason or assumption of the change in the legal form of the COVID-19 Prevention Fund, and most importantly, the further consequences of these changes. Similarly: [Kucia-Guściora 2020: 35].

units of money market funds, subsidies and loans from the state budget, making real estate purchased for road construction purposes available for consideration, other proceeds from fees, fines and penalties specified in the Act [Act of 27 October 1994 on toll motorways and the National Road Fund: Art. 39].

The foregoing sources can be divided into those of a non-repayable nature (mainly public levies) and of a repayable nature, i.e. those causing debts (bonds and loans) [Expenditure on road programs financed from the resources of the National Road Fund: 24]. Bank Gospodarstwa Krajowego may take credits, loans or issue bonds in Poland and abroad for the benefit of the Fund and intended for financing investments implemented under long-term programs established by the Council of Ministers, in accordance with the provisions on public finance, and investments implemented with the participation of the funds referred to in in art. 5 sec. 1 point 2 and 3 above. of the Act, as well as tasks resulting from the Fund's financial plan, as well as for the repayment of liabilities under contracted credits and loans and issued bonds. Guarantees and sureties may be granted by the State Treasury for the liabilities of Bank Gospodarstwa Krajowego referred to above, in respect of the credits and loans taken and certain legal persons [Act of 8 May 1997 on sureties and guarantees granted by the State Treasury and certain legal persons], in accordance with the provisions of the Act on Sureties and Guarantees Granted by the State Treasury and certain legal persons, with the proviso that the requirement referred to in Art. 7 sec. 2 point 2 of this Act, to the extent that it is required that the funds intended for repayment of the loan come from sources other than the state budget, shall not apply [Act of 27 October 1994 on toll motorways and the National Road Fund: Art. 39d sec. 1-2].

The main tasks of the Fund are to collect funds to finance the construction and reconstruction of the national road network, which is managed by the General Director of National Roads and Motorways. The Fund's resources may be used to finance the construction and reconstruction of national roads, carried out by the General Director for National Roads and Motorways; payments to companies for the performance of their obligations under the contract for the construction and operation or only operation of the motorway; financing road projects entrusted to a special purpose road company; financing the costs of establishing a special purpose road company, including funds to cover the share capital and the costs of starting the company's operations, financing the costs of increasing the share capital of a special purpose road company and payment of remuneration for this company; preparation, implementation, construction or operation of toll collection

systems¹⁶; remuneration for the EETS¹⁷ provider and the costs of proceedings before the Commission¹⁸ referred to in Art. 16 of sec. 1 of this Act; financing the costs of consulting services; commission for entrepreneurs selling motorway tickets¹⁹, payment of benefits or funds indicated in the Act on Toll Motorways and the National Road Fund²⁰; commission for fleet card providers²¹.

In addition, the Fund's resources cover the costs of issuing and redemption of bonds of Bank Gospodarstwa Krajowego for the Fund and repayment of loans and credits, together with interest and other costs of servicing loans and credits taken by Bank Gospodarstwa Krajowego for the Fund. The Fund's resources may be used to repay liabilities resulting from the performance by the State Treasury of obligations under guarantees and sureties for the liabilities of Bank Gospodarstwa Krajowego and to repay financing granted by Bank Gospodarstwa Krajowego, in the event of shortages of funds on the Fund's accounts, together with the costs of such financing [Act of 27 October 1994 on toll motorways and the National Road Fund: Art. 39d sec. 2 and sec. 6]. The Fund also pays the commission due to Bank Gospodarstwa Krajowego [Act of 27 October 1994 on toll motorways and the National Road Fund: Art. 39d sec. 3]. The management of the Fund's resources is supervised by the Supervisory Board of Bank Gospodarstwa Krajowego [Act of 27 October 1994 on toll motorways and the National Road Fund: Art. 39m].

4. The size of FPC and KFD expenses and the basic principles of public finance management

The data provided by BGK shows that in 2022 FPC expenses amounted to PLN 43.2 billion. This means that they were nearly PLN 4.5 billion higher than assumed at the beginning of the year. The amount of nearly PLN 25 billion of expenditures planned for 2023 is not final,

¹⁶ The fees referred to in Art. 13 sec. 1 point 3 of the Act of March 21, 1985 on public roads and the toll for the motorway referred to in Art. 37a sec. 7, carried out by:

a) Head of KAS or

b) bodies of the National Revenue Administration designated pursuant to Art. 37a sec. 35 or art. 37gf para. 7 or art. 13hb sec. 1bc of the Act of March 21, 1985 on public roads, or

c) the entity referred to in Art. 13hb sec. 1ja of the Act of March 21, 1985 on public roads.

¹⁷ EETS, mentioned in art. 16t of the Act of March 21, 1985 on public roads.

¹⁸ The committee referred to in Art. 16 of sec. 1 of the Act on Toll Motorways and the National Road Fund.

¹⁹ The sale of motorway tickets referred to in Art. 37a sec. 19 of the Act on Toll Motorways and the National Road Fund.

²⁰ Benefits or measures referred to in Art. 37a sec. 1u or 1w of the Act on Toll Motorways and the National Road Fund.

²¹ The commission referred to in Art. 13iba sec. 8 of the Act of March 21, 1985 on public roads.

as the FPC financial plan may change at any time by the Prime Minister's decision. This is best illustrated by the example of last year, when the Fund's plan had as many as 11 versions. Practice also shows that the fund's expenses may increase over the course of a year, and the changes reach billions of zlotys. Almost the entire amount to be allocated will be granted to the head of the Chancellery of the Prime Minister (PLN 17.1 billion) and the Minister of Climate (PLN 7.5 billion). The funds will be allocated to the Strategic Investments Program (about PLN 17 billion), and over PLN 5.8 billion to compensations resulting from high prices of electricity and fuels and to the payment of coal allowances. Planned for 2023, FPC proceeds in the amount of over PLN 17 billion are to come mainly from the issue of bonds or loans (PLN 16.8 billion)²².

According to the Public Finance Sector [Debt Management Strategy for the Public Finance Sector in 2023-2026: 36], the government intends to maintain FPC for the next few years and wants to increase its debt by financing development projects outside the budget. In 2023, the above-mentioned The strategy predicts that the debt of the covid fund may amount to over PLN 180 billion, and in 2026 it may amount to approx. PLN 250 billion, mainly due to the co-financing of investments from the Polish Government Fund: Strategic Investment Programme²³.

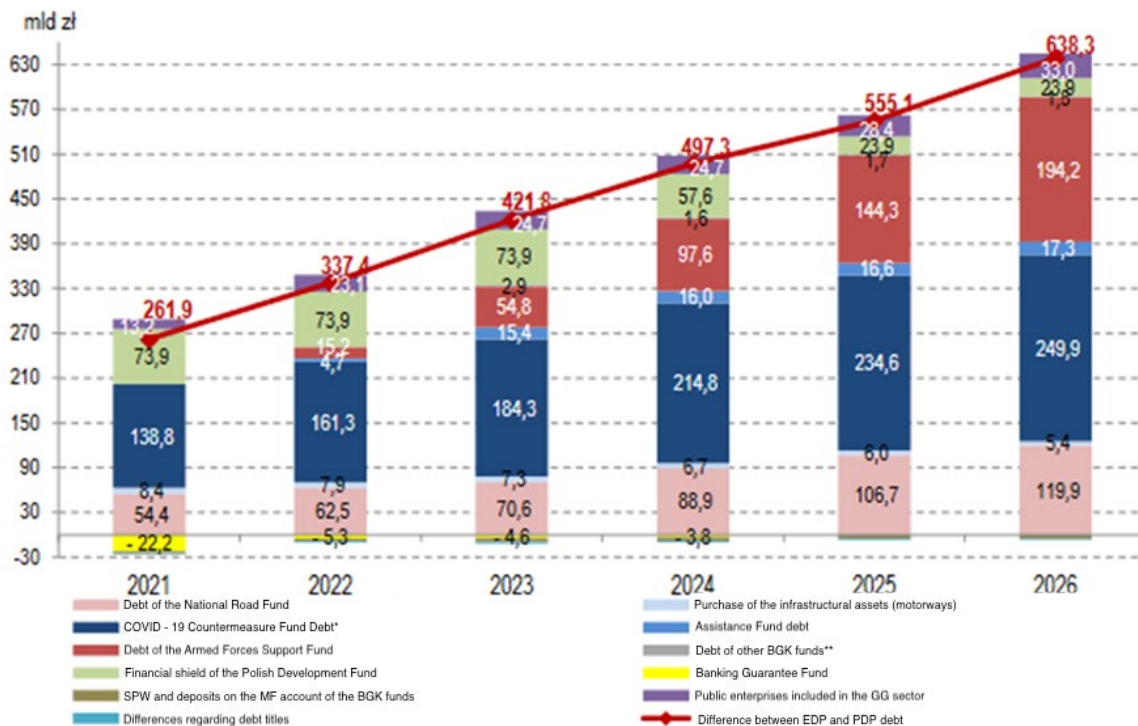
Also with regard to the debt of the National Road Fund, the Public Finance Sector Debt Management Strategy for 2023-2026 provides for its increase from PLN 54.4 billion in 2023 to nearly PLN 120 billion in 2026.

²² For more, see: [Expenses of the COVID-19 Counteracting Fund in 2023 will be much lower; Fandrejewska 2023; Godusławski 2022; Godusławski 2021; Ministry of Finance: COVID-19 Countermeasure Fund with massive debt at the end of 2022].

²³ See chart 1.

Chart 2

Differences between the general government debt (EDP debt) and the state public debt (PDP) in the system 2021 - 2026, including the amount of debt of individual funds, including the COVID-19 Prevention Fund and the National Road Fund



*) The FPC takes into account the implementation of payments for co-financing investments from the Polish Government Fund: Program of Strategic Investment

**) National Guarantee Fund, Liquidity Guarantee Fund, Crisis Guarantee Fund, Railway Fund

Source: [Debt Management Strategy for the Public Finance Sector in 2023-2026: 36].

The issuance and further planning of spending such significant amounts in no way affects the result of the state budget or the entire public finance sector, however, it is not insignificant in terms of the level related to the General Government deficit and the State Treasury debt [Ostrowski 2022: 88-89]. Bank Gospodarstwa Krajowego is a state-owned bank and pursuant to Art. 9 point 14 u.f.p. is not a unit of the public finance sector. However, based on Art. 73 sec. 1 u.f.p. state public debt is calculated as the nominal value of liabilities of public finance sector units after elimination of mutual liabilities between units of this sector. Therefore, the liabilities of both BGK and related funds, including FPC or KFD, are not included in the state public debt, although these are public funds in the amount of at least several hundred billion zlotys per year [Bożek 2020: 60]. BGK's liabilities due to the issue of bonds for its funds, although not included in the state public debt and do not affect its amount, in accordance with the recognition of public debt in the EU methodology (recognition of EDP debt), generate an increase in Polish public debt. Therefore, the subjective scope of public debt in terms of the EU methodology is wider than that resulting

from Art. 73 sec. 1 of the Public Finance Act, in which the legislator provides for the obligations (enumerated in Article 9 of the Public Finance Act) of public finance sector entities after consolidation [Bożek 2020: 59-60].

More and more frequent solutions are used to push expenses outside the state budget and to finance them with debt, force us to reflect on the consequences of using tools to create new fixed expenses, e.g. additional social and development programs, not in the state budget, but outside of it. Both funds are managed by Bank Gospodarstwa Krajowego and state-owned legal entities are ideal places to "hide" new fixed expenses financed through a non-transparent system of loans, subsidies or debt issues [Ostrowski 2020: 88-89; Gwóźdź 2017: 441].

This state should be assessed critically. There is no doubt that in this way the actual amount of debt of the public finance sector is underestimated. Against this background, there are differences in the methodology of calculating public debt in Poland and the EU, which, as of Q3 2022, amount to over PLN 300 billion [Bożek 2020: 71].

As indicated by Teresa Dębowska-Romanowska, the basic nature of the budget as an act of financial management of a state or other community means that the plan should include all public revenues and expenses of that community, or at least all those that are necessary to fulfill public functions and tasks of a given community, guaranteed by separate normative acts [Dębowska-Romanowska 2016: art. 219].

Thus, it should be recognized that expenses incurred for tasks financed from the FPC or KFD funds discussed in this article, as expenses for public tasks, are unquestionably serving the performance of state functions, and should be included in the state budget or at least included in the public finance structures in such a way that they did not create an extra-constitutional, somewhat parallel instrument of financing the tasks of the state, but outside the control of constitutionally appointed bodies. The above is noted by The Supreme Audit Office, pointing to the need to restore the state budget to an appropriate rank related to its special nature and central position in the public finance system. For this purpose, operations performed in the government sector that affect the change in the amount of the State Treasury debt should, as a rule, be included in the income and expenditure of the state budget [Analysis of the performance of the state budget and monetary policy assumptions in 2021: 10].

The need to use various instruments to ensure a certain flexibility in the management of state finances, e.g. earmarked funds or reserves, for the implementation of strictly defined goals, or the implementation of tasks in exceptional situations, does not raise any doubts.

However, the use of such instruments cannot take place without respecting the basic principles of public finance management – openness and transparency of public finance.

According to Art. 61 of the Constitution of the Republic of Poland, a citizen has the right to obtain information about the activities of public authorities and persons performing public functions. This right also includes obtaining information on the activities of economic and professional self-government bodies, as well as other persons and organizational units to the extent that they perform tasks of public authority and manage municipal property or property of the State Treasury [Constitution of the Republic of Poland: art. 61]. Article 33 of the Public Finance Act states that the management of public funds is open [Act of August 27, 2009 on Public Finance: art. 33]. According to the dictionary definition, transparency is doing something in an open, commonly visible way, not hiding something, being available to the public, sincerity, openness [Sobol 2000: 288]. Openness and transparency within the meaning of the Public Finance Act should also be understood in this way. Democracy requires access to information on the state of public finances, constituting the basis for social control of the processes of collecting and spending public funds [Świąch-Kujawska 2021: art. 33]. Meanwhile, the access to information on the financial plans of FPC or KFD, as related to the performance of banking activities by BKG, is formally protected under the provisions on banking secrecy²⁴. It is impossible to agree with the above-mentioned position presented by Bank Gospodarstwa Krajowego on several counts.

According to another budgetary principle, the principle of completeness (universality), the budget should cover in full amounts all revenues and expenses of all organizational forms performing public tasks. The implementation of this principle is intended to maximize control over the implementation of revenues and expenditures through the budget [Mazurkiewicz 1965: 13; Kowalczyk 2013: 62-63]. According to Krystyna Sawicka, this principle will not be

²⁴ The position presented by BGK based on Art. 5 section 1 of the Act on access to public information, according to which the right to public information is subject to limitation to the extent and on the terms set out in the provisions on the protection of classified information and on the protection of secrets protected by law. Moreover, it was indicated that "pursuant to Art. 2 sec. 1 of the Act on Bank Gospodarstwa Krajowego Bank Gospodarstwa Krajowego is a state-owned bank within the meaning of the Banking Law and its activities are governed by the provisions of the Banking Law, unless special provisions provide otherwise. Pursuant to the provisions of the Banking Law Act, the bank is obliged to maintain banking secrecy with regard to all information it has obtained in connection with banking activities. Banking activities include, among others, performing activities reserved for the bank by law, in accordance with Art. 5 sec. 1 point 7 of the Banking Law. Access to information constituting a bank secret is possible only in cases strictly defined in the Act (see: Article 104(2) and Article 105 of the Banking Law). The operation of the COVID-19 Counteracting Fund and the performance of activities related to the operation of this fund have been reserved for the Bank by the provisions of the Act, in accordance with [Act of March 31, 2020: art. 65 sec. 1; Letter from Bank Gospodarstwa Krajowego of November 2, 2022, BKZ.143.7.2022.ATKOC; Supreme Audit Office P/21/001 State budget execution in 2020 - Banking service of the state budget in 2020 Gospodarstwa Krajowego: 9].

implemented when public finance sector entities conduct independent financial management on the basis of plans which even the global amounts of income and expenditure (i.e. the net method) will not be included in the budget [Sawicka 2010: 36]. It can therefore be concluded that the principle of completeness will not be implemented especially when public tasks are financed to a large extent by entities not included in the public finance sector. In this regard, it is worth pointing out that the leading view of the doctrine in this regard is the view based on the primacy of centralized recognition of state revenues and expenditures as allowing for rational and effective socio-economic policy, in particular in the field of economic development, inflation and public debt [Dudek, Kotecki, Majszyk 2023]. In this regard, it should be pointed out that the dispersion of instruments used to finance public tasks, including, inter alia, the use of Bank Gospodarstwa Krajowego and the funds created within it, such as FPC or KFD, certainly has a destructive effect on the implementation of the financial economy conducted by the state completeness of the budget.

Although another important budget principle can be considered both from the formal and material side, unfortunately its practical implementation through the prism of the instruments discussed in this article, the so-called funds can hardly be considered up-to-date and present in public finances. From the formal point of view, the principle of unity means that all budget revenues and expenditures are included in one legal act, i.e. in the state budget. On the other hand, the material approach to the principle of unity is a solution that assumes that all public funds flow into the budget and constitute one common resource for all needs [Wójtowicz 2017: 93-94]. As can be seen from the above considerations, the conducted financial policy, which uses more and more intensive non-budget and even non-sectoral instruments for managing a specific financial resource, which is, after all, a public resource, cannot be part of the implementation of the postulate resulting from the above-mentioned principle of unity, both in formal and material.

It is also worth mentioning the principle of detail, which provides for specifying the amounts of income and expenditure in the financial plan being implemented, e.g. in the budget, which also cannot be fully implemented, inter alia, due to financial management conducted by the state authorities in addition to the main financial plan, which is the state budget, with the use of such legal instruments as FPC or KFD.

5. Conclusion

Transparency of public finances is the foundation of a democratic state [Dudek, Kotecki, Majszyk 2023]. The activities of resources of Bank Gospodarstwa Krajowego, such as FPC or KFD, bear significant impact to making the state's financial economy more flexible, by providing a range of solutions that have not been used in such a meaningful way in the financial dimension in previous years. What is particularly important, the comparative analysis carried out in the article on two selected BGK funds, i.e. FPC and KFD, illustrates the dynamics of the growing importance of the discussed instrument. The KFD instrument, which has been in operation since January 1st 2004, is much more stable in terms of the catalogue of sources of supply and the purposes for which funds from the Fund are transferred. FPC, on the other hand, is a relatively new instrument, operating since 2020, which, however is characterized by a significant dynamics of change, both in terms of the sources of financial support for it, as well as the purposes for which funds from this instrument are transferred. The above may thus constitute a certain direction in shaping the financial policy in terms of the role of non-sectoral funds in the implementation of public tasks, as instruments that make it more flexible and characterized by high volatility. At the same time, implemented under the above-mentioned FPC or KFD, an off-budget and non-sectoral policy of financing public tasks, affects the basic elements of public finance, including the current perception of the concept of public finance, the concept of the public finance sector, public finance goals, and finally the responsibility for implementing the state's financial policy and the consequences of related. The analysis shows that the impact of the activity of the funds of Bank Gospodarstwa Krajowego on the basic principles of public finance in Poland, i.a. on the principle of openness, transparency, detail, unity or completeness, is subject to a fairly unambiguous critical assessment. According to Art. 109 of the Public Finance Act, the state budget is the basis for the state's financial management. It is therefore clear that in the current legal order, the budget should be a comprehensive financial plan, and not a partial, fragmentary plan. In practice, however, it is hard not to notice that the current perception of public finance needs to be refreshed, also in the context of instruments that make it more flexible. In the author's opinion, the above implies the need to standardize the position of non-sectoral funds in relation to public finance, in the current sense [Dębowska-Romanowska 2020: 67]. Interestingly, this position seems to be confirmed by the Ministry of Finance, which considers the activity of funds in BGK as entities not included in the public finance sector, but conducting activities financed from public funds, whether in the form of subsidies, TS transferred free of charge, or in the form of participation

in public levies, indicated that liquidity management should be included in the consolidation [Debt Management Strategy for the Public Finance Sector in 2023-2026: 34].

In the author's opinion, the standardization of fund instruments, such as e.g. discussed in this article FPC or KFD, is absolutely necessary to maintain the functioning system of public finance. Of course, the directions of the process normalizing the relationship between non-sectoral funds and the public finance sector may be different, but it is necessary to consider, among others, the legitimacy of making legislative changes in the status of the state budget and the departure from treating the budget as the only basis for the state's financial management in a given budget year. A somewhat opposite, but equally justified direction of changes may be the inclusion of funds located [Kosikowski 2010: art. 29] outside the public finance sector in the Budget Act, for example as state earmarked funds, or the use of another inclusive formula, i.e. restoring the currently lost status of the state budget. Regardless of the direction of the changes, they should contribute to strengthening the transparency of public finances as a superior value.

References

- Bożek, W.: Fundusz Gwarancji Płynnościowych – aspekty finansowoprawne [Liquidity Guarantee Fund – financial and legal aspects], *Kwartalnik Prawno – Finansowy* [Legal and Financial Quarterly] no. 1, 2020.
- Dębowska-Romanowska T.: Commentary to art. 219, in: Safjan M., Bosek, L. (eds.), *Konstytucja RP. Tom II. Komentarz do art. 87-243, Constitution of the Republic of Poland. Volume II. Commentary on Art. 87-243*, Warsaw: C. H. Beck, 2016.
- Dębowska-Romanowska T.: Normatywizacja finansów publicznych – jako ograniczenie (samoograniczenie) swobody politycznej władz i organów publicznych [Normativization of public finances – as a limitation (self-limitation) of political freedom of authorities and public bodies (in:) Gorgol A. [ed.]: *Teoretyczne i praktyczne aspekty prawa finansowego. Problemy, koncepcje, wyzwania i rozwiązania* [Theoretical and practical aspects of financial law. Problems, Concepts, Challenges and Solutions], Warsaw: C. H. Beck, 2020.
- Gwóźdź T.: Konstytucyjne i ustawowe ograniczenia swobody gromadzenia i wydatkowania środków publicznych przez władze publiczne, [Constitutional and statutory restrictions on the freedom to collect and spend public funds by public authorities] (in:) Bogucka-Felczak M. (ed.): *Finanse publiczne a Konstytucja*, Warsaw: Poltext, 2020.
- Kosikowski C.: *Nowa ustawa o finansach publicznych. Komentarz* [New Public Finance Act. Commentary], Warsaw: LexisNexis, 2010.
- Kowalczyk R.: (in:) *Prawo Finansowe* [Financial Law], Mastalski R., Fojcik-Mastalska E. (eds.), Warsaw: Wolters Kluwer, 2013.
- Kucia-Guściora B.: Fundusz Przeciwdziałania COVID-19 – antidotum finansowe na czas pandemii; COVID-19, [COVID-19 Prevention Fund - a financial antidote for the time of the pandemic], *Kwartalnik Prawno-Finansowy* [Legal and Financial Quarterly] no. 1, 2020.
- Mazurkiewicz M.: Wstępne wiadomości o budżecie państwa [Preliminary information on the state budget] (in:) Lesław A., Jandy-Jendrośka K., M. Mazurkiewicz M., *Prawo finansowe, z. 2. Część szczegółowa. Prawo budżetowe* [Financial law, part 2. Detailed part. Budget law], Wrocław 1965.
- Ostrowski M.: Problem wydatków sztywnych w budżecie państwa oraz zmieniającym się środowisku polskich finansów publicznych, [The problem of fixed expenses in the state budget and the changing environment of Polish public finances], *Prawo Budżetowe Państwa i Samorządu* [Budget Law of the State and Local Government], no. 2, 2022.
- Sawicka K., *Formy prawno-organizacyjne jednostek sektora finansów publicznych*, [Legal and organizational forms of public finance sector units] (in:) E. Ruśkowski (ed.), *System prawa finansowego, t. 2. Prawo finansowe sektora finansów publicznych* [System of Financial law, vol. 2. Financial law of the public finance sector], Warsaw: Wolters Kluwer, 2010.
- Sobol E.: *Mały słownik języka polskiego*, Warszawa 2000, [Small Dictionary of the Polish Language], Warsaw: 2000.
- Świąch-Kujawska K.: Komentarz do art. 33 [Commentary to the article 33] (in:) Ofiarski Z. (ed.): *Ustawa o finansach publicznych. Komentarz* [Public Finance Act. Commentary], Warsaw: Wolters Kluwer, 2020.
- Wójtowicz W.: *Zarys finansów publicznych i prawa finansowego* [An outline of public finance and financial law], Warsaw: Wolters Kluwer, 2017.

Legal Acts

- Constitution of the Republic of Poland (Journal of Laws of 1997, No. 78, item 483, as amended).
- Act of 21 March 1985 on public roads (Journal of Laws of 2023, item 645).
- Act of 27 October 1994 on toll motorways and the National Road Fund (Journal of Laws of 2022, item 2483, as amended).
- Act of 8 May 1997 on sureties and guarantees granted by the State Treasury and certain legal persons (Journal of Laws of 2022, item 1613, as amended).
- Act of August 29, 1997. Banking Law (Journal of Laws of 2022, item 2324 as amended).
- Act of September 4, 1997 on government administration departments (Journal of Laws of 2021, item 1893, as amended).
- Act of September 6, 2001 on access to public information (Journal of Laws 2022, item 902).
- Act of 14 March 2003 on Bank Gospodarstwa Krajowego (Journal of Laws of 2022, item 2153).

- Act of 14 November 2003 amending the Act on toll motorways and amending certain acts (Journal of Laws No. 217, item 2124).
- Act of August 27, 2009 on public finance (Journal of Laws of 2022, item 1634 as amended).
- Act of March 2, 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2021 item 2095 as amended).
- Act of March 31, 2020 amending the Act on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, and some other acts (Journal of Laws of 2020, item 568 as amended).
- Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus (Journal of Laws of 2022, item 376).
- Act of 19 June 2020 on subsidies to the interest rate of bank loans granted to entrepreneurs affected by the effects of COVID-19 and on simplified procedure for approval of the arrangement in connection with the occurrence of COVID-19 (Journal of Laws of 2022, item 2141 as amended).
- Act of 26 January 2022 on special solutions for the protection of gaseous fuel consumers in connection with the situation on the gas market, granting loans (Journal of Laws of 2022, item 202, as amended).
- Act of August 5, 2022 on the carbon additive (Journal of Laws of 2022, item 1692).
- Act of September 15, 2022 on special solutions for certain heat sources in connection with the situation on the fuel market (Journal of Laws of 2022, item 1967, as amended).
- Act of 7 October 2022 on special solutions to protect electricity consumers in 2023 in connection with the situation on the electricity market (Journal of Laws of 2022, item 2127).

Other official documents

- Project of amendment to the Act amending the Act on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, and some other acts, Sejm of IX term form no. 299.

Internet Resources

- Bank Gospodarstwa Krajowego: A writing from of November 2, 2022, BKZ.143.7.2022.ATKOC Dudek S., Kotecki L., Majszczyk H.: Necessary changes increasing transparency to the draft Budget Act for 2023 Basic figures, Warsaw, January 2023
Available at:
https://for.org.pl/pliki/artykuly/8134_prawdziwy-budzet.pdf, accessed July 3rd, 2023.
- Bank Gospodarstwa Krajowego: Report of the Management Board on the Activities of the Capital Group of Bank Gospodarstwa Krajowego (including the report of the Management Board on the activities of Bank Gospodarstwa Krajowego)
Available at:
<https://www.bgk.pl/przydatne-informacje/sprawozdania-i-raporty/okresowe-raporty-Finansowe/#c4155>, accessed July 3rd, 2023.
- Fandrejewska A.: Covid cover. The government created an off-budget fund,
Available at:
<https://www.rp.pl/budzet-i-podatki/art37878271-covidowa-przykrywka-rzad-sotwor-fundusz-poza-budzetem>, accessed July 3rd, 2023.
- Godusławski B., Morawiecki's financial vehicle is still operating. Again, at least PLN 30 billion to be spent outside the budget
Available at:
<https://businessinsider.com.pl/gospodarka/wehikul-Finansowy-morawieckiego-nadal-dziala-znow-co-naj-30-mln-zl-do-wydania/txt89t>, accessed July 3rd, 2023.
- Godusławski B.: The Prime Minister extended the operation of the COVID-19 Counteracting Fund
Available at:
<https://businessinsider.com.pl/firmy/dla-firm/fundusz-przeddzialania-covid-19-przedluzony-przed-premiera-morawieckiego/qt3npch>, accessed July 3rd, 2023.
- IBS News: Expenses of the COVID-19 Counteracting Fund in 2023 will be much lower; January 26, 2023
Available at:

- <https://forsal.pl/lifestyle/zdrowie/artykuly/8646394,fundusz-przeddzialania-covid-19-wydatki-2023.html>, accessed July 3rd, 2023.
- Justification to the government bill of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus (i.e. Journal of Laws 2022.376), Print No. 330.
- The Ministry of Finance: Expenditure on road programs financed from the resources of the National Road Fund (excluding public-private partnerships)
Available at:
https://mf-arch2.mf.gov.pl/c/document_library/get_file?uuid=983ea958-55ea-4c1a-97d1-d397069388e4&groupId=764034, accessed July 3rd, 2023.
- The Ministry of Finance: COVID-19 Countermeasure Fund with massive debt at the end of 2022
Available at:
<https://www.bankier.pl/wiadomosc/MF-Fundusz-Przeciwdzialania-COVID-19-z-poteznym-debt-na-koniec-2022-r-8416218.html>, accessed July 3rd, 2023.
- The Ministry of Finance: Debt Management Strategy for the Public Finance Sector in 2023-2026
Available at:
<https://www.gov.pl/attachment/a49d94d5-a693-4839-8dfe-29e0735095fd>, accessed July 3rd, 2023.
- The Ministry of Finance: Debt of the Public Finance Sector Q3/2022
Available at:
<https://www.gov.pl/attachment/25a3fb33-993b-4702-8c37-1b1bf78fff3b>, accessed July 3rd, 2023.
- The Supreme Chamber of Control: Analysis of the performance of the state budget and monetary policy assumptions in 2021
Available at:
<https://www.nik.gov.pl/plik/id.26023.pdf>, accessed July 3rd, 2023.
- The Supreme Chamber of Control: Post-inspection report P/21/001. Implementation of the state budget in 2020 - Banking services for the state budget in 2020 by Bank Gospodarstwa Krajowego.
Available at:
https://www.nik.gov.pl/kontrole/wyniki-kontroli-nik/pobierz,kbf~p_21_001_202103091042441615282964~id9~01,typ,kj.pdf, accessed July 3rd, 2023.