Gdańskie Studia Prawnicze

Rok XXVIII — Nr 1(62)/2024

Financial Law and Sustainable Development

Edited by
Anna Jurkowska-Zeidler
Przemysław Panfil

Wydawnictwo Uniwersytetu Gdańskiego
Gdańsk 2024

Czasopismo finansowane przez: Wydział Prawa i Administracji Uniwersytetu Gdańskiego, Wolters Kluwer Polska Sp. z o.o., Ministerstwo Edukacji i Nauki w ramach programu pn. „Rozwój czasopism naukowych" (nr rej. projektu: RCN/SP/0355/2021/1)

Adres redakcji:
ul. Bażyńskiego 6, 80-952 Gdańsk

Wydawnictwo Uniwersytetu Gdańskiego

ISSN 1734-5669

Wydawnictwo Uniwersytetu Gdańskiego
ul. Armii Krajowej 119/121, 81-824 Sopot
tel. (+48) 58 523 11 37
e-mail: wydawnictwo@ug.edu.pl
wydawnictwo.ug.edu.pl

Księgarnia internetowa: wydawnictwo.ug.edu.pl/sklep/

Druk i oprawa
Zakład Poligrafii Uniwersytetu Gdańskiego
ul. Armii Krajowej 119/121, 81-824 Sopot
tel. (+48) 58 523 14 49

Financial Law and Sustainable Development

Table of contents

ARTICLES

COMMENTARIES

VARIA

Prawo finansowe i zrównoważony rozwój

Spis treści

ARTYKUŁY

GLOSY

VARIA

Articles

Anna Jurkowska-Zeidler
University of Gdańsk, Poland
anna.jurkowskazeidler@prawo.ug.edu.pl
ORCID: 0000-0002-4316-6073

Michal Janovec
Masaryk University in Brno, Czech Republic
michal.janovec@law.muni.cz
ORCID: 0000-0002-6565-4043

https://doi.org/10.26881/gsp.2024.1.01

Financial Market Stability: A Key Driver of Sustainable Finance

Introduction

Sustainable finance is one of the most recent trends in the theory and practice of financial market functioning and of great importance for financial and fiscal stability. Sustainable finance is broadly defined as various types of financial instruments, programs and actions that incorporate not only economic benefits, but also their social and environmental impact. Furthermore, sustainable finance is increasingly being interpreted as a merger of sustainable socio-economic development and a financial system that includes both public and private sector finance. The phenomena, processes and events with a crisis dimension, such as the global financial crisis, the migration crisis, the pandemic, the war in Ukraine, but also climate and environmental disasters, should be considered as a factor accelerating the development of the sustainable finance concept.

Overcoming the consequences of the 2007–2009 global financial crisis, the 2015 Paris Agreement on climate change and the UN Sustainable Development Goals (SDGs) set out in the UN 2030 Agenda new milestones for the financial sector, the role of which is changing because of the emergence of new worldwide risks and public needs. In the European Union the concept of a European Green Deal is a serious attempt to address the challenge of a distorted relationship: human-environment. The European Commission, with the support of the majority of EU countries, is determined to develop a new paradigm for development, transforming Europe into a climate and environmentally neutral space.[1]

It is becoming increasingly common in the context of economic development to point not only to the maximisation of economic effect and economic profits, but to the

[1] The European Green Deal (European climate law) introduced in 2019 (COM/2019/640 final) aims to transform the EU into a fair and prosperous society, living in a modern, resource-efficient and competitive economy that achieves zero net greenhouse gas emissions by 2050, and where economic growth will be independent of the use of natural resources. J. Ciechanowicz-McLean, *Instrumenty prawne ochrony klimatu przed i w Europejskim Zielonym Ładzie*, GSP 2021, no. 3, p. 16.

need to achieve social benefits and efficiency in the use of natural resources, while being attentive to environmental protection.[2] Internationally, the importance of climate change and the need for more determined and systemic action to protect the environment is now becoming more prominent. This is taking place against the background of a general need to reduce development inequalities in global, continental, national and local terms. The most significant in this regard is attributed to finance in the broadest sense, i.e. the direct participants in the market and institutions of the financial system. This is because the financial system, which consists of the market sector and the public finance sector, is one of the most effective drivers of social and economic change.

The financial market and public finance play crucial roles in addressing social and economic challenges and building the innovative, zero-carbon economy of the future. In this view, finance is becoming an instrument for achieving the goals set out by the United Nations in "Transforming our world: the 2030 Agenda for Sustainable Development."[3] Sustainable finance adopts ESG factors when making investment decisions in the financial sector. ESG factors include environmental (E), social (S) and governance (G) factors. This approach forces greater attention to the social impacts of the financial market and the public finance sector. The ability of the financial and public finance sector to respond adequately to new challenges becomes crucial. In this approach, sustainable finance cannot be separated from environmental factors or social and economic requirements. Given the importance of modern financial markets in people's lives, it is necessary, when studying their functioning, to view these markets in a broader, precisely axiological dimension and to set it in a wider context, i.e. that of the common good, sometimes identified with the public interest.[4]

Financial markets are currently undergoing a process of transformation determined by the huge impact of the threat of climate change.[5] Financial institutions are increasingly considering the impact of climate risk on their business and are taking a number of adaptation measures to reduce the impact of this risk. The Sustainable Development Goals (SDGs) are a strong driver of climate action, and their assumptions are present in the decisions of financial and non-financial sector actors, influencing the allocation and flow of financial capital.

The risk of climate change must be treated as a fundamental challenge to the economic and financial system.[6] Climate change impacts macroeconomic scores, financial markets and institutions mainly through two channels: physical risk and transition

---

2 A. Alińska, S. Frydrych, E. Klein, *Finanse w koncepcji zrównoważonego rozwoju*, "Kwartalnik Kolegium Ekonomiczno-Społecznego. Studia i Prace" 2018, no. 1, p. 41.

3 *Transforming our World: The 2030 Agenda for Sustainable Development*, United Nations, https://sdgs.un.org/2030agenda [accessed: 2023.07.23].

4 T. Nieborak, *Rynek finansowy jako dobro wspólne*, RPEiS 2017, vol. 79, no. 3, pp. 161–174.

5 M. Zioło, *Rynki finansowe wobec zmian klimatu. Dylematy i wyzwania a cele zrównoważonego rozwoju*, "Studia BAS" 2023, vol. 74, no. 2, p. 62.

6 *Financial Markets and Climate Transition: Opportunities, Challenges and Policy Implications*, OECD, Paris 2021, https://www.oecd.org/finance/Financial-Markets-and-Climate-Transition-Opportunities-challenges-and-policy-implications.htm [accessed: 2023.07.24].

risk.[7] Physical risks of climate change can seriously damage economies, for example through the high costs of repairing infrastructure and dealing with uninsured losses. Physical risk arises from the possible loss of physical assets as a result of damage caused by the effects of climate change, such as extreme weather events or rising sea levels. There are also transitional risks associated with potentially disordered mitigation strategies. Transition risk refers to the risk of loss of value of physical or financial assets because of a disorderly transition to a low-carbon economy. Both physical and transitional risks can adversely increase systemic risk.[8] The potential consequences of climate change have implications for the financial stability mandate of central banks. Thus, climate change creates new challenges for central banks, regulators, and supervisors. Their potential consequences have an impact on the financial stability mandate of central banks.

1. Financial market stability: constitutive elements and the impact on the stability of the economic system

The concept of financial market stability can be interpreted in many ways. However, the goal is still the same – a stable financial market environment with reduced risks of financial or even economic crises. Financial market stability is also one of the essential elements of general financial stability alongside public finance stability and monetary stability. As such, financial stability significantly supports the stability of the entire economic system.

Financial market stability can be measured in some way by economic outcomes, even the less positive ones that point to economic instability. However, this is only an economic view. There is also the legal perspective which, while it may not immediately guarantee financial market stability, can certainly support it by creating an appropriate legal environment. It is in the interest of the European Union, and by extension, each Member State, to ensure that the economic system functions appropriately to promote economic prosperity. To this end, the economic system must be kept stable, not in the sense of 'stagnation', but in the stability of a certain level of economic prosperity, preferably in economic growth. In this case, the state's interest is a public interest, and its action consists of public financial activity aimed at ensuring financial stability, which rests on three fundamental pillars. First, there is the stability of public finances, monetary stability and financial market stability, including consumer protection and the equal treatment of all market players.

---

[7] The Network for Greening the Financial System (NGFS) Publications, *First Progress Report*, October 2018, p. 5, https://www.ngfs.net/sites/default/files/medias/documents/818366-ngfs-first-progress-report-20181011.pdf [accessed: 2023.07.23].

[8] About the links between the effects of climate change or global warming and the stability of financial markets see P. Bolton, M. Despres, L.A. Pereira Da Silva, F. Samama, R. Svartzman, *The Green Swan: Central Banking and Financial Stability in the Age of Climate Change*, Bank for International Settlements, January 2020, pp. 11–22, https://www.bis.org/publ/othp31.pdf [accessed: 2023.07.24].

It can then be concluded that an economic system can only be stable and perform its functions if it has a stable financial market. However, it should be noted that financial market stability cannot be achieved in absolute terms. The market will never be 100% stable; there are and will always be external threats and risks that no regulator can prevent, whether in the form of military conflicts, natural disasters, pandemics, political instability, etc.[9] Then, of course, many internal risks are associated, for example, with new or hazardous financial products and services (e.g. foreign currency-linked loans), mainly addressed by regulation or supervision so that the risks of instability are minimized. However, they cannot be eliminated in advance. Still, they can be at least partially mitigated by specific preventive mechanisms, which are reflected in financial institutions capital requirements.

The pillars and preconditions for financial market stability can be found:[10]

- when individual financial institutions enter the market to provide services (e.g. licensing procedures);
- when providing services in the financial market concerning its clients (e.g. client relationship, regulatory reporting concerning the supervisory authority, etc.);
- when elected authorities intervene early in a financial crisis (resolution mechanism);
- in the methods and organization of financial market closures (failure of financial institutions);
- in protecting deposits and investments through financial market guarantee schemes.

The whole architecture of EU financial stability is currently a product of and a response to the financial and economic crisis of 2008. During this financial crisis, some banks were granted public bailouts because they were deemed too big to fail. This would have endangered the financial market as a whole, as there could have been a domino effect of secondary failures of other institutions, not only financial institutions; hence, insolvency law was not applied in these situations. The amount of state aid was unprecedented.[11] This financial crisis highlighted many of the shortcomings of effective resolution of internationally operating financial institutions. This brought with it the need for a regulatory solution with interventions in financial supervision at the international level so that international financial institutions could be wound down or restructured without public money.

Jurkowska-Zeidler[12] argues that financial market safety is subject to normative protection under the financial safety net, and it was the creation of such a safety net that was one of the objectives of the new regulation and supervisory architecture imme-

---

9 M. Janovec, *The Financial Market and its Stability*, Prague 2023, p. 148.

10 *Ibid.*, p. 24.

11 *State aid: Commission's new on-line state aid benchmarking tool shows less aid to banks*, European Commission, Brussels 20 December 2013, http://europa.eu/rapid/press-release_IP-13-1301_en.htm [accessed: 2023.07.20].

12 A. Jurkowska-Zeidler, *The Architecture of the European Financial Market: Legal Foundations*, Gdańsk–Warsaw 2016, pp. 39–45.

diately after the financial crisis of 2008. This is essentially the current state of financial stability or financial market stability.

2. Areas of regulation and supervision contributing to market stability and self-regulation to support sustainable finance

The areas of regulation and supervision that contribute to market stability will now be presented, as well as those works of self-regulation to promote sustainable finance.

Restrictions on market entry

In this case, we can discuss a preventive systemic measure regulating and reducing the entities that can enter and operate on the market. On the one hand, this is about setting the market itself; on the other, it is about setting universal criteria and conditions, the same for everyone and known in advance. Only certain operators who meet the requirements can provide their services on the market, which supports systemic market protection.

Information requirements

Information requirements are linked to the protection of retail clients and consumers in particular, as the de facto existence of information asymmetries is ubiquitous in the financial market. Information asymmetry is a manifestation of different information and, at the same time, other possibilities of access to information for the financial services provider and the client, especially retail or consumer private, non-public information and the management of access to it are the most problematic in market abuse (market manipulation and insider trading). In this case, the objectives of regulation aimed at combating market manipulation and insider abuse are expressed succinctly in the MAR recitals.[13]

Ongoing business conditions (limitations on risk activities, capital requirements, risk management)

A set of risky activities are directly prohibited for financial institutions. These may include investments in high-risk investment instruments, acquisition of shares in companies where the bank would become an unlimited shareholder, etc. Capital requirements are one of the fundamental pillars of the stability of financial institutions themselves to make them more resilient to economic shocks. Capital requirements,

[13] *Cf.* in particular Recitals 1–5 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

best expressed in capital adequacy, are an area where global regulation is very intense, both through the Basel III standards[14] and their expression in the CRR[15] and CRD IV.[16]

Deposit protection

An essential part of the financial safety net that has two primary purposes. One is compensatory, and the other is to build and maintain confidence in the financial market.

Moral hazard

Moral hazard expresses the tendency to engage in risky behaviour or actions when the person is aware that they will not be sanctioned for this risky behaviour. This can be manifested by risky behaviour of managers of financial institutions that are too big to be allowed to go into insolvency by the state or the regulator, who would instead provide public financial assistance. However, moral hazard can also be taken by an investor who risks their deposit with an institution that offers suspiciously favourable terms, knowing that there is a deposit insurance scheme that will return the deposit to the investor in the event of the institution's failure. The person taking the moral hazard is not acting prudently because they knows they will not be harmed. This damage is then financially borne by other financial market participants, mainly clients.

Self-regulation to support sustainable finance

Codes of ethics of voluntary associations and associations, or codes of conduct, complement statutory regulation and simultaneously create additional oversight by these interest organizations. The main benefit for members of financial institution trade associations is to increase their credibility with clients.

The financial market also promotes a form of greener financial market through self-regulation. Through self-regulation, financial institutions, especially banks, respond to modern trends supporting greener banking. Self-regulatory tendencies based on various ethical or other codes thus help to provide sustainable financial services. In the Czech Republic, for example, the Czech Banking Association has issued a Memorandum for Sustainable Finance,[17] to which 16 banks have signed up and through which they commit themselves, among other things, to greener banking.

A particular social and, at the same time, undoubtedly customer demand for greener banking increases and strengthens trust in banks. Green banking is linked to

---

14 This is a comprehensive set of reform measures aimed at improving existing regulation, supervisory rules and risk management of banking business. It was issued by the Basel Committee on Banking Supervision in 2009. Banks fully implemented it by 31 March 2018.

15 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

16 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance (OJ L 176, 27.6.2013, p. 338).

17 *Sustainable Finance Memorandum*, Czech Banking Association, 2021, https://cbaonline.cz/upload/1537-memorandum-cba-pro-udrzitelne-finance-fin-en.pdf [accessed: 2023.07.21].

modern approaches to banking to make banks more environmentally friendly (fewer branches, paperless offices, reducing the carbon footprint of banks, etc.), i.e. greener. This is followed by favouring ecologically friendly businesses concerning the client's environment and financial support for green projects themselves.

3. Financial Safety Net and sustainable finance

An essential foundation for preserving and improving the financing of sustainable development, especially in developing countries, is a stable financial system, as a regional or global financial crisis could jeopardize the new development agenda. The choice of sources and instruments of sustainable finance has a determining effect on the stability of the financial system. Indeed, it should be recognized that funding to achieve specific sustainable development goals can create new systemic risks.

The need to attract significant financial resources to finance the Sustainable Development Goals, as well as to overcome the effects of climate change, requires a rethinking of the role of institutions in the financial sector, especially in the context of their social responsibility. This is important because, in the case of sustainable finance, financial markets play a dual role as providers of financing for the investment gap linked to the achievement of the Sustainable Development Goals and as socially responsible institutions that facilitate and support the achievement of the Sustainable Development Goals. The role and importance of individual financial markets (and the financial institutions operating within them) in the implementation of the SDGs is uneven in the context of each SDG. Financial institutions prefer action on SDG5 (gender equality) and SDG13 (climate).[18] The lack of systematic activities promoting the development of corporate social responsibility in the financial sector will prevent the use of its potential to finance national tasks to achieve the Sustainable Development Goals.

The trend towards sustainable finance is evident in a number of EU regulatory initiatives that aim to align the rules of the financial markets.[19] The new role of financial sector actors involves the imposition of new obligations on these actors (e.g. sustainability-related disclosures in the financial services sector, as referred to in Regulation 2019/2088/EU[20] [Sustainable Finance Disclosure Regulation] and Regulation 2020/852/EU [Taxonomy Regulation])[21] as well as the creation of a new regulatory

---

18 I. Makarenko, Y. Yelnikova, A. Lasukova, A.R. Barhaq, *Corporate Social Responsibility of Financial Sector Institutions in the Light of Sustainable Development Goals Financing*: *The Role of Banks and Stock Exchanges*, "Public and Municipal Finance" 2018, vol. 7, no. 3, pp. 1–14.

19 https://www.cnb.cz/en/supervision-financial-market/legislation/sustainable-finance/laws-and-regulations/ [accessed: 2023.07.21].

20 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

21 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

framework for non-mandatory activities, of which eco-labelling of retail financial products is an example. At the same time, the regulation of sustainable finance influences sectoral legislation (banking, insurance, capital market) and includes new regulations, which now regulate in particular transparency related to the sustainability of financial products and the sustainability impact of the investment activities of financial market players.

Central banks play an important role in the environmental transition because (1) they manage the risks to the financial system and the economy that arise from climate change, (2) they are decisive when it comes to directing funds towards sustainable investments to finance the green transition and (3) they can share their expertise, spread awareness of sustainable finance and encourage changes in behaviour. The action taken by central banks to address these issues is generally referred to as 'green central banking'.[22]

Climate change and the transition to a greener economy affect the primary mandate of central banks to maintain price stability because of its impact on the economy and on the risk profile and value of assets on the balance sheet of the banking system.[23] The European Central Bank in July 2021 presented its Climate Action Plan, in which it announced steps to address climate change in its operations. In July 2022 the ECB presented in its Climate Agenda 2022 the implications of the Climate Action Plan for its monetary policy operations.[24] However, the European Central Bank recognizes in this Climate Agenda that governments and legislators are primarily responsible for tackling climate change and who have the most appropriate tools to address the issue.

These measures are far-reaching and mark a paradigm shift in central banking, which can also be seen globally in the activity of other central banks.[25] However there is a need for a common understanding within the financial safety net – at national, regional and, especially global levels – of how climate change affects our economies and financial systems. And what impact do they have on economic growth, inflation or the labour and production markets? Such a common platform for sharing experiences and good practices is the Network for Greening the Financial System (NGFS) established in December 2017.[26] In a guide for supervisors, the NGFS makes a series of

---

22 S. Spinaci, M. Höflmayr, L. Hofmann, *Green central banking*, EPRS. European Parliamentary Research Service, September 2022, p. 1, https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733614/EPRS_BRI(2022)733614_EN.pdf [accessed: 2023.07.21].

23 About implications of climate change for the conduct of monetary policy in the euro area see *Climate change and monetary policy in the euro area*, EBC Occasional Paper Series, EBC Strategy Review 2021, No. 271, pp. 1–189.

24 *ECB climate agenda 2022*, 4 July 2022, https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704_annex%7Ecb39c2dcbb.en.pdf?e1cc4f3420e8e9f906855410f40e73b5 [accessed: 2023.07.21].

25 *A Sustainable and Responsible Investment Guide for Central Banks' Portfolio Management*, NGFS Publications 10/17/2019, pp. 23–31, https://www.ngfs.net/sites/default/files/medias/documents/ngfs-a-sustainable-and-responsible-investment-guide.pdf [accessed: 2023.07.21].

26 The general aim of the NGFS is to exchange experiences, share best practices, contribute to the development of environment and climate risk management in the financial sector, conduct or commission analytical work on green finance and to mobilize mainstream finance to support the transi-

recommendations on how to incorporate climate risk into prudential supervision.[27] In particular, the NGFS recommends assessing the vulnerability of supervised actors to climate risk through scenario analysis, also known as 'stress testing'.[28] As guidance for central banks and supervisors, the NGFS has published a set of six climate scenarios – from 'orderly transition' to 'hot house world'. The assumptions and pathways detailed in the scenarios will inform central banks' climate risk assessments. In addition, the guide advises supervisors to communicate their expectations for managing climate-related financial risks.[29] As part of holistic approach to addressing climate-related financial risks to the global banking system, the Basel Committee on Banking Supervision also published in 2022 principles for the effective management and supervision of climate-related financial risks.[30]

Importantly, the credibility of new sustainability-related financial instruments is not assessed in a systematic or methodical way, and therefore they may be exposed to sudden impairments that are not identified by existing supervisory mechanisms. Inconsistent definitions in the area of sustainability and the general lack of a uniform perception of it further increase the risks for investors and issuers, and these risks need to be addressed through financial stability safeguards.[31]

Conclusions

The general conclusion is that whether we are dealing with financial, public finance, epidemiological or environmental crises, the stability of the financial market is at the centre of the interest of regulatory and supervisory institutions, as it is important for

tion toward a sustainable economy. As of June 13, the NGFS consists of 127 members and 20 observers. Unfortunately, there are no Polish or Czech central banks or supervisors among the members.

27 *The NGFT Guide for Supervisors integrating climate-related and environmental risks into prudental supervision*, May 2020, https://www.ngfs.net/sites/default/files/medias/documents/ngfs_guide_for_supervisors.pdf [accessed: 2023.07.21].

28 The results of the European Central Bank (ECB) climate risk stress test published in 2022 showed that banks do not yet sufficiently incorporate climate risk into their stress-testing frameworks or internal models. The stress test shows that credit and market losses in the short-term disorderly transition and the two physical risk scenarios amount to around €70 billion on aggregate for the 41 banks in this study. ECB 2022 climate risk stress test, July 2022, https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.climate_stress_test_report.20220708~2e3cc0999f.en.pdf [accessed: 2023.07.21].

29 The European Central Bank's activities in this area are: *ECB report on good practices for climate stress testing*, ECB Banking Supervision 2022, https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.202212_ECBreport_on_good_practices_for_CST~539227e0c1.en.pdf [accessed: 2023.07.21] and *Good practices for climate-related and environmental risk management – Observations from the 2022 thematic review*, ECB Banking Supervision 2022, https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.thematicreviewcercompendiumgoodpractices112022~b474fb8ed0.en.pdf?8330f3208649c4b24d2a6f4204447f9f [accessed: 2023.07.21].

30 https://www.bis.org/bcbs/publ/d532.htm [accessed: 2023.07.21].

31 K. Zielińska-Lont, *Sustainable Finance Initiatives and their Impact on Financial Stability*, "Financial Law Review" 2020, vol. 40, no. 4, p. 118, http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.ojs-issn-2299-6834-year-2020-issue-20_4_-article-5432/c/5432-4760.pdf [accessed: 2023.07.21].

economic growth and the economic health of the state in general. The global financial crisis of 2008 had a fundamental impact on changing the approach to financial market regulation and supervision; it established a new legal framework for the functioning of financial institutions and financial market regulators and supervisors. This was crucial for the institutional architecture of the financial safety net, both at national, European, and international levels. The jurisprudence of the Court of Justice of the EU confirms that financial market stability and security have become the most important objectives of financial market law regulation, which fundamentally affects the nature and importance of the norms created in this area of the legal system.

The European Union is currently at a turning point in the development of its legal and financial system, which is determined by political decisions that reflect changes within a post-modern consumer society. New legislative solutions should refer more to the idea of the common good and stimulate the attitudes of the addressees of legal norms in such a way that they consider the broader public interest, contributing to the objectives of sustainable development. It is necessary to systemically integrate these objectives into the activities of financial safety net institutions in the directions of sustainable financing: support of sustainable development policies; advanced financial inclusion through product innovation; protection of consumers of financial services. Risks to financial stability must always be considered when financing investments to achieve the new Sustainable Development Goals. During the global financial crisis of 2008, there was also a close correlation between the financing structure and the impact of the crisis in the real sector. The lack of systematic measures to promote social responsibility in the financial market does not allow its potential to be used to finance national tasks to achieve the SDG.

Climate and environmental change are a source of financial risk which creates new challenges for central banks, regulators and supervisors. Climate risk is a clear and ongoing threat to the global economy and has extensive implications for the conduct of monetary policy. Through green central banking, central banks can react to the challenges of climate change. It is within the mandate of central banks and supervisors to assure the financial system's resilience to these risks. Climate change will affect the global economy and thus the financial system that supports it. Financial markets are an important channel for the transfer and spread of so-called green attitudes and behaviour, although this should not omit adverse phenomena such as greenwashing. Central banks and supervisors, as well as financial institutions, are beginning to better understand these risks and the need for a better approach. Supervisors are taking a proactive role in assessing prudential risks and setting supervisory expectations to improve financial risk management at supervised markets. A growing number of financial institutions have also undertaken their own analyses related to climate and the environment. Without the participation and involvement of financial markets, effective implementation of the SDGs is not possible. Growing customer demand for greener banking is having a particular social impact, and this undoubtedly has the effect of strengthening trust in banks as contributors to sustainable development goals.

Literature

Alińska A., Frydrych S., Klein E., *Finanse w koncepcji zrównoważonego rozwoju*, "Kwartalnik Kolegium Ekonomiczno-Społecznego. Studia i Prace" 2018, no. 1.

Bolton P., Despres M., Pereira Da Silva L.A., Samama F., Svartzman R., *The Green Swan: Central Banking and Financial Stability in the Age of Climate Change*, Bank for International Settlements, January 2020, https://www.bis.org/publ/othp31.pdf.

Ciechanowicz-McLean J., *Instrumenty prawne ochrony klimatu przed i w Europejskim Zielonym Ładzie*, "Gdańskie Studia Prawnicze" 2021, no. 3.

Janovec M., *The Financial Market and its stability*, Prague 2023.

Jurkowska-Zeidler A., *The Architecture of the European Financial Market: Legal Foundations*, Gdańsk–Warsaw 2016.

Makarenko I., Yelnikova Y., Lasukova A., Barhaq A.R., *Corporate Social Responsibility of Financial Sector Institutions in the Light of Sustainable Development Goals Financing: The Role of Banks and Stock Exchanges*, "Public and Municipal Finance" 2018, vol. 7, no. 3.

Nieborak T., *Rynek finansowy jako dobro wspólne*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2017, vol. 79, no. 3.

Spinaci S., Höflmayr M., Hofmann L., *Green central banking*, EPRS. European Parliamentary Research Service, September 2022, https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733614/EPRS_BRI(2022)733614_EN.pdf.

Zielińska-Lont K., *Sustainable Finance Initiatives and their Impact on Financial Stability*, "Financial Law Review" 2020, vol. 40, no. 4.

Zioło M., *Rynki finansowe wobec zmian klimatu. Dylematy i wyzwania a cele zrównoważonego rozwoju*, "Studia BAS" 2023, vol. 74, no. 2.

Summary

Anna Jurkowska-Zeidler, Michal Janovec

Financial Market Stability: A Key Driver of Sustainable Finance

In this article the authors argue that financial market stability plays a key role in achieving the Sustainable Development Goals (The United Nations Agenda 2030) that include not only economic growth but also the elimination of inequality. Indeed, financial markets share responsibility for building a sustainable economy that balances economic interest with social responsibility. The authors present a thesis that the financial market plays a key role in solving economic and social problems and building the innovative, low-carbon economy of the future. Climate and environmental change are a source of financial risk which creates new challenges for the financial safety net: central banks, regulators, and supervisors. The choice of funding sources and instruments has a decisive impact on the stability of the financial system and financing to achieve specific SDG can lead to new systemic risks. The authors find it reasonable to conclude that whether we are dealing with financial, public finance, epidemiological or environmental crises, the stability of the financial market is at the heart of the concerns of regulatory and supervisory institutions as it is vital for economic growth and economic standing in general. The research uses theoretical and dogmatic-legal methods based on the analysis of the content and

availability of source information, i.e. theoretical and legal publications as well as legal regulations crucial from the point of view of the subject.

Keywords: financial market, financial stability, financial regulation, sustainable finance.

Streszczenie

Anna Jurkowska-Zeidler, Michal Janovec

Stabilność rynku finansowego – kluczowy czynnik zrównoważonych finansów

W niniejszym artykule autorzy argumentują, że stabilność rynku finansowego odgrywa kluczową rolę w osiąganiu Celów Zrównoważonego Rozwoju (Agenda ONZ 2030), które obejmują nie tylko wzrost gospodarczy, ale także eliminację nierówności. Rynki finansowe są bowiem współodpowiedzialne za budowanie zrównoważonej gospodarki, która równoważy interes ekonomiczny z odpowiedzialnością społeczną. Autorzy stawiają tezę, że rynek finansowy odgrywa kluczową rolę w rozwiązywaniu problemów gospodarczych i społecznych oraz budowaniu innowacyjnej, niskoemisyjnej gospodarki przyszłości. Zmiany klimatyczne i środowiskowe są źródłem ryzyka finansowego, co stwarza nowe wyzwania dla sieci bezpieczeństwa finansowego: banków centralnych, organów regulacyjnych i nadzorczych. Wybór źródeł i instrumentów finansowania ma decydujący wpływ na stabilność systemu finansowego, a finansowanie w celu osiągnięcia określonych celów zrównoważonego rozwoju może prowadzić do nowych ryzyk systemowych. Autorzy stwierdzają, że niezależnie od tego, czy mamy do czynienia z kryzysem finansowym, finansów publicznych, epidemiologicznym czy środowiskowym, stabilność rynku finansowego znajduje się w centrum zainteresowania instytucji regulacyjnych i nadzorczych, ponieważ ma kluczowe znaczenie dla wzrostu gospodarczego i ogólnej kondycji ekonomicznej. W badaniach wykorzystano metodę teoretyczno-dogmatyczno-prawną, opartą na analizie treści i dostępności informacji źródłowych, tj. publikacji teoretycznoprawnych oraz regulacji prawnych kluczowych z punktu widzenia podjętego tematu.

Słowa kluczowe: rynek finansowy, stabilność finansowa, regulacje finansowe, zrównoważone finanse.

Przemysław Panfil
University of Gdańsk, Poland
przemyslaw.panfil@ug.edu.pl
ORCID: 0000-0003-3717-4664

https://doi.org/10.26881/gsp.2024.1.02

The State as a Financial Market Participant

The first half of the 1970s brought two events that initiated processes of great significance for countries in the wider West. This period saw the final erosion of the Bretton Woods monetary system and the outbreak of the oil crisis. The floating of exchange rates removed barriers that had prevented the greater use of public borrowing. At the same time, a period of stagflation provided the rationale for the more active use of fiscal policy instruments to stabilize public finances. It was in the 1970s that a period of chronic budget deficits and progressive debt accumulation began.[1] Over time, it became apparent that most Western countries suffered from a phenomenon known as deficit bias. This phenomenon was induced at the interface between the process of democratic choice and the postmodern consumer society. On the one hand, political parties sought to maximize their electoral outcome. In order to do so, they sought to include wider groups of voters in their electorates, entering into the role of so-called political entrepreneurs.[2] On the other hand, voters were not sufficiently aware of the existence and role of long-term budget constraints. Consequently, they built up false perceptions about the possible options for democratic choice. The predictable result of this state of affairs was the use of public borrowing as a substitute for taxation.[3] This led to the slow transformation of tax states into debt states.[4]

The change in the financial operating model of states generated new risks, but their essence has not yet been fully identified in the literature. Increasingly, states are beginning to resemble intergenerational financial institutions, allocating funds from future generations to those currently living. The aim of this article is to identify the risks to socio-economic sustainability posed by the critical dependence of the state on the market-based financing of its borrowing needs. It is a first step in the search for a new security architecture that better serves the idea of sustainable finance.

---

1 A. Alesina, R. Perotti, *Fiscal Adjustments in OECD Countries: Composition and Macroeconomic Effects*, "NBER Working Paper" 1996, no. 7530, p. 2.
2 M. Hallerberg, J. von Hagen, *Organizacja procesu budżetowego w Polsce*, Warszawa 2006, p. 24.
3 J.M. Buchanan, *Finanse publiczne w warunkach demokracji*, Warszawa 1997, p. 133.
4 W. Streeck, *Buying time. The delayed crisis of democratic capitalism*, London–New York 2017, p. 72.

Scale of State Treasury activity in the financial market

An unambiguous determination of the size of the financial links between a State Treasury and the financial market is a relatively complicated task. This is largely because this entity uses a variety of instruments to perform its tasks and manage its financial resources. At the same time, some of these instruments are located outside the public finance sector. On the one hand, this circumstance affects the scope of available statistical data, on the other hand, it raises significant conceptual problems with the assessment of specific facts. An example of this is the attempt to draw demarcation lines between public and private finance. These problems arise, for example, in relation to commercial law companies, which perform the tasks of the state and do not have the ability to self-finance their activities. Nonetheless, for the purposes of the present considerations, an attempt can be made to outline to some extent the scale of State Treasury activity on the financial market.

One of the most important indicators relating to the presence of the State Treasury on the financial market is the size of its borrowing needs.[5] Pursuant to Article 76 of the Act of 27 August 2009 on Public Finance[6] (hereinafter: PFA), these needs are determined by the sum of the state budget deficit, the deficit of the EU funds budget, and repayment of debt. The Budget Act for 2023 of 15 December 2022[7] assumes that these figures will be PLN 68 billion, PLN 16.2 billion, and PLN 673.3 billion respectively. Thus, the total borrowing needs of the State Treasury for 2023 were set at PLN 757.5 billion. It is also symptomatic that the sum of forecast revenues of the state budget and the EU funds budget was PLN 713.5 billion. This means that the main source of public funds for the state budget and the EU funds budget (treated as a certain whole) is becoming public borrowing.

In fact, the analysis of the data on the size of borrowing needs included in the Budget Act did not fully reveal the scale of the State Treasury's need for repayable funds. This is because of consistent distortion of the value of Polish fiscal indicators through actions bearing the hallmarks of unstructured fiscal adjustments and, in particular, creative accounting. For example, for several years, some state budget expenditures have been recorded directly as debt. This is possible by using the transfer of treasury securities to a specific entity as a substitute for budget subsidies and grants. This reduces the reported amount of state budget expenditure and thus the budget deficit, and the treasury's borrowing needs. In 2022 alone, the total value of treasury securities transferred under this mechanism was PLN 25.8 billion.[8] These securities are,

[5] Of course, the State Treasury's borrowing needs are not entirely financed on the financial market. For example, its sources of revenue are other public finance sector entities, international financial institutions, and the European Union.

[6] Consolidated text: Journal of Laws 2022, item 1634 as amended.

[7] Journal of Law 2023, item 256.

[8] Own calculations based on data from the website of the Ministry of Finance: www.gov.pl/web/finanse/dlug-publiczny [accessed: 2023.07.23].

of course, debt titles, the nominal value of which is taken into account when calculating the treasury debt.

Another way of lowering the official level of the borrowing needs of the State Treasury is the implementation of some of its tasks through entities located outside the public finance sector. The key role here is played by funds located in Bank Gospodarstwa Krajowego (hereinafter: BGK) (primarily the National Road Fund, the Covid-19 Counteracting Fund, the Armed Forces Support Fund and the Assistance Fund) and the Polish Development Fund S.A. The main source of financing for the activities of these institutions is funds from the issue of bonds guaranteed by the State Treasury. This is another activity bearing the hallmarks of creative accounting. It makes it possible to conceal part of the real debt of the State Treasury by creating potential debt, which is not included in official statistics reported to the public. It is worth noting that at the end of 2022, the debt of the aforementioned four funds located it BGK and the Polish Development Fund S.A. was PLN 300.8 billion.

The scale of the state's connection to the financial market is also evidenced by the entity structure of the debt. At the end of 2022, State Treasury debt was PLN 1.238 billion.[9] Of this amount, PLN 446.8 billion was attributable to the domestic banking sector, whose share in the entity structure of debt was 36.1%. Most of that debt was owed to commercial banks; State Treasury liabilities to the NBP were PLN 74.3 billion. The domestic non-bank sector participated in 30.7% of debt (PLN 380.2 billion). In this respect, creditors of the State Treasury included households (PLN 88 billion), insurance companies (PLN 59.6 billion), investment funds (PLN 47.1 billion), and pension funds (PLN 5.0 billion). The remaining 33.2% of the State Treasury's debt was due to non-residents, which translated into PLN 411.5 billion at the end of 2022. Of this amount, PLN 146.2 billion is debt in domestic instruments, mainly to central banks and public institutions, investment funds, pension funds, and insurance companies. On the other hand, indebtedness to non-residents in foreign instruments consisted mainly of liabilities on account of foreign bonds (PLN 175.1 billion), as well as loans and credits from international financial institutions (the World Bank, the European Investment Bank, the Council of Europe Development Bank) and the European Union (PLN 113.6 billion in total). Taking into account the above data, it is difficult to state unequivocally what the size of the strictly market-based part of the State Treasury debt was.[10] However, it seems that at the end of 2022 its value was no less than PLN 900 billion. This amount constituted more than 70% of the amount of State Treasury debt. And, at least to this extent, the entity was dependent on the course of market processes.

[9] The source of all data in this paragraph is: Ministerstwo Finansów, "Zadłużenie Skarbu Państwa. Biuletyn Miesięczny" 2022, no. 12.

[10] For the purposes of this article, this term should be understood as the state's obligations to those bondholders whose decision to purchase treasury securities was based primarily on purely economic (the desire to maximize profit at an assumed level of risk) or regulatory (the need to meet prudential requirements imposed by applicable regulations) motives.

Treasury securities as a risk factor transmission channel

Financing growing borrowing needs forces the State Treasury to have a constant presence in the financial market. Currently, the main way in which a government raises repayable funds is by issuing treasury securities. These instruments have a very long history, dating back to medieval Venice. However, after the end of the Second World War, for most countries the main means of raising repayable budgetary funds was through bank loans. This ensured a high degree of concentration of the entity structure of State Treasury debt and facilitated negotiations with a relatively narrow, homogeneous, and often capital-linked group of creditors.[11] It was not until the 1990s that the treasury securities market saw intense development. It is worth noting that, among developing countries, the rise in popularity of these instruments followed the positive experience of the so-called Brady Plan. The aim of this plan was to solve the debt crisis of some developing countries. One of its elements was the partial conversion of debts owed to commercial banks into government bonds.[12]

With a properly chosen issuance strategy, treasury securities are proving to be the most effective form of public borrowing. Their great advantage is the ability to reach a wide range of investors. This translates into both greater certainty of financing a treasury's borrowing needs and minimizing debt servicing costs.[13] Moreover, there are a number of national and supranational legislative solutions that increase investor interest in treasury securities. Excellent examples of this include the provisions of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[14] and Commission Delegated Regulation (EU) No 2015/35 of 10 October 2014 supplementing Directive 2019/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).[15] In a nutshell, these regulations introduce prudential standards to which credit institutions and insurance undertakings are subject. In doing so, both acts give preferential treatment to the claims of these entities on the central governments of the Member States of the European Union, provided that these claims are denominated and funded in the national currency of the government concerned. When calculating the risk exposure amounts of individual assets of credit institutions and insurance companies, these claims are assigned a weight of zero. Exposures to public sector entities are treated in a similar manner, provided they benefit

[11] W. Mark, C. Weidemaier, M. Gulati, *A People's History of Collective Action Clauses*, UNC Legal Studies Research Paper, no. 2172302, Chapel Hill 2012, p. 6.
[12] M. Dynus, *Obligacje Brady'ego sposobem na rozwiązanie kryzysu zadłużeniowego krajów rozwijających się*, "Toruńskie Studia Międzynarodowe" 2010, no. 1(3), p. 41.
[13] M. Mosionek-Schweda, P. Panfil, *Klauzule wspólnego działania w strefie euro* [in:] *Instytucje prawno-finansowe w warunkach kryzysu gospodarczego*, eds. W. Miemiec, K. Sawicka, Warszawa 2014, p. 629.
[14] OJ L 176, 27.6.2013, p. 1 as amended.
[15] OJ L 012, 17.1.2015, p. 1 as amended.

from adequate central government guarantees (Articles 114[4] and 116[4] of Regulation 575/2013 and Article 180[2] of Regulation 2015/35).

Solutions favoring sovereign debt at the level of prudential norms seem to go too far. As the experience of the euro area debt crisis shows, even liabilities denominated and financed in domestic currency are not without risk. This would only be the case if the central bank acted as lender of last resort to the State Treasury. However, in the European Union, this possibility is, at least in theory, excluded by Article 123 of the Treaty on the Functioning of the European Union[16] (hereinafter: TFEU). According to this provision, the ECB and the central banks of the Member States may not grant loans to EU institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, or to other national public institutions or undertakings. This prohibition is also articulated in a slightly different way by Article 220(2) of the Constitution of the Republic of Poland of 2 April 1997.[17] According to it, the Budget Act may not provide for covering the budget deficit by incurring a liability in the central bank of the State. Consequently, the zero risk attributed to, inter alia, treasury securities at the level of prudential norms is in systemic contradiction with the prohibition on financing the State Treasury's borrowing needs by the central bank. It would therefore seem necessary to make these norms more realistic by attributing to State Treasury claims the actual risk that these claims generate. Alternatively, the central bank should be allowed to perform the function of lender of last resort to the State Treasury. However, the exercise of this function should only take place in times of serious threat to fiscal sustainability.

Given the legislative arrangements in place, EU Member States may not increase the attractiveness of treasury securities through the use of tax preferences. According to Article 124 TFEU, any measure not based on considerations of a prudential nature establishing privileged access by the institutions, bodies, offices or agencies of the EU, central governments, and regional, local, or other public authorities to financial institutions is prohibited. This prohibition also extends to other institutions or public undertakings of the Member States. Article 124 TFEU thus ensures transparency and, to a large extent, the equivalence of relations between the public and private sectors. By contrast, the purpose of this provision is to prevent public authorities of EU Member States from using their power (or the emanation of that power in relation to public undertakings) to force any decision on financial sector institutions.[18]

The provisions of Article 124 TFEU are clarified by Council Regulation (EC) No 3604/93 of 13 December 1993 laying down definitions for the application of the prohibition of privileged access listed in Article 104a of the Treaty.[19] According to Article 1 of this Regulation, "any measure establishing privileged access" shall mean, inter

---

16 Consolidated version OJ EU C202, 7.6.2016, p. 47 as amended.

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

18 A. Nowak-Far [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom II*, eds. K. Kowalik-Bańczyk, M. Szwarc-Kuczer, A. Wróbel, Warszawa 2012, pp. 709–710.

19 OJ L 332, 31.12.1993, p. 30.

alia, a law, regulation or other binding act adopted in the exercise of public authority granting:

1. tax breaks that can only benefit financial institutions,
2. financial facilities that are not in line with market economy principles,
   – to encourage these institutions to acquire or hold the liabilities of central government institutions and bodies.

In Poland, Article 124 TFEU is not fully complied with. The most important breakthrough in this respect was created by Article 5(9) of the Act of 15 January 2016 on tax on certain financial institutions[20] (hereinafter: TFIA). This provision introduces a tax credit that can be used by domestic banks, branches of foreign banks, branches of credit institutions and cooperative savings and credit unions. Its essence is the deduction from the tax base[21] of the value of assets in the form of treasury securities and securities statutorily guaranteed by the State Treasury. The latter include, for example, bonds issued for the benefit of certain funds placed with BGK (e.g., the Armed Forces Support Fund). Undoubtedly, Article 5(9) of the TFIA increases the competitiveness of securities issued or statutorily guaranteed by the State Treasury against other instruments characterized by low profitability and risk. In this respect, the construction of the tax on financial institutions distorts the market mechanism and forces taxpayers to make decisions that are beneficial from the point of view of the fiscal interests of the state.[22]

Another factor building up commercial bank demand for treasury securities is the practice of central banks. These securities are, inter alia, the subject of activities carried out under market-based monetary policy instruments. In Poland, it is possible to distinguish at least four, partly interrelated areas of NBP activity that relate to treasury securities. First, these instruments serve as collateral during the refinancing of commercial banks. Second, they are used during open market operations. Third, the share of treasury securities in the bank's own portfolio is taken into account during competition for the function of money market dealers. Fourth, these instruments are used during operations that are part of the concept of quantitative monetary easing. Within the framework of the latter, debt securities guaranteed by the State Treasury also play a similar role to treasury securities (e.g., bonds issued by BGK for the benefit of KFD and FPC-19, or bonds of PFR S.A.). However, the scale of operations implemented as part of NBP's quantitative easing of monetary policy in 2020–2021 is evidenced by changes in the central bank's balance sheet. While at the end of 2019 the Polish central bank was not involved in debt securities denominated in the domestic currency,[23] at the end of 2021 their involvement reached PLN 149.3 billion. (almost PLN 87 bil-

[20] Consolidated text: Journal of Laws 2022, item 1685 as amended.

[21] In some simplification, this basis is the excess of the taxpayer's total assets over the amount of PLN 4 billion.

[22] P. Panfil, *Podatek od niektórych instytucji finansowych w świetle art. 124 Traktatu o funkcjonowaniu Unii Europejskiej*, GSP 2017, vol. 38, p. 398.

[23] NBP, *Raport Roczny 2019*, Warszawa 2020, p. 182.

lion in treasury securities and PLN 62.4 billion in securities guaranteed by the State Treasury).[24]

Twin debt crises

The dependence of modern states on market financing for their borrowing needs creates a two-way crisis transmission mechanism between the public finance sector and the financial sector. This mechanism is one of several reasons for the occurrence of so-called twin debt crises. Research shows that the spread of foreign government bonds shows a strong correlation with the spread of domestic loans to private borrowers. Episodes of sovereign bankruptcy in the international market, on the other hand, show a strong correlation with episodes of large-scale bankruptcies of private domestic entities.[25]

From the point of view of the financial sector, the danger of the loss of fiscal sustainability by a state can be treated as so-called systemic risk. This concept is defined in Article 4(15) of the Act of 5 August 2015 on the macroprudential supervision of the financial system and crisis management in the financial system.[26] According to this provision, systemic risk is the risk of disruption in the functioning of the financial system which, if it materializes, disrupts the operation of the financial system and the national economy as a whole. In particular, its source can be trends related to excessive credit or debt dynamics and related asset price imbalances, unstable funding patterns, risk distribution in the financial system, linkages between financial institutions, and macroeconomic and sectoral imbalances. Undoubtedly, the deteriorating state of public finances is a manifestation of macroeconomic imbalances resulting from excessive debt. At the same time, it leads to volatility in the prices of treasury securities and disrupts the financial sector.[27] A fall in the value of these instruments obviously aggravates the situation of their holders, particularly banks.[28] Paradoxically, entities are sometimes forced to refinance maturing sovereign debt. This is because this behavior can protect them from the possible bankruptcy of the issuer of treasury securities.[29] However, sovereign bankruptcy itself means that financial institutions have to update the value of their asset portfolios. Historically, such bankruptcies have meant a reduction in claims by holders of treasury securities in the range of 13–73%.[30] Undoubtedly, this type of situation can lead to the bankruptcy of some bondholders.

---

[24] NBP, *Raport Roczny 2021*, Warszawa 2022, p. 192.

[25] D. Tymoczko, *Operacje banków centralnych w okresach kryzysu* [in:] *Polityka pieniężna*, ed. A. Sławiński, Warszawa 2011, p. 219.

[26] Consolidated text: Journal of Laws 2022, item 2536 as amended.

[27] P. Panfil, *Reguły i iluzje fiskalne w Polsce. Ujęcie prawnofinansowe*, Gdańsk 2021, p. 62.

[28] S. Pawłowski, *Nowe zadania Europejskiego Banku Centralnego a kryzys zadłużeniowy*, "Analizy Natolińskie" 2013, no. 10, p. 28.

[29] Z. Grocholski, *Banki i rynki finansowe. Od zaufania publicznego do kasyna?*, Warszawa 2016, p. 168.

[30] K. Oosterlinck, *Sovereign debt defaults: Insights from history*, "Oxford Review of Economic Policy" 2013, vol. 29, no. 4, p. 700.

As an aside, attention should also be drawn to the modern view of fiscal sustainability. This notion implies avoiding the excessive growth of government liabilities, which burdens future generations, while at the same time being able to provide necessary public services to society, including adequate security in difficult times, and the possibility of changing policies pursued in response to new challenges.[31] One of the attributes of fiscal sustainability thus becomes the ability of the state to respond adequately to emerging crisis phenomena, and thus to fulfil the stabilizing function of public finances. At the same time, in an era of chronic budget deficits, this capacity depends on the creditworthiness of the state and the confidence it enjoys in the financial market. These factors determine the ability to provide market-based financing for the government's surging borrowing needs. It is worth noting here that the costs of supporting financial institutions in times of crisis are usually very high. The example of Ireland, which guaranteed the liabilities of its largest banks on 30 September 2008, can be cited here. At the end of 2010, this resulted in state disbursements of EUR 50 billion and a public finance crisis.[32] This amount was equivalent to almost a third of Ireland's GDP. The disbursements associated with the guarantees caused the general government deficit to reach an astronomical 31.2% of GDP in 2010 and the general government debt to rise to 92.5% of GDP.[33] Impressively, Ireland was able to finance this expenditure and regain the confidence of financial market participants after a relatively short period of disruption. The fact that Ireland entered the global financial crisis with very sound public finances appears to have been a key factor in this. In 2007, this manifested itself in a small general government surplus and a debt of only 25.0% of GDP,[34] which created space for the extensive use of fiscal policy instruments in response to extraordinary challenges.

Undoubtedly, the need to support financial institutions at risk of bankruptcy is becoming a serious challenge for public finances, potentially leading to a spike in public debt. However, this is not the only mechanism for the transmission of crisis phenomena. Growing risk aversion and the deteriorating situation of financial market participants affect their behavior. The result is changes in the volume and structure of demand for treasury securities. Due to the herd behavior of investors, such processes are often highly dynamic. The decisions taken by participants in the market game are not always rational, balanced, or right, but are often irrational, unfair, and even hysterical.[35] Moreover, at high levels of debt, investor reactions become highly non-linear.[36] Some phenomena and processes are also self-fulfilling prophecies. This issue is related to the so-

[31] European Commission, *Fiscal Sustainability Report 2012*, "European Economy" 2012, no. 8, pp. 1–2.
[32] P. Bagus, *Tragedia euro*, Warszawa 2011, p. 117.
[33] European Commission, *European Economic Forecast. Spring 2012*, "European Economy" 2012, no. 1, p. 70.
[34] European Commission, *European Economic Forecast. Spring 2010*, "European Economy" 2010, no. 2, p. 87.
[35] A. Wernik, *Finanse publiczne*, Warszawa 2011, p. 102.
[36] J. Escolano, *A practical guide to public debt dynamics, fiscal sustainability, and cyclical adjustment of budgetary aggregates*, "IMF Technical Notes and Manuals", January 2010, p. 11.

called collective action problem. Creditors might realize that the best solution would be to continue refinancing the country; however, they refuse to do so assuming that other lenders will behave in the same way. Consequently, rational individual decisions lead to a disastrous collective outcome.[37] At the public-private association level, this type of creditor behavior generates a phenomenon similar to a bank run.[38] As a result, state bankruptcy can occur not only because of insolvency but also a loss of liquidity.

It is also worth noting the contagion effect, which is the transmission of a crisis among actors seeking financing on the financial market. This phenomenon can occur, inter alia, between financial institutions and states and between states. In the latter case, the source of the disruption can be, for example, investors automatically closing their positions in countries belonging to the same group.[39] An excellent example of the contagion phenomenon is the events that took place during the Eurozone debt crisis. Interestingly, this effect was induced by the problems experienced by the financial holding company Dubai World in 2009. This institution managed a large portfolio of Dubai government investments and projects. As a result, investors assumed that Dubai World's liabilities were guaranteed by the emirate. However, a representative of the Dubai government officially denied this assumption on 30 November 2009.[40] Investors realized that any assumptions about implicit or informal guarantees of liabilities could prove to be wrong.[41] This situation coincided with Greece's mounting fiscal problems. In the case of this country, investors also made the erroneous assumption that it had an informal guarantee of support from the richer members of the eurozone. This goes some way to explaining the spectacular fall in interest rates on Greek government securities issued after the country joined the single currency area.[42] However, the assumption of informal guarantees given to euro area members by countries such as Germany and France has never had a strong basis, especially in the context of the wording of Article 125 TFEU. This provision explicitly prohibits the EU and its members from incurring or assuming responsibility for the liabilities of other Member States. When investors realized their mistake, a sell-off of Greek government securities began, which ultimately put the country in a very difficult position. In doing so, they began to compare the consequences of a possible Greek bankruptcy with the situation that occurred in the financial market after the collapse of Lehman Brothers. Banks holding debt securities issued by the country and issuers of credit default swaps (hereafter: CDS) insuring Greek debt became the focus of particular attention.[43]

---

37 T.F. Geithner, *Stress Test. Reflections on Financial Crises*, New York 2014, p. 61.

38 C. Arellano, N. Kocherlakota, *Internal debt crises and sovereign defaults*, "NBER Working Paper" 2008, no. 13794, p. 4.

39 M. Kiedrowska, P. Marszałek, *Stabilność finansowa – pojęcie, cechy i sposoby jej zapewniania (II)*, "Bank i Kredyt" 2002, no. 4, p. 20.

40 A. Abocar, *Dubai govt won't back Dubai World debts*, "Reuter" 2009, November 30.

41 R. Petru, *Koniec wolnego rynku? Geneza kryzysu*, Warszawa 2015, p. 129.

42 J. Peet, A. la Guardia, *Unhappy union. How the euro crisis – and Europe – can be fixed*, London 2014, p. 37.

43 K. Whelan, *Sovereign default and the euro*, "Oxford Review of Economic Policy" 2013, vol. 29, no. 2, p. 493.

Various financial market malfunctions or pathologies also prove to be a certain threat to fiscal sustainability. It should be borne in mind that the financial health of the state is continuously assessed by financial market participants. The results of this assessment influence the demand for treasury securities and the risk premium demanded. In this context, three market indicators for assessing the fiscal sustainability of the state are of key importance. These are: 1) ratings; 2) the spread between domestic government bond yields and the benchmark;[44] and 3) the premium in CDS contracts. In each of these cases, problems can be found that require the intervention of the legislator.

At the heart of the rating services market problem is an over-reliance on the ratings provided by the credit rating agencies (hereinafter: CRAs). Its manifestation is the widespread use of ratings in, among other things, the process of estimating capital requirements and liquidity standards, or for constructing investment strategies.[45] This phenomenon is largely stimulated by legislators who force financial market participants to use ratings for so-called regulatory purposes. Such solutions have contributed to the creation of the oligopolistic structure of the market for rating services and exacerbate the conflicts of interest that exist in it.[46] The scale of the problem is exacerbated by the high barriers to entry into the market for rating services, the funding model adopted for rating agencies, and the petrification of business relationships resulting, inter alia, from the so-called lock-in effect.[47] This situation adversely affects the independence, objectivity, and quality of the ratings provided by CRAs. Legislative action should therefore aim to reduce the use of ratings for regulatory purposes and to increase competition in the rating services market.[48] In the EU, the solutions contained in Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[49] were generally intended to achieve this result. However, the big three CRAs (Fitch, Moody's, and Standard & Poor's) continue to hold a dominant share of the ratings issued on request. In the case of treasury securities issued by European Economic Area sovereigns, it was around 95% at the end of 2022.[50] Undoubtedly, therefore, the problem of the oligopolistic structure of the rating services market remains unresolved.

In contrast, the other two market-based indicators for assessing fiscal sustainability – the spread on the yield of treasury securities and the premium in CDS contracts – are sensitive to speculative activities aimed at lowering the market value of treasury secu-

---

44 From a Polish perspective, this benchmark is the yield on German government bonds.

45 P. Niedziółka, *Agencje ratingowe – instytucje wczesnego ostrzegania przed kryzysem czy podmioty destabilizujące rynki finansowe?*, „Zarządzanie i Finanse" 2013, vol. 2, no. 1, p. 397.

46 Opinion of the European Economic and Social Committee on Credit Rating Agencies, COM(2008) 704 final – 2008/0217 (OJ C 277, 17.11.2009, p. 117).

47 The effect is that the issuer refrains from changing rating agency for fear that such a step will be interpreted by financial market participants as an expression of creditworthiness problems.

48 *Report of the High-Level Group on Financial Supervision in the EU*, chaired by J. de Larosière, Brussels, 25 February 2009, pp. 19–20.

49 OJ L 302, 17.11.2009, p. 1 as amended.

50 ESMA, *Market Report on the EU Credit Ratings market 2023*, Paris 2023, p. 45.

rities. Investment strategies such as short selling and so-called naked CDS contracts are used for this purpose. In general, short selling consists of two steps. In the first, the investor borrows treasury securities and sells them at the current market price, while in the second step, which is carried out at a specific point in the future, they purchase instruments of the same type and repay the borrowing. In the case of this strategy, the investor's profit is hidden in the difference between the higher selling price of the treasury securities and the lower buying price of them. Meanwhile, the name naked CDS contracts refers to contracts in which the purchaser of the credit protection insures themself against the risk of a credit event, even though its occurrence does not involve any damage to it. An example would be the purchase of CDS contracts against the risk of bankruptcy of a particular sovereign by an investor who does not hold treasury securities issued by that sovereign.

The investment strategies described pose a significant challenge to the smooth functioning of the market for treasury securities, especially when implemented on a large scale. Short selling means an increase in the supply of these instruments on the secondary market and generates downward pressure on their price. The consequence of this situation can be an increase in the yield of treasury securities and the cost of financing a treasury's borrowing needs. Meanwhile, the high demand for CDS contracts leads to an increase in the premium demanded by their issuers, thereby worsening the conditions under which holders of treasury securities insure themselves against the risk of a credit event. At the same time, financial market participants perceive such a situation as an increase in the probability of sovereign default. The effect can be both an increase in the risk premium demanded by investors and a decrease in demand for treasury securities. It seems, therefore, that the possibility of using investment strategies based on short selling and naked CDS contracts should at least be limited. Given the global nature of today's financial market, however, such restrictions should be set at a supranational level. In this respect, it is worth highlighting the efforts of the EU legislator, which has, in principle, introduced a ban on naked CDS contracts in the European Union and partially restricted the use of strategies based on short selling. This has been achieved through the solutions contained in Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.[51] However, it should be highlighted that there has been a trend in recent years of some EU Member States introducing more far-reaching restrictions on short selling. It is therefore possible to consider whether such solutions should be transferred to the EU level. In addition, it would be worthwhile making efforts to harmonize the rules on naked CDS contracts and short selling in the major global financial markets.

A separate problem that countries can face in the financial market is the activity of vulture funds. These entities appear on the secondary market for treasury securities of countries experiencing serious fiscal difficulties, buying up the instruments they have issued at a large discount to face value. Then, rejecting restructuring proposals,

[51] OJ L 86, 24.03.2012, p. 1 as amended.

they demand payment of the face value of the securities acquired plus matured interest. This type of operating strategy is fraught with high risk. Obtaining a favorable court judgment and its subsequent enforcement are both problematic. Consequently, a relatively small group of specialized entities [IMF 2012], usually operating in the form of hedging funds (e.g., Elliott Associates, NML Capital Ltd.), opt for this profile of activity. From the point of view of the activities of vulture funds, it is crucial that there is no bankruptcy law designed for states at the international level. Thus, public-law associations that become illiquid or insolvent do not benefit from any form of additional legal protection.[52] In this context, the use of collective action clauses in treasury securities issuance contracts is extremely important. This term refers to a set of contractual provisions that simplify the debt restructuring process, thereby contributing to the orderly resolution of debt crises. In simple terms, collective action clauses allow a specific group of treasury security holders to accept restructuring proposals in a manner that is binding on all creditors.[53]

Conclusions

One of the conditions for the realization of the idea of sustainable finance is an appropriate legal architecture, which should take into account the complexity of the financial system. This complexity is revealed, inter alia, in the multifaceted interrelationships that exist among the various elements of this system. The applicable rules should seek to limit the scale of the transmission of risk factors between these elements. Indeed, a crisis occurring in a single segment of the financial system should not have a destructive impact on the functioning of the entire system. One area of particular concern for national and EU legislators should be market-based financing of treasury borrowing needs. Of course, it is reasonable to limit the size of these needs and build a restrictive budgetary framework. Indeed, countries with a low level of public debt have a greater capacity to absorb various shocks to public finances, as well as to provide support to financial institutions in times of crisis. In addition, a lower debt level means less State Treasury involvement in the financial market.

Regardless of the solutions relating directly to public finance, national and EU legislators cannot depreciate the importance of solutions directly affecting the way a State Treasury operates on the financial market. In this respect, it is postulated that this entity should be subject to fully market-based mechanisms of operation. In particular, a State Treasury should not enjoy any preferences with regard to its presence on the financial market. This postulate concerns both tax issues and the assessment of the risks associated with treasury securities. At the same time, the legislator should strive to eliminate the financial market inefficiencies that affect the situation of the state

[52] P. Panfil, *Ograniczenie działalności sępich funduszy w strefie euro – wnioski de lege lata*, "Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" 2018, no. 531, p. 352.
[53] M. Mosionek-Schweda, P. Panfil, *Klauzule wspólnego działania*…, p. 631.

treasury. These include, for example, the oligopolistic nature of the market for rating services, the activities of vulture funds, and the use of certain investment strategies such as short selling and naked CDS contracts. However, the effective elimination of such inefficiencies requires coordinated action at the supranational level.

Literature

Abocar A., *Dubai govt won't back Dubai World debts*, "Reuter" 2009, November 30.

Alesina A., Perotti R., *Fiscal Adjustments in OECD Countries: Composition and Macroeconomic Effects*, "NBER Working Paper" 1996, no. 7530.

Arellano C., Kocherlakota N., *Internal debt crises and sovereign defaults*, "NBER Working Paper" 2008, no. 13794.

Bagus P., *Tragedia euro*, Warszawa 2011.

Buchanan J.M., *Finanse publiczne w warunkach demokracji*, Warszawa 1997.

Dynus M., *Obligacje Brady'ego sposobem na rozwiązanie kryzysu zadłużeniowego krajów rozwijających się*, "Toruńskie Studia Międzynarodowe" 2010, no. 1(3).

Escolano J., *A practical guide to public debt dynamics, fiscal sustainability, and cyclical adjustment of budgetary aggregates*, "IMF Technical Notes and Manuals" January 2010.

Geithner T.F., *Stress Test. Reflections on Financial Crises*, New York 2014.

Grocholski Z., *Banki i rynki finansowe. Od zaufania publicznego do kasyna?*, Warszawa 2016.

Hallerberg M., von Hagen J., *Organizacja procesu budżetowego w Polsce*, Warszawa 2006.

Kiedrowska M., Marszałek P., *Stabilność finansowa – pojęcie, cechy i sposoby jej zapewniania (II)*, "Bank i Kredyt" 2002, no. 4.

Mark W., Weidemaier C., Gulati M., *A People's History of Collective Action Clauses*, UNC Legal Studies Research Paper, no. 2172302, Chapel Hill 2012.

Mosionek-Schweda M., Panfil P., *Klauzule wspólnego działania w strefie euro* [in:] *Instytucje prawno-finansowe w warunkach kryzysu gospodarczego*, eds. W. Miemiec, K. Sawicka, Warszawa 2014.

Niedziółka P., *Agencje ratingowe – instytucje wczesnego ostrzegania przed kryzysem czy podmioty destabilizujące rynki finansowe?*, "Zarządzanie i Finanse" 2013, vol. 2, no. 1.

Nowak-Far A. [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz. Tom II*, eds. K. Kowalik-Bańczyk, M. Szwarc-Kuczer, A. Wróbel, Warszawa 2012.

Oosterlinck K., *Sovereign debt defaults: Insights from history*, "Oxford Review of Economic Policy" 2013, vol. 29, no. 4.

Panfil P., *Ograniczenie działalności sępich funduszy w strefie euro – wnioski de lege lata*, "Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu" 2018, no. 531.

Panfil P., *Podatek od niektórych instytucji finansowych w świetle art. 124 Traktatu o funkcjonowaniu Unii Europejskiej*, "Gdańskie Studia Prawnicze" 2017, vol. 38.

Panfil P., *Reguły i iluzje fiskalne w Polsce. Ujęcie prawnofinansowe*, Gdańsk 2021.

Pawłowski S., *Nowe zadania Europejskiego Banku Centralnego a kryzys zadłużeniowy*, "Analizy Natolińskie" 2013, no. 10.

Peet J., la Guardia A., *Unhappy union. How the euro crisis – and Europe – can be fixed*, London 2014.

Petru R., *Koniec wolnego rynku? Geneza kryzysu*, Warszawa 2015.

Streeck W., *Buying time. The delayed crisis of democratic capitalism*, London–New York 2017.

Tymoczko D., *Operacje banków centralnych w okresach kryzysu* [in:] *Polityka pieniężna*, ed. A. Sławiński, Warszawa 2011.

Wernik A., *Finanse publiczne*, Warszawa 2011.
Whelan K., *Sovereign default and the euro*, "Oxford Review of Economic Policy" 2013, vol. 29, no. 2.

Summary

Przemysław Panfil

The State as a Financial Market Participant

High levels of public debt and chronic budget deficits force states to be constantly present on the financial market. This leads to the slow transformation from tax states into debt states. The change in the financial operating model generates new risks, the essence of which the literature has yet to fully identify. Increasingly, states are beginning to resemble intergenerational financial institutions, allocating funds from future generations to those currently living. The aim of this article is to identify the risks to socio-economic sustainability posed by the critical dependence of the state on market-based financing of its borrowing needs. This is a first step in the search for a new security architecture that better serves the idea of sustainable finance.

Keywords: public debt, borrowing needs, treasury securities, financial market, fiscal sustainability.

Streszczenie

Przemysław Panfil

Państwo jako uczestnik rynku finansowego

Wysoki poziom długu publicznego i chroniczny deficyt budżetowy zmuszają związki publicznoprawne do stałej obecności na rynku finansowym. Prowadzi to do powolnej transformacji państw opartych na podatkach w państwa oparte na długu. Zmiana modelu działania państw na płaszczyźnie finansowej generuje nowe zagrożenia. Wydaje się, że ich istota nie została jeszcze w pełni zidentyfikowana w literaturze przedmiotu. W coraz większym stopniu państwa zaczynają przypominać międzypokoleniowe instytucje finansowe, dokonujące alokacji środków finansowych od przyszłych pokoleń na rzecz pokoleń obecnie żyjących. Celem artykułu jest identyfikacja zagrożeń, jakie dla zrównoważonego rozwoju społeczno-gospodarczego niesie ze sobą krytyczne uzależnienie państwa od rynkowego finansowania jego potrzeb pożyczkowych. Jest to pierwszy krok na drodze do poszukiwania nowej architektury bezpieczeństwa, która lepiej służyłaby idei zrównoważonych finansów.

Słowa kluczowe: dług publiczny, potrzeby pożyczkowe, skarbowe papiery wartościowe, rynek finansowy, stabilność fiskalna.

Anna Drywa
University of Gdańsk, Poland
anna.drywa@prawo.ug.edu.pl
ORCID: 0000-0003-1830-4478

https://doi.org/10.26881/gsp.2024.1.03

Taxes in Sustainable Development and Sustainable Development in Taxes. A Theoretical and Legal Perspective[1]

Resource-efficient, closed-loop economies are key topics on the path to sustainability, and their realisation requires changes in the way we design, produce, consume, repair, reuse or recycle, among other things.[2] Taxes, to some extent, through their design and functions, can contribute to these tasks. However, will the use of this tool, which has strong negative connotations and is associated with state coercion, fulfill its role as an instrument for realizing sustainable development? The purpose of this article is to provide an answer to this question. I will argue that not only can taxes be seen as a useful instrument in achieving the goal of sustainable development, under certain conditions, of course, but also the concept of sustainable development should be applied to taxes. Taxes can be useful in sustainable development, however, at the same time, taxpayers should be able to expect that the sustainable development paradigm will be welcomed in taxes, which will have a positive effect on protecting their interests. This study provides a theoretical and legal perspective.

There is an increasingly strong normative link between tax law and sustainable development. Taxes are used by the legislator as a tool to influence taxpayer behaviour. Appropriately shaped scope of the tax subject matter and tax preferences, the level and nature of tax rates will induce or intensify behaviour that is beneficial from the point of view of sustainable development or can result in inhibiting or eliminating harmful and unfavourable ones. Through the tax system, it is possible to stimulate economic activity in specific spheres, influence the efficiency of the economy or the volume and structure of consumption, which will contribute to the concept of sustainable development. In this context, this article is an analysis of the possibility of the use and usefulness of taxes in the implementation of the concept of sustainable

[1] The paper is a part of research on the taxpayer's privacy was financed by the National Science Centre, Poland – project no. NCN 2018/31/D/HS5/00543.

[2] Subsection 18 of Regulation (EU) 2021/783 of the European Parliament and of the Council of 29 April 2021 establishing a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EU) No 1293/2013 (OJ L 172, 17.5.2021, p. 53).

development and, at the same time, it is a record of doubts that are formulated against the background of possible forms of the instrumental use of tax law. The adoption of the paradigm of sustainable development in tax law is associated with the necessity of a new shaping of tax philosophy, legal norms, the approach to the use of legal and tax instruments and the application of law. The main thesis boils down to the fact that, since an increase in the level of use of taxes in the realisation of sustainable development must be reckoned with, this should be done in such a way that it also has the benefit of improving the culture of tax law.

1. The concept of sustainable development – introductory remarks

The idea of sustainable development has been developed against the background of problems of overexploitation and environmental degradation. It has been enshrined in various international documents in the field of environmental protection and eco-development.[3] Over time, the concept of sustainable development has appeared in international instruments on other issues, including international economic law.[4]

The concept of sustainable development is based on equal treatment of social, economic and ecological rationales which results in taking a broad perspective and the necessity of integrating environmental protection aspects with policies in particular areas of the economy.[5] It is integrative in nature, as sustainable development is such social and economic development that ensures that the needs of the present society are met without compromising the ability of future generations to meet their needs. The implementation of the idea is manifested in the search for solutions that

[3] A key role in shaping the doctrine of sustainable development is attributed to the World Commission on Environment and Development (1987), also known as the Brundtland Commission, which issued the report *Our Common Future*. Its central thesis is the need to link environmental policy with other sectoral policies, taking into account the needs of present and future generations. In turn, the United Nations Conference in 1992 adopted the so-called Rio Declaration on Environment and Development. It contains 27 principles, constituting a catalogue of rights and obligations, the implementation of which is necessary to achieve the main objective of sustainable development. For more on the genesis of the concept of sustainable development and on definitional issues, see e.g.: G. Dobrowolski, *Zasada czy model zrównoważonego rozwoju?* [in:] *Administracja w demokratycznym państwie prawa. Księga jubileuszowa Profesora Czesława Martysza*, ed. A. Matan, Warszawa 2022; Z.P. Korzeniowski, *Zasady prawne ochrony środowiska*, Łódź 2010, pp. 280–297; Z. Bukowski, *Zrównoważony rozwój w systemie prawa*, Toruń 2009, pp. 23–40 and 64–96; M.M. Kenig-Witkowska, *Koncepcja "sustainable development" w prawie międzynarodowym*, PiP 1998, no. 8; I. Mironowicz, R. Skrzypczyński, *Od zrównoważonego rozwoju do dewzrostu – paradygmaty krytyczne wobec wzrostu i ich implikacje dla planowania przestrzennego*, ST 2022, no. 7–8, pp. 80–86.

[4] M.M. Kenig-Witkowska, *Prawnomiędzynarodowa koncepcja sustainable development z perspektywy prac Stowarzyszenia Prawa Międzynarodowego* [in:] *Prawo międzynarodowe. Księga pamiątkowa prof. Renaty Szafarz*, ed. J. Menkes, Warszawa 2007, pp. 259–260.

[5] B. Poskrobko, *Podstawy polityki ekologicznej* [in:] *Ochrona środowiska. Problemy społeczne, ekonomiczne i prawne*, eds. K. Górka, B. Poskrobko, W. Radecki, Warszawa 2001, p. 99.

guarantee further and sustainable development. Furthermore, it is supposed to result in an improvement in people's well-being.

The idea of sustainable development in the twenty-first century has been elevated to the status of a paradigm.[6] Not only it is a specific scientific concept, but it has become a kind of reflection through which a wide range of research problems relating primarily to the environment, as well as economics, sociology and law, are perceived, analysed and solutions sought. It is a matter of a new perception of phenomena at every level of scientific analysis.

Sustainable development has become a scientific canon. It refers to principles, processes and objectives and actions that relate to environmental protection and socio-economic development. In law, it has moved far beyond the boundaries of environmental law. The concept of sustainable development has also become a prism through which taxes can be viewed. This statement has a strong legal foundation. The principle of sustainable development is enshrined in Article 5 of the Polish Constitution, which defines the basic objectives of the Republic. "The Republic of Poland shall safeguard the independence and inviolability of its territory, ensure the freedoms and rights of man and citizen and the security of citizens, protect the national heritage and ensure the protection of the environment, guided by the principle of sustainable development."[7] The constitutional norm dictates that environmental protection should be guided by the principle of sustainable development. It constitutes a principle of a programmatic character and, although it does not contain an indication of specific means and ways of its implementation, the system legislator thereby imposes an obligation on all public authorities to implement it.[8]

2. Sustainable development goals

It must be assumed that tax legislators will follow the path of making extensive use of taxes to realise the idea of sustainable development. The United Nations has encapsulated the idea of sustainable development in 17 goals.[9] Both the UN and the European Union recognise the need to consider and use taxes to realise sustainable development. In the UN Resolution, goal 12.c provides for "[rationalizing] inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions, in

[6] See B. Poskrobko, *Paradygmat zrównoważonego rozwoju jako wiodący kanon w badaniu nowych obszarów ekonomii*, "Ekonomia i Środowisko" 2013, no. 3, p. 19 *et seq.*; I. Mironowicz, R. Skrzypczyński, *Od zrównoważonego rozwoju do dewzrostu*…, p. 81.

[7] Article 5 of the Polish Constitution.

[8] P. Tuleja, *Commentary to Article 5* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. *idem*, LEX el. 2021.

[9] UN Resolution: *Transforming our World: The 2030 Agenda for Sustainable Development* was adopted by the United Nations General Assembly on 25 September 2015, A/RES/70/1, https://sdgs.un.org/2030agenda [accessed: 2023.02.23].

accordance with national circumstances, including by restructuring taxation […]."[10] The role of taxation is also invoked elsewhere in the document. Under the objective called Strengthen the means of the implementation and revitalisation of the global partnership for sustainable development, it is envisaged to strengthen domestic resource mobilisation, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.[11]

The European approach to the problem of sustainable development is embodied in the concept of the European Green Deal, which sets out a number of specific objectives.[12] Achieving these requires significant investment.[13] The role of financial law in this respect is very significant. To get an idea of the scale of the importance, it can be pointed out first of all that the investment plan includes a dedicated financing system to support sustainable investments. Relevant provisions will appear in the budget, with the assumption that 25% of the funds under all EU programmes should be dedicated to climate change issues. At least 30% of the InvestEU Fund will be dedicated to climate change. To implement the European Green Deal, the Commission will also work with the European Investment Bank Group, national pro-development banks and other international financial institutions. National budgets will play a key role in the transition. Green public investment will be seen in the context of the quality of public finances. Greater use of green budgeting tools will help shift public investment, consumption and taxes towards environmental priorities and reduce harmful subsidies.[14]

In the European Union, taxation as a tool for achieving sustainable development is accorded great importance. The European Green Deal states that taxes play an essential role in achieving its objectives. They send price signals and provide appropriate incentives for producers, users and consumers to behave in a sustainable manner.[15]

3. Taxes in sustainable development

3.1. Utility of taxes in the context of their functions

The usefulness of taxes in realising sustainable development is multidimensional. The problem can be analysed, for example, through the prism of the function of

[10] UN Resolution Goal 12.c: *Transforming our World…*, p. 23, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement [accessed: 2023.02.23].

[11] UN Resolution Goal 17.1: *Transforming our World…*, p. 26, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement [accessed: 2023.02.23].

[12] The European Green Deal was presented on 11.12.2019 as a Communication from the Commission to the European Parliament, the European Council, the Council of the European Economic and Social Committee and the Committee of the Regions on, COM/2019/640 final.

[13] According to the Commission's estimates, an additional investment of €260 billion per year, or around 1.5% of 2018 GDP, will be required to meet the climate and energy targets set for the period up to 2030 (see section 2.2.1 of the European Green Deal).

[14] Paragraph 2.2.2 of the European Green Deal.

[15] *Ibid*.

taxes.[16] The function of taxes is related to their effect and their objectives, since the typical and recurring effects of the establishment, assessment and collection of taxes give rise to the term function.[17] The function of taxes can be defined by the result of the legislator's intended objectives.[18]

The primary function of taxes is fiscal.[19] Taxes are, first and foremost, a source of revenue for a public-law association necessary for its operation, enabling it to fulfil its tasks and objectives. Thanks to the monetary resources thus collected, state and local government units are able to carry out tasks related to sustainable development. The levying and collection of taxes should be subordinated to fiscal objectives, while allowing for a lesser degree of non-fiscal functions. While the primary function of taxes is to accumulate a stock of cash, at the same time, taxes influence and have tangible effects in the social and economic spheres.

The tax legislation of developed countries commonly reaches out to the non-fiscal functions of tax, pursuing certain social and economic objectives. In the context of the problem under analysis, the intervention (stimulus) function is worthy of attention. Its essence is expressed in the possibility of using taxes for the state's impact on economic and social life.[20] It makes it possible to influence the structure of the economy, affect the directions and location of economic activity and shape accumulation and consumption.[21] Taxes are therefore a useful tool in creating the economic and social model, initiating states that are beneficial from the point of view of sustainable development and inhibiting those that are undesirable in this respect. The taxpayer also makes choices with the tax burden in mind. The low tax burden associated with taxpayers' particular choices, e.g. using bicycles or implementing thermomodernization, relative to other possible behaviours, can more or less intensely induce taxpayers to make the legislator's preferred choices.[22] If, on the other hand, if the tax burden in the assessment of taxpayers is too high, they will abandon certain actions, e.g. excessive consumption or using combustion cars. Taxes can have a stimulating function by supporting economic activity in industries that are perceived as pro-environmental and pursuing the idea of sustainable development or inhibiting in areas characterised by negative impacts.

The redistributive function comes down to allowing the public union to direct the redistribution of the national product. By means of taxes, money is transferred among individuals (economic entities) and the budget of a state or a local authority. The state

---

16 The term function is not unambiguous. More on this topic: J. Gliniecka, *Opłaty publiczne w Polsce. Analiza prawna i funkcjonalna*, Bydgoszcz–Gdańsk 2007, pp. 71–73.

17 *Cf.* J. Gliniecka, *Opłaty publiczne w Polsce*…, p. 72.

18 A. Mariański, *(Nie)sprawiedliwy polski podatek dochodowy od osób fizycznych*, Warszawa 2021, p. 30.

19 A. Krajewska, *Podatki w Unii Europejskiej*, Warszawa 2012, pp. 57–58; P.M. Gaudement, J. Molinier, *Finanse publiczne*, Warszawa 2000, pp. 422 and 428; B. Brzeziński, *Wstęp do nauki prawa podatkowego*, Toruń 2001, p. 67; A. Mariański, *(Nie)sprawiedliwy*…, p. 30.

20 R. Zieliński, *Funkcje podatków w doktrynie prawnofinansowej oraz ich znaczenie dla praktyki stanowienia prawa podatkowego*, "Rocznik Nauk Prawnych" 2019, no. 1, p. 117.

21 *Cf.* J. Głuchowski, *Podatki ekologiczne*…, Warszawa 2002, p. 21.

22 See B. Brzeziński, *Wstęp do nauki*…, p. 67.

disposes of a part of the social product and decides on the implementation of certain tasks, including environmental protection. It must be taken into account that, through taxation, the level of money at its disposal is influenced. The seizure of the public burdens through a series of taxes, both direct and indirect, affects demand and reduces the purchasing capacity of taxpayers which, in a way, influences their assets. This is directly reflected in the comfort of citizens' lives, with a particularly negative impact on low-income groups, often creating a regressive fiscal burden.[23]

In addition, it is worth noting that the level and structure of tax revenues provide a range of information about society and the economy, their state, phenomena and ongoing changes. Thus, the information function of taxes can also be relevant in the context of sustainable development, since, based on the data provided, it is possible to assess the state of achievement of the adopted goals and to design a possible correction when deviations from the assumptions are found. Taxes can provide information on the behaviour of taxpayers, their preferences and, finally, the effectiveness of the legal solutions adopted in the context of achieving sustainable development objectives. The resource of this information is correspondingly broader if the implementation of the tax obligation is accompanied by a number of other obligations of a technical nature, such as keeping tax records, the obligation to make payments in non-cash form and only to declared bank accounts, etc. However, additional obligations of a technical nature generally result in the complexity of the tax rules and increase the burden on the taxpayer's time, commitment and money.

Other types of public burdens may complement the legal and financial forms of influencing private actors in order to realise sustainable development. It is worth noting that levies levied in connection with the right to use natural assets generally have the character of earmarked revenues and are allocated to environmental tasks, but if they result from some form of violation of its equilibrium, a repressive and compensatory function will be attributable to them in addition to the fiscal function.[24]

The pursuit of fiscal and non-fiscal objectives of taxation should be balanced and aim to achieve a compromise between the fiscal objectives and the economic and social objectives of taxation.[25] Nowadays, some taxes pursue primarily a non-fiscal purpose, this results in the weakening of the overriding, i.e. fiscal function, or even in the deterioration of the tax system leading, for example, to its excessive complexity, breaches of stability or reduced efficiency.[26] Moreover, the multiplicity of functions used and objectives pursued by taxes may result in the fact that the various incentives inherent in the design of taxes may cancel each other out.[27] With this in mind, it must be assumed that the use of taxes for non-fiscal purposes should be carefully consid-

---

[23] For more on this topic, see J. Głuchowski, *Podatki ekologiczne*…, pp. 161–172.

[24] For more on this topic, see J. Gliniecka, *Opłaty publiczne*…, pp. 75–76; P.P. Małecki, *Podatki i opłaty ekologiczne*, Kraków 2006, pp. 16–40.

[25] R. Mastalski, *Prawo podatkowe*, Warszawa 2016, p. 35.

[26] A. Mariański, *(Nie)sprawiedliwy*…, p. 30; R. Mastalski, *Prawo podatkowe a gospodarka*, RPEiS 2005, no. 3, pp. 6 and 11; A. Gomułowicz, *Zasada zdolności płatniczej podatnika*, RPEiS 1990, no. 3–4, p. 31.

[27] B. Brzeziński, *Wstęp do nauki*…, p. 67.

ered and planned, and should be limited to only a few, specifically indicated cases, in particular when other methods are not applicable.[28] It should be borne in mind that, in addition to taxes, the state has other financial tools at its disposal to influence society and the economy, such as the provision of guarantees or loans or grants, subsidies or allowances, as well as penalties.[29]

3.2. Utility of taxes in the context of their construction

The issue of the usefulness of using taxes to realise sustainable development can be analysed by considering the construction of taxes. One of the possibilities of using taxes in the context of sustainable development is to introduce solutions to existing taxes that will have a pro-environmental impact. The following can be used for this purpose: a system of allowances and exemptions, the design of exemptions, accelerated or single depreciation, the level of rates and the design of the tax scale. The second possibility is the introduction of new taxes.

Tax preferences may primarily be introduced in income taxes, due to their wide-ranging impact. They will take the form of tax reductions or exemptions, granted in connection with the purchase of environmentally friendly goods (e.g. appliances with the highest energy efficiency class, low emissions of harmful substances or generating green energy[30]) or taking actions that are part of the idea of sustainable development (e.g. subsidies for research and development).

Another possibility to use the construction of taxes is to differentiate rates in indirect taxes (goods and services tax or excise duties). In the European Green Deal, it is planned to allow value added tax rates to be used in such a way that Member States can use them in a more targeted way, reflecting environmental ambitions, e.g. by promoting green products.[31] In this respect, it will be possible to influence taxpayers' behaviour by applying reduced rates to environmentally friendly or energy-efficient goods. It must be borne in mind that consumer behaviour is influenced by many determinants and, through the rate of value added tax, can only to a certain extent contribute to encouraging the desired behaviour.[32]

Furthermore, it is possible to use the object of the tax in the context of the implementation of sustainable development. Environmental taxes take as their object of taxation states concerning energy, natural resources, transport or pollution which

---

[28] See, for example, B. Brzeziński, *Wstęp do nauki*…, p. 67; P.M. Gaudement, J. Molinier, *Finanse publiczne*…, pp. 428–429; R. Zieliński, *Funkcje podatków*…, p. 118.

[29] For more on this topic, see J. Głuchowski, *Podatki ekologiczne*…, pp. 22–31.

[30] For example, in Spain and the United States. See M. Mazurek-Chwiejczak, *Podatki ekologiczne*, "Acta Universitatis Lodziensis. Folia Oeconomica" 2014, no. 1, p. 67.

[31] Paragraph 2.2.2 of the European Green Deal.

[32] M. Jarczok-Guzy, *Stawki podatku VAT a zużycie środków ochrony roślin i nawozów mineralnych w krajach Unii Europejskiej w obliczu wyzwań zrównoważonego rozwoju*, "Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego w Warszawie. Problemy Rolnictwa Światowego" 2022, vol. 22(38), iss. 3, p. 31.

have a proven, specific, negative impact on the environment.[33] The idea behind these taxes comes down to highlighting the intervention function of the tax. The intention of the legislator is to inhibit or even eliminate phenomena negatively affecting sustainable development by imposing a tax on an object that is perceived (has been recognised) as harmful in this respect, e.g. waste tax, product taxes, harmful emissions. Against this background, the other structural elements of the tax have to be shaped and a number of legal and taxation problems have to be solved. The design of environmental taxes is more difficult than the use of, for example, the appropriate design of the tax scale, because in their design it is necessary to combine the protection of the public interest with the decision-making capacity of the individual.[34]

The role of so-called environmental taxes is to distort price signals. This occurs by imposing a specific financial burden per unit of pollution.[35] or by exempting or reducing the tax burden on environmentally positive states. Taxes of this type should be levied directly on the emitters or service providers (the polluter pays), but in practice the burden on production processes and products may be simpler to implement.[36] Thus, taxes can be used as an economic incentive, a stimulus or at least a price-cost guideline to induce consumers to purchase environmentally friendly goods and refrain from purchasing those with harmful effects.[37] The right to impose taxes is directly related to the sovereignty of states, but it is worth considering the importance and impact of green taxes in a transnational perspective.[38]

3.3. Announcement of tax reform

The announcement of tax reforms is enshrined in the European Green Deal. The programme assumes that "At national level, the European Green Deal will create the context for broad-based tax reforms, removing subsidies for fossil fuels, shifting the tax burden from labour to pollution, and taking into account social considerations."[39] This marks a fundamental change in the approach to taxation. It is written that the aim is not to introduce additional tax burdens.[40] The object of taxation is to be shifted from an event of a positive and expected nature, such as the generation of income or revenue, towards a phenomenon of a negative nature – environmental pollution. In such taxes, the focus would have to be balanced between a fiscal and an interventionist

---

33 M. Mazurek-Chwiejczak, *Podatki ekologiczne*…, p. 64; P.P. Małecki, *Podatki i opłaty ekologiczne*…, pp. 8–13.

34 J. Głuchowski, *Podatki ekologiczne*…, p. 22.

35 M. Mazurek-Chwiejczak, *Podatki ekologiczne*…, p. 61.

36 J. Głuchowski, *Podatki ekologiczne*…, p. 145.

37 M. Mazurek-Chwiejczak, *Podatki ekologiczne*…, p. 61.

38 For a more extensive discussion, see J. Głuchowski, *Podatki ekologiczne*…, pp. 145–159.

39 Paragraph 2.2.2 of the European Green Deal.

40 In most countries where green tax reforms have been attempted, the assumption of revenue neutrality of taxation has been adopted, and in some (Sweden, Denmark, Germany) the overall burden of public tributes has been reduced. See: M. Mazurek-Chwiejczak, *Podatki ekologiczne*…, p. 61; P.P. Małecki, *Podatki i opłaty*…, p. 63.

function. This is not a new concept, as the purchase of alcohol or cigarettes, for example, is taxed on the same basis. The main purpose of so-called environmental taxes is to have a pro-environmental effect, while the realisation of the fiscal function occurs as an additional effect.[41] In contrast, the novelty lies in the change of focus from the existing tax systems. Although a sustainable development impact through taxation may result in savings in environmental expenditure if the harmful effects on the environment are reduced, the administrative costs of implementing tax reforms will be high. In addition, it needs to be considered whether a tax system structured in this way will fulfil its fiscal function properly. Will revenues from a tax system structured in this way be sufficiently stable? Another problem is related to, as it is assessed, the probable low efficiency in achieving the objectives and the rather secondary role played by ecological taxes.[42] This is related to the presence of a number of factors and variables that have to be taken into account and incorporated into the legal apects and design of such a tax. At the same time, their impact may increase as more countries introduce similar solutions.[43]

In relation to the provision included in the European Green Deal, one can conclude that the European Commission has a broad understanding of the realisation of sustainable development in the context of taxation. It expresses the belief that well-designed tax reforms[44] can drive economic growth, improve resilience to climate shocks and contribute to a fairer society and a just transition.[45]

The pro-environmental impact of taxes on consumers may come down to the fact that for taxpayers (consumers) goods become expensive and therefore less available, thus reducing demand. In this option reduced consumption and changes in habits are forced upon individuals, thus reducing the comfort of citizens' daily lives in both cities and the country. Frustration will build up due to the inability to fulfil one's needs. It is important to consider whether this approach is compatible with the concept of sustainable development, which is intended to increase social welfare. Another possibility for the use of tax regulation is the introduction of rebates and exemptions to encourage innovation with the aim of contributing to the invention of new, better, more efficient or more useful energy-saving devices (energy-efficient) or enabling new sources of energy (preferably renewable).

The use of the non-fiscal functions of taxation should be planned carefully and the real effects of regulation should be monitored. The objective must be achieved by looking after the welfare of taxpayers.

---

41 For more on the concept of a green correction tax and the idea of a tax by A.C. Pigou see, for example: J. Głuchowski, *Podatki ekologiczne*…, pp. 19–20; M. Mazurek-Chwiejczak, *Podatki ekologiczne*…, pp. 59–68 and the literature cited therein.

42 J. Głuchowski, *Podatki ekologiczne*…, pp. 146–147.

43 *Ibid.*, pp. 151–152.

44 On the stages of pro-ecological tax reform, see P.P. Małecki, *Podatki i opłaty*…, pp. 62–69.

45 Paragraph 2.2.2 of the European Green Deal.

4. Sustainability in taxation

The principles of sustainable development include not only the protection of nature or the shaping of spatial order, but also due concern for social and civilisational development.[46] A tax law implementing the postulate of sustainable development should make it possible to balance individual well-being and general welfare. Therefore, the relationship between tax law and sustainable development should not be based solely on the relationship of instrumental use of taxes to realise the idea of sustainable development. The concept should enter more broadly into tax law. And certainly some of its elements are worth adapting to tax law. Identifying sustainable taxes with pro-environmental tax preferences and taxes on things and activities perceived as harmful to the environment is too narrow since it only realises the environmental aspect of sustainability. The legal and tax regulatory system should be sustainable in all aspects. This is because the concept of sustainable development is based on treating social, economic and environmental rationales equally. The concept of sustainable development establishes a framework for shaping the relationship between economic growth, care for the environment (not only natural, but also the human-made environment) and quality of life.

The ecological aspect of tax sustainability will be manifested in the initiation and encouragement of environmentally neutral and beneficial choices, as well as the inhibition of processes harmful to the environment (this aspect is discussed extensively in section 2). The economic aspect of tax sustainability should be manifested in the fiscal efficiency of taxes and the tax system and respect for taxpayers' ability to pay as well as in the introduction of pro-development structures.[47] Sustainable taxes from a social perspective are fair taxes, shaped with respect and care for the rights of taxpayers and their welfare.

From the perspective of legal science, the term sustainable taxes can be identified with a system of legal and tax norms in which the protection of public and private interests are balanced while achieving a state of fiscal efficiency of taxes and the realisation of pro-environmental tasks. Sustainable taxes are those that realise themselves in the material and formal spheres.

In view of the above, sustainable taxes will be manifested firstly in the reliable fulfilment of tax obligations (they then provide an adequate resource of money), secondly in the real respect of the rights of taxpayers and society as a whole and thirdly in solutions that have a positive impact on environmental protection. This means that the system of legal and tax regulations should be structured in such a way that it can achieve these objectives.

In this context, an important issue is the concept of fair share in bearing the tax burden and tax avoidance and evasion which have rightly become the leitmotif of the

---

[46] Judgment of the Polish Constitutional Court of 6 June 2006, K 23/05.

[47] M. Schratzenstaller, *Sustainable Policy. Concepts and Indicators beyond Tax Ratio*, "Revue de l'OFCE" 2015, no. 5, p. 61.

tax debate. However, one cannot overlook the fact that coercion, authoritative and authoritarian action, excessive oppressiveness, surveillance, encroachment on the private sphere of the individual destroys the mutually beneficial relationship and the nature of the peculiar exchange for both parties (taxpayer and the public-law relationship represented by the tax authority). This affects taxpayers' actions and activities, the common trust and pushes them towards concern only for their own well-being and the pursuit of their own benefits at almost any cost including illegal actions. This, of course, eliminates the benefits that could accrue for both parties from the existence of a balanced tax system. When tax regulations become too repressive, complicated, burdensome and intrusive, taxpayers implement various solutions to escape their effects, which in turn introduces further restrictive, detailed legal solutions and generally leads to an increase in oppressive and burdensome solutions and an even greater stifling of taxpayers' freedom. It hampers economic development.

Sustainable taxation requires the establishment of effective and adequate tools to protect taxpayers' rights and free up space for taxpayer action and development. The tax sphere has seen a change in the approach to tax law in the twenty-first century. Tax regulations are becoming increasingly detailed and casuistic. The intrusiveness of tax law is being strengthened. Tools are changing, such as the use of new technologies. Development in tax law is supposed to correspond to the development of the state and vice versa. Sustainable tax development requires, among other things, that the protection of taxpayers' rights is adequately guaranteed, nowdays especially taxpayers' privacy in the era of the invasive technologies used by tax administrations. Unfortunately, the fundamental level of protection of taxpayers' rights remains unchanged. In order for development to be sustainable, both sides of the tax-legal relationship must be taken care of.

Not only should the tax legislator take the principle of sustainable development into account in the lawmaking process, but this principle should also be borne in mind by authorities applying the law. Sometimes the factual situation requires considering and balancing more favourable solutions by applying the principle of sustainable development.[48] It is perceived as an interpretation directive, playing a role similar to the principles of social co-existence or socio-economic purpose in civil law.[49]

Conclusions

In line with the implementation of the concept of sustainable development, it is assumed that environmental and climate objectives need to be integrated to a greater extent into other policies and therefore also into tax policy. Public finances, including

[48] Judgment of the WSA in Gorzów Wielkopolski of 25.03.2009, II SA/Go 825/08; Judgment of the NSA of 2.04.2015, II OSK 2123/13.

[49] Judgment of the WSA in Gorzów Wielkopolski of 25.03.2009, II SA/Go 825/08; Judgment of the NSA of 2.04.2015, II OSK 2123/13.

taxation, are sensitive to the influence of external factors, i.e. economic, political or administrative aspects, and each of these is reflected in the shape of tax regulations.[50] It is to be expected that over time, as the next stages of following the sustainable development path are behind us, the practical role of tax law in the implementation of sustainable development goals will increase. It will only be possible to assess these measures from the perspective of the next decade. It will then become clear how taxes have been used by national legislatures and what effect this has had because the experiences of individual countries will certainly differ significantly.

At the same time, certain postulates can already be formulated. Therefore, it should be strongly emphasised that the use of taxes to realise the idea of sustainable development should be carefully designed, both in form and content setting out the specific objectives of the tax law in such a way as to take into account socio-economic-environmental connotations. Given the past experience of tax legislation and the tendency of the legislator to make ad hoc changes to the tax system, taxpayers may feel deeply uneasy about another attempt to instrumentalise the use of taxes, this time in the field of sustainable development.

The practical importance of using taxes to realise the idea of sustainable development is determined by many factors, such as the will of the legislator, the objectives adopted, the structure of society, the state of the economy, the shape of tax regulation, the culture of the application of the law and, finally, the ability of the legislator to analyse data and accurately predict the effects of legal regulations. Taxes, as one of the fiscal instruments, are an element of sustainable finances, but one should be aware that sustainability is influenced in parallel by many more factors.[51]

Literature

Brzeziński B., *Wstęp do nauki prawa podatkowego*, Toruń 2001.

Bukowski Z., *Zrównoważony rozwój w systemie prawa*, Toruń 2009.

Dobrowolski G., *Zasada czy model zrównoważonego rozwoju?* [in:] *Administracja w demokratycznym państwie prawa. Księga jubileuszowa Profesora Czesława Martysza*, ed. A. Matan, Warszawa 2022.

Gaudement P.M., Molinier J., *Finanse publiczne*, Warszawa 2000.

Gliniecka J., *Opłaty publiczne w Polsce. Analiza prawna i funkcjonalna*, Bydgoszcz–Gdańsk 2007.

Głuchowski J., *Podatki ekologiczne*, Warszawa 2002.

Gomułowicz A., *Zasada zdolności płatniczej podatnika*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1990, no. 3–4.

Jarczok-Guzy M., *Stawki podatku VAT a zużycie środków ochrony roślin i nawozów mineralnych w krajach Unii Europejskiej w obliczu wyzwań zrównoważonego rozwoju*, "Zeszyty Naukowe Szkoły Głównej Gospodarstwa Wiejskiego w Warszawie. Problemy Rolnictwa Światowego" 2022, vol. 22(37), iss. 3.

Kenig-Witkowska M.M., *Koncepcja "sustainable development" w prawie międzynarodowym*, "Państwo i Prawo" 1998, no. 8.

[50] P.M. Gaudement, J. Molinier, *Finanse publiczne*…, p. 144.

[51] M. Jarczok-Guzy, *Stawki podatku VAT*…, p. 31.

Kenig-Witkowska M.M., *Prawnomiędzynarodowa koncepcja sustainable development z perspektywy prac Stowarzyszenia Prawa Międzynarodowego* [in:] *Prawo międzynarodowe. Księga pamiątkowa prof. Renaty Szafarz*, ed. J. Menkes, Warszawa 2007.
Korzeniowski P., *Zasady prawne ochrony środowiska*, Łódź 2010.
Krajewska A., *Podatki w Unii Europejskiej*, Warszawa 2012.
Małecki P.P., *Podatki i opłaty ekologiczne*, Kraków 2006.
Mariański A., *(Nie)sprawiedliwy polski podatek dochodowy od osób fizycznych*, Warszawa 2021.
Mastalski R., *Prawo podatkowe*, Warszawa 2016.
Mastalski R., *Prawo podatkowe a gospodarka*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2005, no. 3.
Mazurek-Chwiejczak M., *Podatki ekologiczne*, "Acta Universitatis Lodziensis. Folia Oeconomica" 2014, no. 1.
Mironowicz I., Skrzypczyński R., *Od zrównoważonego rozwoju do dewzrostu – paradygmaty krytyczne wobec wzrostu i ich implikacje dla planowania przestrzennego*, "Samorząd Terytorialny" 2022, no. 7–8.
Poskrobko B., *Paradygmat zrównoważonego rozwoju jako wiodący kanon w badaniu nowych obszarów ekonomii*, "Ekonomia i Środowisko" 2013, no. 3.
Poskrobko B., *Podstawy polityki ekologicznej* [in:] *Ochrona środowiska. Problemy społeczne, ekonomiczne i prawne*, eds. K. Górka, B. Poskrobko, W. Radecki, Warszawa 2001.
Schratzenstaller M., *Sustainable Policy. Concepts and Indicators beyond Tax Ratio*, "Revue de l'OFCE" 2015, no. 5.
Tuleja I., *Commentary to Article 5* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. *idem*, LEX/el. 2021.
Zieliński R., *Funkcje podatków w doktrynie prawnofinansowej oraz ich znaczenie dla praktyki stanowienia prawa podatkowego*, "Rocznik Nauk Prawnych" 2019, no. 1.

Summary

Anna Drywa

**Taxes in Sustainable Development and Sustainable Development in Taxes.
A Theoretical and Legal Perspective**

According to assumptions of the implementation of the concept of sustainable development, it is postulated that environmental and climate objectives should be better integrated into other policies, and therefore also into tax policy. This means that the practical role of tax law in achieving sustainable development goals will increase in the near future. In this context, the article analyses the possibilities and the usefulness of taxes in the implementation of this concept, and at the same time, it is a record of the doubts that are formulated against the background of possible forms of the instrumental use of tax law. The use of taxes to implement the idea of sustainable development should be carefully designed, both in form and content, setting the specific objectives of tax law in such a way as to take into account socio-economic and environmental connotations.

Keywords: green taxes, sustainable development, taxes.

Streszczenie

Anna Drywa

Podatki w zrównoważonym rozwoju i zrównoważony rozwój w podatkach. Ujęcie teoretycznoprawne

Zgodnie z założeniami wprowadzania w życie koncepcji zrównoważonego rozwoju przyjmuje się, że należy w większym stopniu włączać cele środowiskowe i klimatyczne do innych polityk, a zatem także do polityki podatkowej. Oznacza to, że w bliskiej przyszłości wzrośnie praktyczna rola prawa podatkowego w zakresie realizacji celów zrównoważonego rozwoju. W tym kontekście artykuł stanowi analizę możliwości wykorzystania i przydatności podatków w realizacji tej koncepcji, a jednocześnie jest zapisem wątpliwości, które są formułowane na tle możliwych form instrumentalnego wykorzystania prawa podatkowego. Użycie podatków w celu realizacji idei zrównoważonego rozwoju powinno być starannie zaprojektowane, zarówno co do formy, jak i treści, ustalając szczegółowe cele prawa podatkowego w taki sposób, aby uwzględnić konotacje społeczno-gospodarczo-środowiskowe.

Słowa kluczowe: podatki, podatki ekologiczne, zrównoważony rozwój.

Tomasz Sowiński
University of Gdańsk, Poland
tomasz.sowinski@prawo.ug.edu.pl
ORCID: 0000-0002-4137-1209

https://doi.org/10.26881/gsp.2024.1.04

Towards the Financial Sustainability of Public Pension Insurance Systems

Introduction

In the following study, the author attempts to explain why the issue of financial stability of pension insurance is also an issue of key importance for public finances and their stability. Repeated attempts to improve pension insurance models and systems have been met with increasing social dissatisfaction expressed in protests, demonstrations and even riots in the countries where such reforms are undertaken.

Almost no country is free of the problems the funding of public pension insurance brings about, and all countries stricken with such problems share a common feature; the system of the old-age benefits to citizens in all of them is based on the pay-as-you-go model of pension insurance originating in the nineteenth century, hard though it may be to explain why the scheme remains the core solution for social security of citizens after they have reached retirement age. In Poland, as in many other countries, the largest public fund, second only to the state budget, is the Social Insurance Fund, and the bulk of its resources (more than half) are earmarked for pension purposes. The management of the resources is, as mentioned above, based on the pay-as-you-go scheme, established over 130 years ago, which is now viewed as rather archaic from an economic point of view. Any attempt to interfere with the system's solutions results in social dissatisfaction while creating further problems for public finances. At the same time, the failure to resolve the problems poses the threat of bankruptcy to pension insurance systems. In the worst-case scenario, it could actually result in the collapse of the state budgets. Even the short remarks above clearly indicate that the issues the author raises actually deserve some scholarly reflection. To achieve this research goal, the author used historical, comparative and statistical research methods.

1. The (shortest) history of pension insurance

Chancellor Otto von Bismarck established what was called common pension insurance (*Sozialversicherung*[1]) in 1889, and this is most often referred to as the date of its introduction in Europe. This simplified form of security, or old-age benefit, as it should actually be called, was supposed to provide certain resources to persons having lost the capacity to earn money due to their age and thus secure them (or, in the event of their death) their families. A hundred years ago, at the request of the World Bank, a report on providing the elderly with decent retirement benefits, the financial viability of the pension system, and the model of the legal and financial structure of pension insurance was developed and published. The conclusions formulated in the report were so alarming that it was entitled 'Averting the Old Age Crisis. Policies to Protect the Old and Promote Growth'[2]).[3]

That very old age in question, or rather the prolonged average life span, including the retirement age entitling one to receive benefits, in the late twentieth and early twenty-first centuries, became a source of the crisis for the existing pension systems in Europe; as it happens, they have not changed much since their start.

Under the state-guaranteed pension system established by Bismarck, all insured workers who reached the age of 65 were covered. Funding the pension system was based on resources brought in, as contributions, by employees. Oftentimes they were employed between 16 and 65 years of age, but their average life expectancy at that time was merely 54 years. This model was simply bound to succeed, and from the economic point of view it was a kind of a perpetual motion machine (*perpetuum mobile*).

Pension benefits for people who acquired the right to them upon reaching the statutory retirement age, were paid from the insurance fund coming from contributions paid by employees. This, in simple terms, is what the pay-as-you-go model consists of – the working generation makes contributions that supply the fund from which retirement benefits are paid to members of the generation that has completed its working career.

As regards Great Britain, in November, 1942, Sir William Beveridge produced to the House of Commons the report on 'Social Insurance and Allied Services' (The Beveridge Report[4]). Despite popular belief, Beveridge is not the father of the British pension system, but just the author of said report. However, it was on the basis of the Beveridge Report that the Beveridge Plan was introduced by Winston Churchill's government in Great Britain. Pension insurance was supplemented with the additional element: of social security for unemployed people, which was most criticized by those who re-

---

1 M. Kozłowski, *Emerytalna wojna pokoleń* [*Intergenerational Pension Conflict*], https://zielonalinia.gov.pl/-/emerytalna-wojna-pokolen-6554 [accessed: 2022.10.12].

2 *Averting The Old Age Crisis. Policies to Protect the Old and Promote Growth*, Oxford 1994.

3 For a broader discussion see: T. Sowiński, *Finanse ubezpieczeń emerytalnych* [*Pension Insurance Finance*], Warszawa 2009, pp. 326–328.

4 W. Beveridge, *Social Insurance and Allied Services*, Report by Sir William Beveridge, Presented to Parliament by Command of His Majesty, November 1942, London.

ceived any benefits thanks to them, which they probably would not have received without their introduction. Beveridge should definitely be praised rather than blamed for his plan.

Bismarck does not necessarily deserve recognition for the reasons that stood behind the establishment of pension insurance. This was not done upon a sudden impulse of heart and mind, nor as a statesman's deed, but rather cynically, with a view to achieving immediate political goals;[5] he was set on liquidating the system after just a couple of years because, as he himself admitted, it was nothing more than a hoax. Nothing of the sort happened, though, and the pension model based on the pay-as-you-go principle survived for much more than a century and remains, without economic reason, the basis of a majority of modern pension schemes in Europe.

The social insurance system was not established in Poland until the interwar period after the country regained independence in 1918. Independent Poland, reborn after 123 years of harsh foreign rule, took over the insurance systems of the powers that had partitioned it at the end of the eighteenth century. Regardless, the Polish system was one of the first social insurance systems established in Europe and elsewhere.

The legislation that completed work done over many years that was unambiguously recognised as a great success and an achievement of the Second Republic (as pre-war Poland was referred to) was the Act of 28 March 1933 on Social Insurance,[6] known as the Consolidation Act.[7] It established a new order in integrated common social insurance as of 1933 in the form of a unified organisational system, albeit one that included five separate funds.[8] At that time, this, was definitely the world's best social insurance system. From the point of view presented in this paper, it is also essential to note that it included a most precisely elaborated pay-as-you-go pension insurance model, which perhaps only another Polish model of the same kind, developed and implemented by the country in 1987, could match. Limitations of space do not allow for providing a justification to these evaluative statements, the author, nevertheless, does undertake this task in other articles.[9]

It is usually not creative zeal or the intention to develop a perfect model to ensure stable, acceptable pension insurance rules that lies behind efforts made to develop such systems. Instead, the politicians, academics and experts involved fight over the correctness of their proposals but the dispute is actually futile since neither the pay-as-you-go model, preferred by the social security law, or the capital model, presented most often by economists, has any chance of success. Neither of the proposals

---

5 O. von Bismarck, *Collected Works*, vol. 9, Berlin 1924–1935, pp. 195 and 196.

6 The Social Insurance Act of 28 March, 1933, Journal of Laws, No. 51, item 396.

7 T. Sowiński, *Finanse ubezpieczeń emerytalnych*…, p. 77.

8 More on the funds of contemporary social insurance system see: Z. Ofiarski, *Prawo finansowe* [*Financial Law*], 2nd ed., Warszawa 2010, pp. 420–429.

9 For instance: T. Sowiński, *Podmiotowa koncepcja zabezpieczenia emerytalnego. Studium prawno-finansowe* [*Person-Based Concept of Pension Security*], Warszawa 2019, p. 259; *idem*, *In Search for a Model of State Pension Insurance Financially Viable and Independent of the Central Budget* [in:] *The Financial Law Towards Challenges of the XXI Century*, eds. P. Mrkývka, J. Gliniecka, E. Tomášková, E. Juchniewicz, T. Sowiński, M. Radvan, Gdańsk–Brno 2020.

is able to provide funds for paying retirement benefits to people how have acquired the rights to them (see Fig. 1) now, much less in the future, when all the phenomena adversely influencing the coherence and solvency of the pension model are bound to affect it much more.

2. The square of opposition of pension insurance based on the pay-as-you-go model

A broader discussion of the square of opposition for pension insurance based on the pay-as-you-go model is available in other studies by the author.[10] The current study is concerned first of all, with the conclusions drawn from the logical consequence of the assumptions of the pay-as-you-go pension insurance model and the capital model.

The idea of the determinants of the pay-as-you-go model of pension insurance boils down to four indicators arranged to form two opposing pairs:
1A. long periods of professional activity;
1B. retirement period;
2A. high contributions to the pension system;
2B. small pension benefits.

A precondition for the success of this model is the additional fifth indicator of the replacement rate, which is in this particular case generated by the birth rate.

The intrinsic logic of the square of opposition concerning the pay-as-you-go pension model is that a change in of any of the indicators generates the need to modify another or even all the other indicators to maintain the model's status quo.

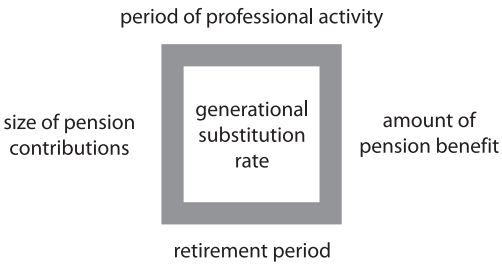

Fig. 1. Square of opposition of a pension insurance system based on the pay-as-you-go model
Source: author's own elaboration.

Where there is no will to change pension models, there is always a last element inextricably linked to the funding of the pay-as-you-go model of pension insurance,

[10] T. Sowiński, *W poszukiwaniu wydolnego finansowo modelu emerytalnego* [*Searching for a Financially Sustainable Pension Insurance Model*] [in:] *Z zagadnień zabezpieczenia społecznego* [*From the Issues of Social Security*], ed. A. Wypych-Żywicka, Gdańsk 2019; *idem*, *Podmiotowa koncepcja*…, p. 259.

namely the injection of public funds, usually from state budgets. However, such actions endanger fiscal sustainability in the long run.

However, taking into account that since for at least two generations all these indicators have changed many times, obviously in the spirit of 'optimisation', improving the system and maintaining solidarity of the insured, any room for manoeuvre has, in practical terms, been reduced to nil and any subsequent changes require sophisticated acrobatics to justify them, although reasons for changes, regardless of their justifications, are always the same: the lack of financial resources in the existing pay-as-you-go pension model for the payment of benefits to people who have already reached retirement age and are entitled to pensions.[11]

It should be noted here clearly that the introduction of the capital model, which is proposed by many, especially economists, as a solution to the financial problems faced by the pay-as-you-go model, is actually not a solution at all. The consequences of the square of opposition of pay-as-you-go pension insurance model also apply fully to the capital model, which is supposed to be launched as a universal one; save for organisational and legal changes, this change is meaningless from the point of view of its financial resources! The general indicators remain the same. The only difference lies in the organisation of the model, meaning a transition from multiplicity in unity (the pay-as-you-go model) to unity in multiplicity (the capital model). However, in the search for new models (or at least a concept of a pension security organisation that would be capable of bearing the burden of public finance needs, not to mention meeting social expectations), the inertia of those responsible for public pension systems is unacceptable.

3. Analysis of data and forecasts regarding pension insurance finances

This part of the study presents and analyses selected forecasts concerning revenues and spending of the Pension Fund (Polish: FUS) until 2060 and 2080, as well as the development of the population of those insured until 2080 and even 2100.

The FUS17 model was developed following the rules of actuarial science and is a long-term forecasting model based on historical data and input parameters that predicts the revenues and spending of FUS resources until 2080.[12]

The author assumes that if neither history nor logic can provide arguments for the urgent development of a new pension model that can withstand the economic situation and prove to be financially efficient, then it is the branch of knowledge firmly based on statistical data, such as mathematics, that one cannot argue with. However, it cannot be ruled out that supporters of the pay-as-you-go model and the so-called idea of solidarity of the insured may prove resistant to these arguments as well.

---

[11] T. Sowiński, *W poszukiwaniu*…, pp. 92–94.

[12] *Forecast revenues and spending of the Pension Fund until 2080*, Department of Statistics and Actuarial Forecasts, ZUS [Social Insurance Agency], Warsaw 2019, pp. 5–7.

The statistical data presented here (see Fig. 2) were developed assuming the estimator of the mean sample value as the expected value of normal distribution based on a specific sample of the population providing an assessment of the parameter in the study presented.[13]

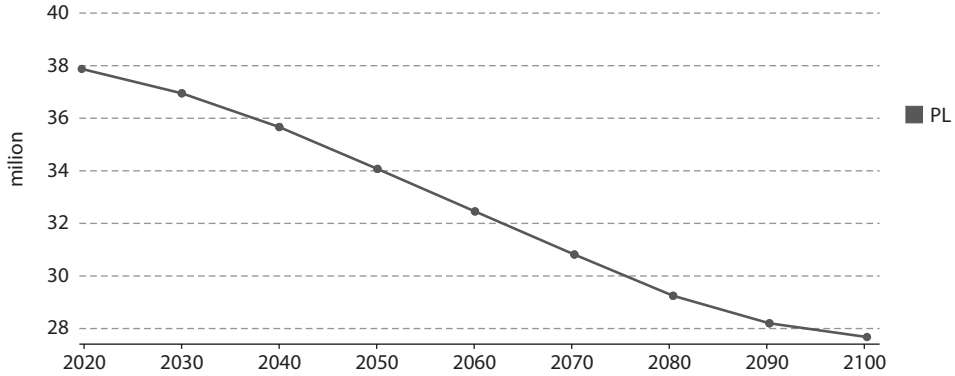

Fig. 2. Poland population forecast until 2100

Source: Eurostat.

For the sake of data completeness and comparison, a similar forecast is provided for the European Union population (see Fig. 3).

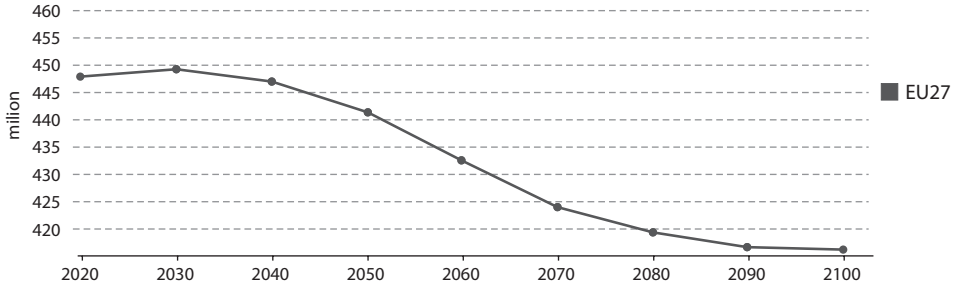

Fig. 3. European Union population forecast until 2100

Source: Eurostat.

In both graphs (Figs. 2 and 3) a clear downward trend in the population of citizens of both Poland and the European Union is notable. In the EU, it takes place after a slight

[13] The number of persons active in the labour market were calculated based on the numbers of those working and the unemployment rates provided by the Macroeconomic Policy Department of the Minister of Finance. *Ibid.*, pp. 9–10.

increase in the population around 2040, but in the following years the numbers drop dynamically. For pension insurance resources and public finances this means rapidly growing problems in balancing pension funds and the need to support them. This can be done either from budgetary funds or through changes in the structure of the logical square of the pay-as-you-go pension insurance. It is also possible to combine both options to mitigate the easily predictable consequences of these occurrences. These would include, firstly, problems with balancing state budgets and public finances, and, secondly, possible, or rather certain, as previous experience shows, social unrest. The forecast population size in the 2020–2080 period is likely to decrease in a way that will dramatically change the financial situation of the pension funds,[14] which will translate into disastrous effects for the finances of pay-as-you-go pension insurance model upon which is organized the majority of pension systems in European countries. A drop in the number of insured, accompanied by a simultaneous rise in the number of people receiving pension benefits will, in practical terms, result in the insolvency of pension systems based on the pay-as-you-go principle.

Tab. 1. Population by economic age group (in thousands) as at the end of the year – definitions of economic age groups in the 2015–2060 period

Economic age group	Year						Notes
	2015	2020	2030	2040	2050	2060	
Total population	38 490	38 346	37 403	36 108	34 696	33 126	–
Pre-working age	6 959	6 954	6 233	5 561	5 499	5 230	–
Working age	24 020	22 818	21 569	19 976	17 427	16 029	–7 991
Post-working age	7 511	8 573	9 610	10 570	11 769	11 867	+4 356
Notes	–	–	–	–	–	Difference in millions	12 347

Source: *EUROPOP 2013, Demographic Forecast*, Eurostat 2015; calculations provided by the author.

The following conclusions were drawn from the analysis of the figures in Table 1:

1. the total population data presented reveals that the population in 2060 will be smaller than that in 2015 by 5,364,000;
2. the number of working-age people will decrease by 7,991,000 in this period;
3. the number of post-working age people will increase by 4,356,000;
4. the total population difference between these two groups (2 and 3, above) indicates that the changes in the proportion affecting the replacement rate will be 12,347,000 people. Thus, these relations will deteriorate in a way that radically changes the financial situation of pension funds;

[14] More on the funds of contemporary social insurance system see: Z. Ofiarski, *Prawo finansowe…*, pp. 420–429.

5. the number of people of pre-working age will also decrease significantly, meaning that this trend will continue.

A reflection of the demographic situation in the period analyzed, which is extended to cover the 2020–2050–2080 span, are the age pyramids that present the entire population of the selected years differently and reveal, when compared with each other, the aforementioned demographic trends.[15] Their analysis and comparison shows the advent of a successive decline in the population that will result in a certain stability and the lack of extended and, consequently (after some 40 to 50 years) reduced periods of population growth, i.e., demographic booms and busts. While a situation like this will result in greater predictability of the financial needs of pension systems and their capacity in the periods in question, no change will occur in the decreasing trend of the replacement ratio since there are no periodical ups or downs in it. This will also result, especially in the first years of the period analyzed, in certain significant discrepancies in the replacement rate and, consequently, also in the resources generated for pension funds compared to those needed for paying benefits to those entitled to them; this is bound to be a significant problem for the financial capacity of the pension systems.

According to Fig. 4, population trends in Poland and the European Union as a whole are similar, and are both unfavourable. When taking into account the operation of the

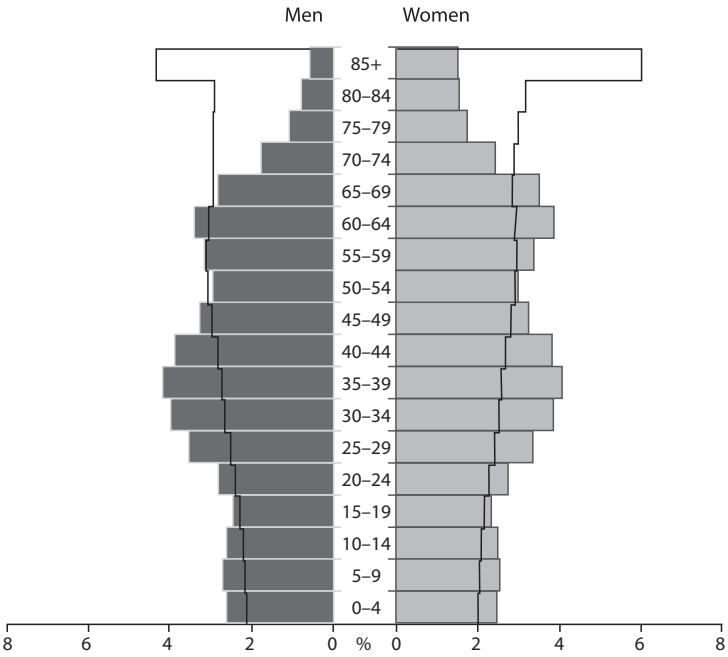

Fig. 4. Sex and age structure in 2019 and 2100

Chart (grey colour) – sex and age structure in 2019, black lines – sex and age structure in 2100.

Source: Eurostat.

[15] *Demographic Forecast of the Ministry of Finance* [in:] *Forecast*…, p. 17.

square of opposition of the pay-as-you-go pension model, they clearly demonstrate the need to immediately implement remedial actions aimed at maintaining the solvency of pension insurance funds or at least reducing their insolvency.

The data above should be supplemented with an age pyramid showing the difference in the state of the population of citizens of the EU between 2019 and 2100.

Thus, it is necessary to specify the data that have been analysed thus far to identify future problems and threats to European society more precisely and to prepare for them.

The following conclusions can be drawn from the contents of Table 2:

1. the cumulative natural population change in the period analysed is approximately – 125,333,700, which is the difference between the number of births and deaths;
2. the total population change in this period is –27,273,600;
3. cumulative net migration is +98,060,000;
4. Table 2 reveals that despite the decrease in population of 125,333,700, the actual decrease in the European population is only 27,273,600 because of an unprecedented influx of migrants of about 100 million. Only conclusion 1 is indisputable, as it confirms all other data presented in this study. Conclusions 2 and 3, which are mutually interdependent, are rather unlikely. It is difficult to justify the magnitude of migration in conclusion 3, also if deliberately inspired.[16] Irrespective of doubts, even if the migration assumptions are correct, the population of European Union citizens will still decrease by 27,273,600 or about 7%, which is a fairly significant number. Should migration not reach the predicted level, then the population difference would be 125,333,700 (28.06%, or almost one-third of the initial number of 446,735,300). This number, as far as sustainable pension insurance funding is considered, has to be viewed as one that creates an entirely different situation, requiring a new approach to current problems and calls for solutions other than the existing ones.

When analysing the medium and long-term forecasts of the populations of Polish and European Union citizens, the expected proceeds from contributions to the insurance system, and the forecast amounts of resources necessary to pay benefits from pension funds, assessments made must take into account the perspective measured not in years but in several decades, which exceeds the lifespan of the insured by two generations. This perspective is often neglected by decision-makers who attempt to improve the pay-as-you-go models in a majority of countries. Instead of implementing long-term measures, they prefer short-term fixes, or they address emerging problems as they occur, and even if theoretical assumptions for the future are made, they are rarely supported by forecasts such as those presented in this study.

[16] Even if the data should prove to be accurate, there remains a question as to what kinds of migrants can be expected in these numbers and how many of them would join the ranks of those working and paying insurance premiums (I am not talking about taxes and other public levies here), increasing the layer of professionally active people and improving the replacement rate, and how many would join the ranks of people in need of care and social assistance, increasing social expenditures of the budgets of individual countries, without replenishing the resources of pension funds.

Tab. 2. Numbers of current and estimated future populations of European countries and estimated births, deaths and migration in the 2022–2100 period

Demographic balance, 1 January 2022–2100 (thousands)

Country	Population	Cumulative births	Cumulative deaths	Cumulative natural population change	Cumulation net migration	Total population change	Projected population
	1 January 2022	2022–2099					1 January 2100
EU	446 735.3	291 262.3	416 595.9	–125 333.7	98 060.0	–27 273.6	419 461.7
Belgium	11 617.6	8 975.7	10 540.0	–1 564.2	2 502.6	938.4	12 556.1
Bulgaria	6 838.9	3 693.1	6 633.6	–2 940.6	1 173.6	–7 767.0	5 072.1
Czechia	10 516.7	7 808.9	9 885.6	–2 076.7	2 205.7	129.0	10 645.7
Denmark	5 873.4	4 538.3	5 376.5	–838.2	1 090.8	252.6	6 126.1
Germany	83 237.1	58 027.4	78 538.7	–20 511.4	21 391.6	880.2	84 117.3
Estonia	1 331.8	925.2	1 294.8	–369.6	327.1	–42.5	1 289.5
Ireland	5 060.0	4 361.8	4 666.6	–304.8	1 116.2	811.4	5 871.4
Greece	10 459.8	5 017.2	9 246.4	–4 229.1	1 052.0	–3 177.1	7 282.5
Spain	47 432.9	27 417.7	46 032.3	–18 614.6	16 303.2	–2 311.4	45 121.4
France	67 871.9	52 842.6	60 065.6	–7 223.0	7 393.9	170.9	68 042.8
Croatia	3 862.3	1 949.4	3 606.7	–1 657.4	617.7	–1 039.7	2 822.7
Italy	59 030.1	29 905.1	57 526.3	–27 621.2	18 785.6	–8 835.6	50 194.5
Cyprus	904.7	695.6	774.7	–79.1	182.2	103.1	1 007.7
Latvia	1 875.8	903.1	1 654.6	–751.4	41.6	–709.8	1 165.8
Lithuania	2 806.0	1 279.1	2 664.6	–1 385.5	355.2	–1 030.3	1 775.7

Luxembourg	645.4	627.1	675.1	–48.0	399.8	351.8	997.3
Hungary	9 689.0	6 600.5	9 212.5	–2 612.0	1 977.1	–634.9	9 054.1
Malta	521.0	422.4	618.3	–195.9	434.0	238.1	759.1
Netherlands	17 590.7	13 277.2	16 226.6	–2 949.4	3 669.1	719.7	18 310.4
Austria	8 978.9	6 289.3	8 485.6	–2 196.2	2 794.0	597.8	9 576.6
Poland	37 654.2	21 008.5	34 373.8	–13 365.4	5 227.1	–8 138.2	29 516.0
Portugal	10 352.0	5 753.5	9 818.2	–4 064.7	2 693.8	–1 371.0	8 981.1
Romania	19 042.5	11 428.2	16 999.9	–5 571.7	1 138.8	–4 432.9	14 609.5
Slovenia	2 107.2	1 335.1	1 977.0	–641.9	485.5	–156.4	1 950.8
Slovakia	5 434.7	3 397.2	4 922.5	–1 525.3	643.0	–882.2	4 552.4
Finland	5 548.2	3 268.8	5 137.9	–1 869.1	1 105.6	–763.5	4 784.9
Sweden	10 452.3	9 514.2	9 641.4	–127.2	2953.1	2 825.9	13 278.2
Iceland	376.2	422.6	389.5	33.1	215.4	248.6	624.5
Norway	5 425.3	4 328.7	5 059.0	–730.3	2 036.6	1 306.2	6 731.6
Switzerland	8 738.8	6 609.4	8 097.5	–1 488.1	2 853.6	1 365.5	10 104.3

Source: Eurostat.

The author has used four sources of data in this paper.[17] Similar data and results are available from institutions like the World Bank, the Council of Europe or from virtually any country where data is kept by bodies and organisations responsible for pension insurance. It is rather telling that the results obtained by such institutions are very similar, which strongly suggests that data from all these sources are correct.

All this definitely corroborates the view presented above that pay-as-you-go pension insurance, while archaic, cannot actually be reformed. It is essential that a new model is established to secure citizens' social status with regard to pension benefits. Meanwhile, the option to divert from public pension security in its current form (or even entirely) must not be ruled out.

Given the magnitude and significance of the phenomena and conclusions discussed above, they are worth examining more closely, and the same holds true for the replacement ratio.[18] This coefficient also provides us with an idea of how realistic it is to secure financial resources for the payment of retirement benefits from contributions. This is especially apparent when reading the ratio individually, in the version of how many working people and their contributions are needed to cover the retirement benefit of a single person.

For this purpose, the author also mentions the replacement rate in Table 3 below.

Tab. 3. Number of insured persons in relation to the number of pensioners whose benefits are paid from the pension fund in 2020–2080 (in thousands)

Year	Number of insured	Replacement ratio	Number of pensioners
2020	15 964	2.53	6 320
2021	15 992	2.47	6 469
2022	15 978	2.42	6 613
2023	15 957	2.36	6 757
2024	15 870	2.30	6 889
2025	15 773	2.25	7 003
2026	15 659	2.21	7 082
2027	15 552	2.18	7 150
2028	15 466	2.14	7 214
2029	15 391	2.12	7 274
2030	15 315	2.09	7 332
2035	14 827	1.94	7 660

[17] Eurostat (EU), the Main Statistical Office (Poland – GUS), Department of Statistics and Actuarial Forecasts of Social Insurance Agency (Poland – ZUS) and the Demographic Forecast of the Ministry of Finance of the Republic of Poland.

[18] The ratio of the number of insured who pay contributions to the number of retirees, i.e. the people who have reached retirement age and can claim retirement benefits, is the replacement ratio, or the number resulting from the division of the numbers mentioned previously. To simplify the problem, the coefficient illustrates, inter alia, how many people work and pay insurance contributions to the pension insurance fund from which pension benefits are paid to those who have already acquired the right to pensions.

2040	14 207	1.74	8 149
2045	13 639	1.56	8 731
2050	13 097	1.43	9 175
2055	12 553	1.34	9 341
2060	12 097	1.31	9 228
2065	11 802	1.33	8 879
2070	11 559	1.35	8 534
2075	11 331	1.37	8 242
2080	11 116	1.39	7 978

Source: author's own elaboration based on: *Forecast revenues and spending of the Pension Fund until 2080*, Department of Statistics and Actuarial Forecasts, ZUS [Social Insurance Agency], Warsaw 2019, pp. 43 and 44.

The following conclusions can be drawn from the data in Table 3:

1. the number of insured in the 2020–2080 period will gradually decrease from 15,964,000 to 11,116,000, which is by 4,848,000 people in the period analysed;
2. the number of pensioners whose benefits are paid from the pension fund in the 2020–2080 period will gradually increase from 6,320,000 in 2020 to 9,341,000 in 2055, when it will start to decline to 7,978,000 by 2080;
3. the replacement ratio from the level that is definitely insufficient to build a pension fund capable of covering retirement benefits in 2020 of 2.53, which will decrease to 1.31 in 2060 (definitely the toughest year), and then reach a slightly higher value in 2080 of 1.39, although this is still about three times smaller than the size that could possibly ensure the solvency of the pay-as-you-go pension model;
4. the average replacement ratio throughout the period will be 1.44 (1.4371), meaning that one retirement benefit will be financed by less than one and a half insurance premiums;
5. during the time of the greatest increase in the number of the recipients of retirement benefits, the number of people paying insurance contributions will continue to decrease. As a result, the 2040–2070 period is expected to be the hardest period financially for the finances of the Social Insurance Fund and the State Social Insurance Agency (ZUS). The state will likely have to find a source of additional income to supplement the pension fund.

As a consequence of the proportions described above and the comparison of income from contributions and the pension fund's expenditures, further forecasts regarding the capacity of the pension fund and its annual balance must be taken into account.

Tab. 4. Pension fund's annual balance and capacity in the 2020–2080 period

Year	Annual balance of the pension fund (PLN millions)	Pension fund capacity (%)
2020	–45 975	74
2021	–49 321	73
2022	–52 581	72
2023	–55 621	72
2024	–58 442	71
2025	–60 928	71
2026	–62 630	71
2027	–63 508	71
2028	–63 820	72
2029	–63 786	72
2030	–63 528	73
2035	–61 307	76
2040	–63 577	77
2045	–68 361	77
2050	–72 550	77
2055	–71 968	79
2060	–65 528	81
2065	–50 461	86
2070	–37 252	90
2075	–32 062	92
2080	–30 935	93

Source: author's own elaboration based on: *Forecast revenues and spending of the Pension Fund until 2080*, Department of Statistics and Actuarial Forecasts, ZUS [Social Insurance Agency], Warsaw 2019, pp. 31 and 41.

The figures in Table 4 present, albeit differently, the same realities as those presented in Table 3. Whether these figures are in percentages or financial terms, they complement one another and confirm the trends revealed by both forecasts, while underscoring the following:

1. the permanent gap between the income and the expenditure of the pension fund will be as high as 29% in the most problematic period of 2024–2027;
2. the fact that almost a third of funds for retirement benefits in that period will have to come from sources other than the monies the pension fund collects from contributions and their derivatives;
3. conclusions from items 1 and 2 above predict the absolute insolvency of the pay-as-you-go pension insurance model;
4. the gradual, albeit slight, improvement in the efficiency of the pension fund that is forecast to occur in the next few years will never reach a level sufficient to fully

finance the pension benefits payable to persons who can claim them in the period under review;

5. the data in Table 3 fully confirm the figures and conclusions from Table 2, and they indicate, in specific amounts, the shortages of funds for paying retirement benefits in given years;
6. the pension fund deficit is about PLN 70 billion for most of the 2045–2065 period, which exceeds the 2022 state budget deficit;
7. a rough calculation of the level of inadequate funds for the period analysed reveals that the State Treasury of the Republic of Poland and Polish society will incur losses of about PLN 3 trillion!

In addition to the conclusions above, it should also be mentioned that subsidising the pension fund over such a long time and in such large amounts is bound to drain the state's financial resources, which will most likely significantly increase its debt. This will have negative consequences since the poor financial condition of the state will in practical terms hamper its development for decades. If subsidies to the pension fund are approximately 20–29% for about 35 to 40 years (2020–2055), this will be comparable to several years of the state's income. This situation can be best described by quoting the title of a monograph on the current model of pension insurance, *Emerytalna katastrofa*.[19] It should be added that the disaster will be a true catastrophe for the state's finances above all, and it will cripple the country's further development.

It must also be noted that data similar to the figures presented for Poland in Tables 3 and 4, are available for all European Union countries. Considering that their pension security models and systems all draw from the basic version of Bismarck's *Sozialversicherung*, which has been modified many times over 130 years, a virtually universal pan-European search for new solutions of the problem discussed in this article is required. No sustainable public finance system can be operated without the finances of pension security being balanced, and this is not possible if pension solutions from the nineteenth century, or the the mid-twentieth century, at best, are still in use in most countries.

The statistical data and forecasts presented above seem to illustrate well the performance, or rather complete non-performance, of pension insurance finance resulting from the application of the pay-as-you-go model. It is noteworthy that these conclusions were formulated before the Covid-19 pandemic and Russia's brutal assault on independent Ukraine, and the aftermath of the former disaster and the continuance of the latter disaster have further added to the conditions described in this article.

Losses of PLN 3 trillion over the next 60 years are equal to six state budgets (at the current level of PLN 492 billion in 2022). This is not simply an astronomical amount, but one that will absolutely disrupt public finances, the state and society.

[19] R. Gwiazdowski, *Emerytalna katastrofa* [*The Pension Disaster*], Poznań 2012.

Conclusions

In the Act of 4 February 2022,[20] the total tax and non-tax revenues of the state budget in 2022 was PLN 491,936,950,000. The state budget deficit as of 31 December 2022 was supposed to be no more than PLN 29,900,000,000. According to Table 4, the lowest deficit resulting from the annual balance of the pension fund in the 2020–2080 period will be approximately PLN 30,935,000,000 in the final year of the study, which is 2080. For most of the 2025–2065 period, the deficit of the pension fund will range from PLN 60.928 to PLN 72.550 billion each year, which is over twice the amount of the state budget deficit in 2022. The Budget Act for 2023 provides for a deficit of approximately PLN 68 billion. This means that in the aftermath of the crisis, including the national recovery plan after the two-year period of the Covid-19 pandemic and the effects of the war in Ukraine, that, in this rather extraordinary period, the budget will have a deficit that next, in the 2025–2065 period will, on average, be exceeded by the balance of the pension insurance fund almost every year. Therefore, the Polish state has to deal with two budget deficits annually – that provided for in the Budget Act, and that generated by the pension fund, that has been insolvent for a long time or rather, putting it vividly, but not academically, since forever,[21] which is thanks to – let us not hesitate to say so – the pay-as-you-go pension model.

Thus, an unprecedented situation can occur, with an imbalance striking not only the pension fund, but also public finances. Such a two-pronged problem would be much more difficult to cope with, and would result in insufficient financial resources in the two largest public funds – the pension fund and the state budget. The consequences of this could be disastrous. Hardly can any guarantees of sustainable pension finance can be discussed if hidden public debt consists mainly of insurance contributions of the insured who have not yet acquired the right to retirement benefits are brought into the pension system and indexed. Even assuming that an entirely new pension model is developed that is not based on the pay-as-you-go scheme and is resilient to demographic problems, the great challenge of the repayment of debt would still have to be faced to secure the sustainability of pension insurance finances. It is just the debt that that lies behind the desire to permanently improve the pay-as-you-go public pension insurance model that functions in many countries since decision-makers wrongly believe it to be only way in which funds for repayment can be collected.

Unfortunately, sustainability, or rather the inability to attain sustainability, is not only a problem of the Polish pay-as-you-go model of pension insurance described in this study. As throughout the current study, these problems should be viewed against the entire European Union and most European countries where the pay-as-you-go pension insurance model is in use or at least in partial use. Therefore, conclusions regarding the Polish model should be treated as applicable to the majority of public

[20] The Budget Act 2022 of 17 December, 2021, Journal of Laws 2022, item 207.
[21] Over the last 60 years, a positive balance of the pension fund was achieved only once (in 1987).

pension insurance systems on the European continent. What is more, in many countries the problems are even much more acute and harder to solve than those in Poland.

Undoubtedly, the challenge of developing a new model of pension security seems to be one of the most, if not the most urgent issues, if we consider the changing realities of social, economic and political life and the desire to maintain, or rather return pension insurance to financial sustainability in sustainable public finances.

Why attaining sustainability requires developing a new model of pension insurance is proven in the current study in all the aspects touched on in the discussion. To all those who still hesitate, fearing, among other things, the high costs of changing the pension system, especially funding in the the transitional period, let me point out that maintaining and tolerating the functioning of the pay-as-you-go model in pension insurance keeps generating ever greater costs and increases public debt, both open and hidden. Additionally, the costs of supporting and maintaining the old system, as the statistical part of this study indicates, can over time exceed the costs of changing the system, of introducing a new pension model and of financing the transition period.

Decision makers are afraid of the social reaction to changes and stubbornly improve and modify the pay-as-you-go model, and they are convinced that such moves are simpler and more readily accepted by society. In contrast to them, the author of this study believes that taking citizens seriously, making things clear and presenting an attractive proposal to the public will prove to be a better, more acceptable solution. As unjustified and harmful as their beliefs may be, perhaps the so-called experts think that empowering people to decide how to prepare themselves for retirement is not within the capabilities of average citizens. Maybe the theory is simply supposed to ensure a good life for the experts themselves?

Deregulation, resignation, coerced citizen pensions (although as discussions reveal there are *quot capita, tot sensus* in that respect), or maybe a change of model? There are many possibilities to proceed further in this regard. The basis, however, is a person-oriented, serious approach to the interested parties whom the public pension system is supposed to serve.

Therefore, we should strive to balance the finances of public pension insurance, and as there are many ways to achieve this, it is time to finally make a decision and choose one of them, because next to financial resources, time is a phenomenon characterized by the greatest deficit.

Literature

Averting The Old Age Crisis. Policies to Protect the Old and Promote Growth, Oxford 1994.

Beveridge W., *Social Insurance and Allied Services*, Report by Sir William Beveridge, Presented to Parliament by Command of His Majesty, November 1942, London.

von Bismarck O., *Collected Works*, vol. 9, Berlin 1924–1935.

Demographic Forecast of the Ministry of Finance [in:] *Forecast revenues and spending of the Pension Fund until 2080*, Department of Statistics and Actuarial Forecasts, ZUS [Social Insurance Agency], Warsaw 2019.

EUROPOP 2013, Demographic Forecast, Eurostat 2015.
Forecast revenues and spending of the Pension Fund until 2080, Department of Statistics and Actuarial Forecasts, ZUS [Social Insurance Agency], Warsaw 2019.
Gwiazdowski R., *Emerytalna katastrofa* [*The Pension Disaster*], Poznań 2012.
Kozłowski M., *Emerytalna wojna pokoleń* [*Intergenerational Pension Conflict*], https://zielonalinia.gov.pl/-/emerytalna-wojna-pokolen-6554.
Ofiarski Z., *Prawo finansowe* [*Financial Law*], 2nd ed., Warszawa 2010.
Sowiński T., *Finanse ubezpieczeń emerytalnych* [*Pension Insurance Finance*], Warszawa 2009.
Sowiński T., *In Search for a Model of State Pension Insurance Financially Viable and Independent of the Central Budget* [in:] *The financial law towards challenges of the XXI century*, eds. P. Mrkývka, J. Gliniecka, E. Tomášková, E. Juchniewicz, T. Sowiński, M. Radvan, Gdańsk–Brno 2020.
Sowiński T., *Podmiotowa koncepcja zabezpieczenia emerytalnego. Studium prawnofinansowe* [*Person-Based Concept of Pension Security*], Warszawa 2019.
Sowiński T., *W poszukiwaniu wydolnego finansowo modelu emerytalnego* [*Searching for a Financially Sustainable Pension Insurance Model*] [in:] *Z zagadnień zabezpieczenia społecznego* [*From the Issues of Social Security*], ed. A. Wypych-Żywicka, Gdańsk 2019.
Wantoch-Rekowski J., *System ubezpieczeń społecznych a budżet państwa* [*Social Insurance System vs. State Budget*], Warszawa 2014.

Summary

Tomasz Sowiński

Towards the Financial Sustainability of Public Pension Insurance Systems

The following study is composed of an introduction, three main parts (historical, logical and statistical) and conclusions. This structure allows the author to explain why the issue of the financial sustainability of pension insurance is a matter of crucial importance for public finance. In most countries the systems of old-age benefits for citizens is based on the pay-as-you-go model of pension insurance from the nineteenth century. It is hard to explain why the scheme remains the core solution for the social security of citizens after they have reached retirement age. The management of resources is, as mentioned above, based on the pay-as-you-go scheme that was established over 130 years ago and is now viewed as archaic from an economic point of view. Any attempt to interfere with system solutions results in social dissatisfaction while creating further problems for public finances. At the same time, the failure to resolve these problems threatens to bankrupt pension insurance systems. In the worst-case scenario, it could actually result in the collapse of state budgets. These are the problems that inspired the author to conduct the study.

Keywords: social insurance, pension security, public finances, contribution.

Streszczenie

Tomasz Sowiński

Ku zrównoważeniu finansów publicznych ubezpieczeń emerytalnych

Niniejsze opracowanie składa się ze wstępu oraz trzech części: historycznej, logicznej i statystycznej, a także z wniosków. Daje to możliwość próby odpowiedzi na pytanie – dlaczego zrównoważenie finansów ubezpieczeń emerytalnych ma kluczowe znaczenie dla finansów publicznych? W większości państw podstawą zabezpieczenia emerytalnego obywateli jest pochodzący z XIX w. model repartycyjny ubezpieczeń emerytalnych. Nie da się racjonalnie uzasadnić, dlaczego jest on nadal podstawową formą mającą zapewnić bezpieczeństwo socjalne obywateli po osiągnięciu wieku emerytalnego. Gospodarowanie wspomnianymi środkami funduszu emerytalnego opiera się w praktyce na archaicznej, wprowadzonej ponad 130 lat temu metodzie repartycyjnej. Każdorazowa próba ingerencji w rozwiązania systemu powoduje z jednej strony społeczne niezadowolenie, a z drugiej kolejne problemy finansów publicznych. Natomiast brak ich rozwiązania grozi bankructwem systemu ubezpieczeń emerytalnych, a w niesprzyjających okolicznościach może grozić nawet bankructwem budżetu państwa. Są to problemy, które zainspirowały autora do badań zawartych w artykule.

Słowa kluczowe: ubezpieczenie społeczne, zabezpieczenie emerytalne, finanse publiczne, składka.

Nela Křemečková
Masaryk University in Brno, Czech Republic
493908@mail.muni.cz
ORCID: 0009-0001-4442-744X

Sally Sanad Šreflová
Masaryk University in Brno, Czech Republic
493974@mail.muni.cz
ORCID: 0009-0002-4876-925X

https://doi.org/10.26881/gsp.2024.1.05

The Green Deal in the Context of Sustainable Finance

Introduction

In recent years, the concept of sustainable financing and sourcing has gained considerable attention from governments, businesses, and individuals around the world. This interest has been spurred by growing concerns about climate change, environmental degradation, and social inequality that have highlighted the need for more responsible and sustainable practices in finance and sourcing.

One of the most prominent initiatives in this regard is the European Green Deal, which was launched by the European Commission in December 2019. This initiative aims to make the European Union climate-neutral by 2050, while also promoting sustainable economic growth and social equity. To achieve these goals, the Green Deal proposes a range of measures, including investments in renewable energy, energy efficiency, and sustainable transport, as well as reforms to agriculture and forestry practices and measures to promote a circular economy.[1]

In this paper, we will explore the Green Deal in the context of sustainable financing and sourcing. Below we will try to define as precisely as possible the concept of sustainable finance, the Green Deal, and the related green – or ecological – taxes and investment plan. After a comprehensive discussion of the whole issue, we will conclude the paper by evaluating the hypothesis of whether the Green Deal meets the objectives of sustainable finance.

1. Sustainable Financing and Sourcing: Challenges and Opportunities

Sustainable finance and sourcing are complex and multifaceted concepts that encompass a wide range of practices, policies, and initiatives. At their core, these concepts involve finding ways to ensure that economic activities are conducted in a manner that is socially, environmentally, and economically sustainable over the long term. This

[1] European Commission, *The European Green Deal*, 2019, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_cs [accessed: 2023.07.21].

requires a shift away from traditional models of finance and sourcing that prioritize short-term profit and growth toward more holistic and responsible approaches that take into account the full range of impacts that economic activities can have on society and the environment.[2] Sustainable finance is a rapidly evolving field that aims to align financial activities with environmental, social, and governance (ESG) goals, and to support sustainable development.

As there is no universally accepted definition of the term sustainable finance, we would like to mention other definitions to present an objective assessment. Various organizations, including the European Commission, the United Nations, the World Bank, have contributed to the development of definitions and frameworks in sustainable finance.

The European Commission defines sustainable finance as "any form of financial service that integrates environmental, social, and governance (ESG) criteria into business or investment decisions."[3] They have played a significant role in developing the EU's Sustainable Finance Action Plan, which includes regulations and standards to promote sustainability in financial markets.

The United Nations plays a key role in shaping the global sustainable finance agenda. The UN Principles for Responsible Banking, Principles for Responsible Investment (PRI), and Principles for Sustainable Insurance (PSI) are some of the initiatives that outline principles for responsible and sustainable financial practices. The UN's definition of sustainable finance encompasses investments and financing that contribute to the achievement of the Sustainable Development Goals.[4]

The World Bank defines sustainable finance as "the process of taking due account of environmental, social, and governance considerations in the financial decision-making process, leading to increased investments in longer-term and sustainable activities." The World Bank works to promote sustainable finance by providing financing, technical assistance, and knowledge-sharing to support projects and initiatives in developing countries.[5]

Achieving sustainable finance and sourcing is a challenging task, therefore it requires increasing the use of financial instruments and making significant changes to existing business models, policies, and regulatory frameworks.

We would like to add green, blue, and social bonds and loans to the discussion about basic financial instruments strictly related to sustainable finance. These types of financial instruments are designed to fund specific environmentally or socially benefi-

---

[2] European Commission, *Sustainable Finance*, 2021, https://czechia.representation.ec.europa.eu/udrzitelne-finance-taxonomie-eu-komise-podnika-dalsi-kroky-k-tomu-aby-nasmerovala-financni-2021-04-21_cs [accessed: 2023.07.23].

[3] *Ibid*.

[4] United Nations Global Compact, *United Nations Sustainable Finance*, 2020, https://unglobalcompact.org/sdgs/sustainablefinance [accessed: 2023.07.21].

[5] The World Bank, *Sustainable Finance*, 2021, https://www.worldbank.org/en/topic/financialsector/brief/sustainable-finance [accessed: 2023.06.21].

cial projects. They are a key part of sustainable finance aimed at directing investments toward projects that have a positive impact on the environment, society, or both.

Green bonds and loans are debt instruments where the proceeds are specifically earmarked to finance environmentally sustainable projects or initiatives. These projects can include renewable energy projects, energy efficiency improvements, sustainable waste management, clean transportation, and more. The purpose of green bonds and loans is to attract investment toward projects that contribute to mitigating climate change, reducing carbon emissions, and promoting a more sustainable and environmentally friendly future.

Blue bonds are a specialized type of debt instrument that is dedicated to financing projects related to ocean and marine conservation and sustainability. The funds raised from blue bonds are utilized for activities such as marine conservation, sustainable fisheries, coastal protection, and improving water quality. The purpose of blue bonds is to address the various challenges facing the world's oceans and marine ecosystems, such as overfishing, habitat destruction, pollution, and climate change impacts on marine life.

Social bonds and loans are financial instruments where the capital raised is allocated to fund projects that have positive social impacts. These projects often address societal issues such as affordable housing, healthcare, education, employment generation, poverty alleviation, and community development. The purpose of social bonds and loans is to mobilize investments to support projects that improve the well-being of communities and promote social inclusion and equality.[6]

One of the key challenges in the area of sustainable finance is the need to balance economic growth and development with environmental and social concerns. This requires a nuanced approach that takes into account the differing needs and priorities of different stakeholders, including businesses, governments, consumers, and civil society organizations.[7]

Another challenge is the need to overcome the inertia and resistance that often characterizes existing systems and practices. Many businesses and governments are deeply entrenched in traditional models of finance and sourcing, which can make it difficult to introduce new, more sustainable approaches. This is particularly true in sectors such as energy, agriculture, and transport, where established interests and vested interests can be particularly strong.

Despite these challenges, there are also significant opportunities for businesses and governments that embrace sustainable finance and sourcing. These include the potential to reduce environmental impacts, improve social equity and wellbeing, and create new economic opportunities and markets. Sustainable finance and sourcing

[6] United Nations Development Program, *Demystifying green and blue bonds for the Pacific region*, 2022, https://www.undp.org/sites/g/files/zskgke326/files/2022-08/demystifying-green-and-blue-bonds-for-the-pacific.pdf [accessed: 2023.07.21].

[7] United Nations Environment Programme, *Global Trends in Renewable Energy Investment 2020*, https://www.unpri.org/about-us/about-the-pri [accessed: 2023.06.21].

can also help to build resilience and long-term stability in economies, reducing the risks associated with environmental and social shocks and disruptions.

The Paris Agreement is a very important milestone in the history of sustainable finance. It is critically important to sustainable finance because it sets a global framework for addressing climate change and promoting sustainable development. The agreement, adopted in 2015 at the twenty-first Conference of the Parties (COP21) to the United Nations Framework Convention on Climate Change (UNFCCC) in Paris, establishes a commitment to limit global warming to well below 2 degrees Celsius above pre-industrial levels, with an aim to limit the increase to 1.5 degrees Celsius.[8] Finally, the Paris Agreement provides a clear global goal and timeframe for reducing greenhouse gas emissions. As we see it, this clarity enables financial institutions to align their investments and strategies with these goals, facilitating the transition to a low-carbon economy. An important point is that the agreement creates a stable, predictable regulatory environment for investments in sustainable and climate-resilient projects. Investors and financial institutions can make long-term decisions with greater confidence, attracting more capital toward sustainable initiatives, which is also thanks to the new transparency requirements. The agreement emphasizes enhanced transparency and accountability through regular reporting on countries' progress in achieving their climate targets. This transparency is crucial for investors and financial institutions as well to assess risks and opportunities associated with climate change and to make informed investment decisions.

In our opinion, the Paris Agreement provides a global roadmap that aligns financial systems and investments with the urgent need to address climate change, promoting a sustainable and resilient future for all.

2. Concept and purpose of the Green Deal

The Green Deal, or Green Deal for Europe, is a set of proposals, measures or visions adopted by the European Commission and one of the most ambitious initiatives to date aimed at promoting sustainable finance and sourcing. The aim is to take hold of and adapt European Union policies, mainly in the areas of climate, energy, transport, and taxation in order to reduce greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels to make Europe carbon neutral,[9] and to bring emissions of the predominant greenhouse gas, carbon dioxide, to zero. The Green Deal has set itself the goal of achieving this goal within almost 30 years, and therefore by 2050, while also promoting sustainable economic growth and social equity.[10]

---

[8] Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

[9] N. Tsafos, *Why Europe's Green Deal Still Matters*, Center for Strategic and International Studies, March 24, 2020, https://www.csis.org/analysis/whyeuropes-green-deal-still-matters [accessed: 2023.06.21].

[10] J. Fredinger, *Evropský Green Deal je krok správným směrem, ale sám o sobě nestačí*, greenpeace.org,

The Green Deal was presented to the world on December 11, 2019, and it contains a veritable plethora of measures aimed at the aforementioned emissions reductions. The project also involves heavy investment as all the research and innovation associated with the green transformation needs to be funded. The European Commission has identified approximately EUR 260 billion needed to achieve the visions planned for 2030, an amount that represents approximately 1.5% of the GDP of all the Member States of the European Union. In the future, each EU member should expect to have to set aside at least 25% of the funding for climate action, with additional funding to be covered by the European Investment Bank, which is based in Luxembourg.[11]

2.1. Areas of Green Deal actions and their subsequent transformation

As the preceding shows, the most important area is the issue of climate, or climate neutrality, which the Green Deal aims to transform into clean air, safe water, healthy soil, and biodiversity. However, climate change depends on all of the areas mentioned below.

The second rather significant issue is energy, which sees its vision in greener energies, developing the potential of wind energy in Europe's seas and innovation through cutting-edge clean technologies and modern infrastructure. The decarbonization of the European Union's energy system is absolutely crucial to meeting climate targets. Another difficulty lies in agriculture. The Green Deal also dreams of green fields producing healthy, affordable food not only at national but also at EU levels. A healthy planet depends on a healthy society, which cannot do without healthy individuals, and the key to this lies in a healthy food system. What about the idea of globally competitive, resilient industry? The Green Deal addresses this too and is drawing up an industrial strategy for a digital Europe. The next difficult issue lies in the sphere of environmental friendliness and ocean pollution, which will seek to ensure that products last longer, as they will be repairable, recyclable, and reusable.[12]

However, one of the most indispensable and challenging fields of action, dare we say, is transport. The agreement addresses this issue not only by expanding public transport, but also by including electromobility, which is intended to remedy, above all, urban air pollution. Will electricity become the oil of the twenty-first century? However, it is precisely the proposal to ban internal combustion engines that has aroused the greatest resentment and attracted criticism from politicians and citizens in the Member States of the European Union.[13]

The transport issue has another dimension that is the question of impending unemployment; can the labor market manage to move workers from problematic jobs

---

December 11, 2019, https://www.greenpeace.org/czech/clanek/5252/evropsky-green-deal-je-krok-spravnym-smerem-ale-sam-o-sobe-nestaci/ [accessed: 2023.06.21].

11 *Ibid.*

12 European Commission, *The European Green Deal*, 2019, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_cs [accessed: 2023.06.21].

13 *Ibid.*

to those that are resilient to future changes in the labor market? Or will the necessary training be available in areas that will become necessary for future transformation?

A final sector that is also important is financing and regional development, which will translate into the renovation of buildings for energy efficiency, for example, drawing on solar energy.

In this case, it is not the proposal for an across-the-board ban on natural gas heating that has been made in the media, but rather the so-called National Building Renovation Plans promoting renewable energy sources, this would also be an investment in a green future.[14]

2.2. Green Deal Investment Plan

From a financial law perspective, more important than the Green Deal itself is its separately published Green Deal Investment Plan, also known as the Sustainable Europe Investment Plan, from January 2020.[15]

The plan sets out following key goals (Point I, Investment Plan): 1) to mobilize 1 trillion EUR over the 2021–2030 decade to support sustainable investments through the EU budget; 2) to create a supportive investment framework for sustainable investments for both the private and public sectors with the key involvement of the green taxonomy; 3) to target administrative support with the specification and realization of sustainable projects for both public authorities and project developers.

Specifically, according to the Commission, the mobilization of the 1 trillion EUR will involve a total of 503 billion EUR directly from the EU budget, 279 billion EUR leveraged through the EU budget guarantee through the InvestEU fund, and 143 billion EUR from the EU budget in co-financing by Member States for the Just Transition, a support programme for regions disproportionately affected by decarbonization (Point III, Investment Plan). Finally, 25 billion EUR is planned to be provided from the innovation and modernisation funds financed by auctioning emission allowances which (in accounting terms) are outside the European budget.

Under the second task, the development of a supportive investment framework, the Commission wants to prioritize sustainable financing in the financial system. It plans to achieve this through long-term market signals and sufficiently clear policy in a sustainable direction to act as a guarantee to investors that their long-term investments will pay off over time. The Commission mentions the Taxonomy Regulation, the revision of the Non-Financial Information Reporting Directive, and the draft legislation on green bonds (Point 4.1, Investment Plan) as key to this effect. On the regulatory side, this area is covered by the EU Action Plan on Financing Sustainable Growth from 2018 and its 2021 revisions, which was mentioned in a previous section of this article.

---

[14] *Ibid.*

[15] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Sustainable Europe Investment Plan European Green Deal Investment Plan, COM/2020/21 final.

Compared to the Commission's 2014 strategy to finance the European economy, which was based on the 2013 Green Paper,[16] the new plans commit to much higher public investment. However, the core of the strategy is still the effort to activate the private sector. The reason for this is both factual, the lack of public funds, and ideological, the attempt to leave market mechanisms as free as possible. Investing itself cannot bring about change that can be successfully achieved only by competing for funding among projects.[17]

3. Green taxes for sustainability

Sustainable taxation is an important part of sustainable finance. In this section we will briefly focus on sustainable taxation, and not only in the European Union, as one of the tools of financing sustainable goals.

Taxes can be understood in four basic functions: 1) fiscal; 2) redistributive; 3) stabilizing to influence economic cycles; and 4) regulatory as a mechanism to influence economic or social behavior.[18] Thus, an easy solution is to internalize ESG externalities through taxation, just as the consequences of smoking are internalized in tobacco taxation, for example.

The term of sustainability is ambiguous in tax policy and can be understood in relation to any of the four functions of taxation defined above. Therefore, we can look for sustainability, for example, in relation to the fiscal function and ask whether tax collection corresponds to state budget expenditures over long periods of time.[19] However, typically, sustainable taxation usually refers to a carbon tax or the special taxation of short-term and speculative investment, or taxation in waste policies.

An alternative to a direct carbon tax, which may be politically impassable and technically difficult to implement for various reasons, is to create an artificial emissions market. Thus, since 2005, the European Union has operated a cap-and-trade emissions trading system, which gradually reduces the amount of free emissions and tries to put indirect pressure on polluters.[20]

According to Lyal, the disadvantages of the artificial emissions market in the European Union mainly stem from bureaucratic complications, the inclusion of only 40% of the total amount of greenhouse gases emitted, and the indirect pricing of emissions for the end customer.[21] This could be solved by a carbon tax, the main disadvantage of

---

16 Communication from the Commission to the European Parliament and the Council: on Long-Term Financing of the European Economy, COM/2014/0168 final.

17 H. Guez, P. Zaouati, *Positive Finance*, London 2017, p. 59.

18 D. Nerudová, M. Dobranschi, M. Litzman, P. Rozmahel, *Tax Policy Areas and Tools for Keeping Sustainable Economy and Society in the EU* [in:] *Tax Sustainability in an EU and International Context*, eds. C. Brokelind, S. van Thiel, Amsterdam 2020, p. 71.

19 *Ibid.*, p. 75.

20 R. Lyal, *Carbon Taxation and the European Union* [in:] *Tax Sustainability…*, p. 324.

21 *Ibid.*, p. 330.

which lies in its widespread impact that would threaten to fall disproportionately on low-income people. This would potentially require additional social solutions. It is also problematic to achieve the avoidance of carbon exports to countries outside the European jurisdiction[22] nother barrier to regulate sustainable externalities through the tax system is technological progress, which the legal system does not reflect quickly enough. Tax incentives can thus become obsolete over time, turning into tax privileges and encouraging market-based solutions that are already well established and independent.[23]

Sweden, Ireland, and British Columbia[24] have already introduced carbon taxes. It has been debated at the European Union level since 1992, but so far without results.[25] The most recent attempt by the European Commission to introduce the possibility of some kind of common European carbon tax is the above-mentioned suggestion of an offsetting mechanism in the Green Deal, which would stop the export of carbon or the outsourcing of high carbon operations outside the European market (Point 2.1.1. Green Deal). The measure would target the carbon content of imported products to complement European climate efforts and, in addition to improving the efficiency of economic policies, would remove a major obstacle to the introduction of a European carbon tax.

The Carbon Pricing Leadership Coalition, a network established in 2015, is working to solve the carbon export problem on a global level. It is also working on carbon pricing itself, seeking to find solutions through scientific research and debate. It involves scientists, national governments, and financial market participants.[26]

In general, green taxes are a type of taxation that aims to encourage environmentally sustainable behavior by taxing activities or products that have a negative impact on the environment. The revenue generated from these taxes can be used to finance sustainable initiatives such as renewable energy, waste management, and biodiversity conservation. Green taxes are considered an effective tool for sustainable financing because they create a financial incentive for individuals and businesses to adopt environmentally friendly practices. By increasing the cost of activities that harm the environment, green taxes encourage the adoption of cleaner alternatives. For example, a tax on carbon emissions can encourage businesses to invest in renewable energy sources or energy-efficient technology.[27]

However, the effectiveness of green taxes can be limited if they are not designed and implemented properly. For example, if the tax is set too high, it can lead to op-

---

22 *Ibid.*, p. 332.

23 F. Vanistendael, *Reflections on Taxation and the Choice between Development and Sustainability* [in:] *Tax Sustainability*…, p. 51.

24 R. Lyal, *Carbon Taxation*…, p. 332.

25 *Ibid.*, 342.

26 Carbon Pricing Leadership Coalition, *Carbon Pricing Leadership Report 2020/21*, pp. 6–7, https://static1.squarespace.com/static/54ff9c5ce4b0a53decccfb4c/t/60ba4a7d2f4d4b6e0ace36c4/1622821505499/CP LC%2BReport%2B2021_Final.pdf [accessed: 2023.06.21].

27 European Commission, *Taxation: environmental taxes*, 2021, https://ec.europa.eu/taxation_customs/business/environmental-taxes_en [accessed: 2023.06.21].

position and non-compliance, but if the tax is set too low, it may not have a significant impact on behavior change. Additionally, green taxes can be regressive, meaning they disproportionately affect low-income individuals who may not have the resources to adopt more environmentally friendly alternatives.[28]

Overall, green taxes are an important tool for sustainable financing, but they must be designed and implemented carefully to ensure their effectiveness and fairness.

4. The EU Action Plan on Financing Sustainable Growth from 2018 and its 2021 revisions

In this paper, we focus on the topic of the Green Deal, but we find it necessary to mention other European Union instruments related to sustainable finance, such as the EU Action Plan on Financing Sustainable Growth. In the final part, we also analyze sustainable taxation in general, not only in the context of the Green Deal.

The EU Action Plan on Financing Sustainable Growth from March 2018[29] follows directly on the commitments made in the Paris Climate Agreement and contains the core of the European Commission's EU Sustainable Policy together with a plan for its implementation.

The most comprehensive point of the 2018 Action Plan is action 1, the adoption of the Taxonomy Regulation[30] to set up a clear way to measure ESG criteria in the financial market through the ESG classification system. It has already been adopted and effective from January 1, 2022.

Other actions include, for example, the implementation of new obligations for institutional investors through the modification of the Shareholder Rights Directive[31] in action 7, the adoption of the revision of the Benchmark Regulation[32] in action 5, support for research within the ESAs in actions 6 and 9, and the intention to consider the possible embedding of sustainable criteria in the prudential requirements of banks and insurance companies in action 8.

---

28 *Ibid.*

29 Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth, COM/2018/097 final.

30 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

31 Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement (OJ L 132, 20.5.2017, p. 1).

32 Regulation (EU) 2019/2089 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks (OJ L 317, 9.12.2019, p. 17).

4.1. The European Sustainable Taxonomy

The European Sustainable Taxonomy is one example of a policy where the Commission wants to take advantage of the European Union's first-mover role and hopes to set a global standard.

The main goal of the taxonomy is to avoid fragmentation of the types of sustainable investment indicators and to provide investors with clear criteria to follow in the financial market. To date, the absence of a standard set by the European legislator has led to imperfect investment analysis and has harmed consumers and investors (Recital 14, Taxonomy Regulation). The classification set is the basis for future product standards for financial sustainability and their labelling (Recital 16, Taxonomy Regulation). The regulation qualifies environmentally sustainable economic activities on the basis of both positive and negative criteria (Article 3, Taxonomy Regulation). The environmental goals are wider than just climate change and include, for example, biodiversity and the transition to a circular economy (Article 9, Taxonomy Regulation).

The role of the taxonomy in counteracting greenwashing is important. This happens when investments or investment products are falsely promoted as environmentally sustainable.

In addition, through Recital 19 and the definition of environmentally sustainable economic activities, the Taxonomy Regulation provides a safe harbor for identifying sustainable investments under the Sustainability Disclosure Regulation.[33]

When discussing the topic of the benchmarking framework at the Czech Banking Association conference in 2019, it was mentioned several times that the supply of ESG assets is not keeping up with demand. The Benchmarking Framework should make it easier for new assets to enter the market and offer investors and investment intermediaries enough green assets.[34]

4.2. Revision of the strategy in 2021: double materiality and other additions

The Commission's Action Plan was updated July 6, 2021, under the title Strategy for Financing the Transition to a Sustainable Economy.[35] One of the key ideas of the new strategy is to work with the concept of double relevance, thus double materiality (Action 3, Strategy for Financing the Transition to a Sustainable Economy). It represents the practice of bringing sustainability perspectives into financial reporting and accounting standards. In classical accounting, materiality can be taken as the opinion of the average reasonable person. If the average reasonable person would find the infor-

---

[33] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

[34] E. Bučová, *Banking in Motion 2019 Conference: Sustainable Finance*, Prague, 12.9.2019, https://youtu.be/49GI4XA4NF0?t=12791 [accessed: 2023.06.21].

[35] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Strategy for Financing the Transition to a Sustainable Economy, COM/2021/390 final.

mation to be relevant to the operation of the business, the company should report it and reveal it in the financial statements.[36]

In contrast, double materiality is associated with a double perception of impacts. Matthias Täger explains that the first type is the impacts of climate change on a company's business, which can be significant, and even according to the current materiality principle are then subject to reporting. The second, newly monitored type is, on the contrary, the impacts of a company on climate change or on one of the other dimensions of sustainability, such as other environmental or social aspects.[37] The principle of double materiality therefore illustrates both directions of impact, the impact of climate change on a company and the impact of a company on climate change and provides investors and other interested parties with a new type of data.

In practice, the difference can be illustrated with a hypothetical example of a company that is involved in coal mining. From a climate change perspective, for example, the threat to its mine from landslides caused by increased heavy rainfall would be relevant to its reporting. With state regulation, such as a date-specific cutoff of coal-fired power generation, it would be forced to internalize another consequence of climate change, a state-imposed demand shortfall. Double materiality adds a third dimension to this. For example, a company would have to report how much of its emissions correspond to the coal it mines.

The Commission wants to integrate the concept of double materiality across the European financial market in the coming years. Specifically, in actions 3 and 5 of the 2021 Strategy, it aims to cooperate with Member States, European financial supervisors, the European Central Bank, the European Systemic Risk Board and the European Environment Agency. For this purpose, it also wants to set up a new research forum.

In addition to double materiality, the 2021 Strategy contains in Part IV a proposal for the regulation of green bonds in the form of a directive, a commitment to work on the development of a social taxonomy, a social version of the already adopted green taxonomy (Action 2, Strategy for Financing the Transition to a Sustainable Economy), and a commitment to analyze further possible changes to the shareholder rights directive (Part III, Strategy for Financing the Transition to a Sustainable Economy).

Conclusions

In conclusion, the Green Deal stands as a visionary and comprehensive strategy aimed at realizing carbon neutrality by the pivotal year of 2050. It not only underscores our commitment to addressing the urgent global climate crisis but also lays out a path

[36] US Securities and Exchange Commission, "SEC Staff Accounting Bulletin" 1999, no. 99 – Materiality (1999), https://www.sec.gov/interps/account/sab99.htm [accessed: 2023.06.21].

[37] M. Täger, *"Double materiality": What is it and why does it matter?*, Grantham Research Institute on Climate Change and the Environment, 2021, https://www.lse.ac.uk/granthaminstitute/news/double-materiality-what-is-it-and-why-does-it-matter/ [accessed: 2023.06.22].

toward a more sustainable and environmentally responsible future. A pivotal pillar within this endeavor is sustainable finance, which assumes a pivotal role in the realization of the Green Deal's multifaceted objectives.

Sustainable finance functions as the bridge between intent and impact, offering a mechanism to channel much-needed capital into environmentally conscious projects and businesses. It promotes Environmental, Social, and Governance (ESG) integration in investment decisions, thereby fostering a financial ecosystem that aligns with the principles of responsible and sustainable growth. Furthermore, it encourages transparency and disclosure, which, in turn, enhances accountability and trust in the financial sector. Through the establishment of robust standards, sustainable finance not only streamlines investment processes but also ensures that sustainability is a non-negotiable criterion.

However, the road to achieving the Green Deal's ambitious objectives is not without its hurdles. One of the prominent challenges is the paucity of reliable and consistent data regarding environmental and social performance, which can hinder effective decision-making. Additionally, the lack of standardization in the sustainable finance landscape can lead to ambiguity and inconsistency in assessing ESG performance. A dearth of awareness among investors and corporations regarding the significance of sustainable finance poses another substantial challenge, limiting its potential impact. Furthermore, the absence of comprehensive regulatory frameworks can create an environment where unsustainable practices persist unchecked.

Collaboration is key to surmounting these challenges and fulfilling the promise of the Green Deal. Policymakers, investors, corporations, and civil society must unite in a collective effort. Policymakers must work diligently to craft regulations and incentives that promote sustainable finance, foster data transparency, and align the financial sector with environmental goals. Investors and corporations must commit to integrating ESG considerations into their decision-making processes and embrace the principles of sustainability. Raising awareness about the importance of sustainable finance and its role in the Green Deal is a responsibility that falls on civil society's shoulders.

In essence, achieving a sustainable and climate-neutral economy as envisioned in the Green Deal necessitates a concerted and cooperative effort. By addressing the challenges and working collaboratively, we can pave the way toward a future where economic growth and environmental responsibility go hand in hand, ensuring a brighter and greener future for generations to come.

Literature

Bučová E., *Banking in Motion 2019 Conference: Sustainable Finance*, Prague, 12.9.2019, https://youtu.be/49GI4XA4NF0?t=12791.

Carbon Pricing Leadership Coalition, *Carbon Pricing Leadership Report 2020/21*, https://static1.squarespace.com/static/54ff9c5ce4b0a53decccfb4c/t/60ba4a7d2f4d4b6e0ace36c4/1622821505499/CP LC%2BReport%2B2021_Final.pdf.

European Commission, *The European Green Deal*, *2019*, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_cs.

European Commission, *Sustainable Finance*, 2021, https://czechia.representation.ec.europa.eu/udrzitelne-finance-taxonomie-eu-komise-podnika-dalsi-kroky-k-tomu-aby-nasmerovala-financni-2021-04-21_cs.

European Commission, *Taxation: environmental taxes*, 2021, https://ec.europa.eu/taxation_customs/business/environmental-taxes_en.

Fredinger J., *Evropský Green Deal je krok správným směrem, ale sám o sobě nestačí*, greenpeace.org, December 11, 2019, https://www.greenpeace.org/czech/clanek/5252/evropsky-green-deal-je-krok-spravnym-smerem-ale-sam-o-sobe-nestaci/.

Guez H., Zaouati P., *Positive Finance*, London 2017.

Lyal R., *Carbon Taxation and the European Union* [in:] *Tax Sustainability in an EU and International Context*, eds. C. Brokelind, S. van Thiel, Amsterdam 2020.

Nerudová D., Dobranschi M., Litzman M., Rozmahel P., *Tax Policy Areas and Tools for Keeping Sustainable Economy and Society in the EU* [in:] *Tax Sustainability in an EU and International Context*, eds. C. Brokelind, S. van Thiel, Amsterdam 2020.

Täger M., *"Double materiality": What is it and why does it matter?*, Grantham Research Institute on Climate Change and the Environment, 2021, https://www.lse.ac.uk/granthaminstitute/news/double-materiality-what-is-it-and-why-does-it-matter/.

Tsafos N., *Why Europe's Green Deal Still Matters*, Center for Strategic and International Studies, March 24, 2020, https://www.csis.org/analysis/whyeuropes-green-deal-still-matters.

United Nations Development Programme, *Demystifying green and blue bonds for the Pacific region*, 2022, https://www.undp.org/sites/g/files/zskgke326/files/2022-08/demystifying-green-and-blue-bonds-for-the-pacific.pdf.

United Nations Environment Programme, *Global Trends in Renewable Energy Investment 2020*, https://www.unpri.org/about-us/about-the-pri.

United Nations Global Compact, *United Nations Sustainable Finance*, 2020, https://unglobalcompact.org/sdgs/sustainablefinance.

US Securities and Exchange Commission, "SEC Staff Accounting Bulletin" 1999, no. 99 – Materiality, https://www.sec.gov/interps/account/sab99.htm.

Vanistendael F., *Reflections on Taxation and the Choice between Development and Sustainability* [in:] *Tax Sustainability in an EU and International Context*, eds. C. Brokelind, S. van Thiel, Amsterdam 2020.

The World Bank, *Sustainable Finance*, 2021, https://www.worldbank.org/en/topic/financialsector/brief/sustainable-finance.

Summary

Nela Křemečková, Sally Sanad Šreflová

The Green Deal in the Context of Sustainable Finance

The paper focuses on the topic of the Green Deal in the context of sustainable finance. First, the thesis presents definitions of the terms that need to be understood in the field of sustainable finance. Among these concepts, we concentrate especially on green finance, the Green Deal

itself, and the related Green Deal Investment Plan, also referred to as the Sustainable Europe Investment Plan, which is the investment pillar of the Green Deal. The Just Transition Mechanism, based on the Sustainable Europe Investment Plan, is also analyzed in the paper. We then focus on the EU Action Plan on Financing Sustainable Growth from 2018 and its 2021 revisions. The paper also deals with the sustainable finance objectives and their implementation achieved to date. The aim of the paper is to analyze the Green Deal in the context of sustainable finance. Finally, by conducting research, we were able to evaluate the hypothesis whether the Green Deal fulfills the stated intentions of sustainable finance. The research methodology of this paper includes the analysis, synthesis, and comparison of the available literature on the subject.

Keywords: Green Deal, sustainable finance, tax, green tax, European Union, Investment Plan, Action Plan, Just Transition Mechanism.

Streszczenie

Nela Křemečková, Sally Sanad Šreflová

Zielony Ład w kontekście zrównoważonych finansów

Artykuł koncentruje się na tematyce Europejskiego Zielonego Ładu w kontekście zrównoważonych finansów. W pierwszej kolejności przedstawiono definicje pojęć z obszaru zrównoważonych finansów. W tym zakresie na szczególną uwagę zasługują terminy: zielone finanse, Europejski Zielony Ład oraz plan inwestycyjny na rzecz Europejskiego Zielonego Ładu (zwany także planem inwestycyjnym na rzecz zrównoważonej Europy), który jest filarem inwestycyjnym Europejskiego Zielonego Ładu. W opracowaniu przeanalizowano również mechanizm sprawiedliwej transformacji, który powstał na podstawie planu inwestycyjnego na rzecz zrównoważonej Europy. Następnie autorki skupiły się na planie działania UE na rzecz finansowania zrównoważonego wzrostu z 2018 r. i jego rewizji z 2021 r. Celem artykułu jest analiza Europejskiego Zielonego Ładu w kontekście zrównoważonych finansów. Przeprowadzone badania pozwoliły zweryfikować hipotezę, że Europejski Zielony Ład spełnia założenia zrównoważonych finansów. Katalog metod badawczych wykorzystanych w pracy obejmuje analizę, syntezę i porównanie dostępnej literatury przedmiotu.

Słowa kluczowe: Europejski Zielony Ład, zrównoważone finanse, podatek, podatek ekologiczny, Unia Europejska, plan inwestycyjny, plan działania, mechanizm sprawiedliwej transformacji.

Anna Vartašová
Pavol Jozef Šafárik University in Košice, Slovakia
anna.romanova@upjs.sk
ORCID: 0000-0002-1366-0134

Mária Bujňáková
Pavol Jozef Šafárik University in Košice, Slovakia
maria.bujnakova@upjs.sk
ORCID: 0000-0002-6574-1411

Gábor Hulkó
Széchenyi István University of Győr, Hungary
hulko.gabor@ga.sze.hu
ORCID: 0000-0002-9139-6893

Lajos Csörgits
Széchenyi István University of Győr, Hungary
csorgits.lajos@ga.sze.hu
ORCID: 0000-0002-8552-5089

https://doi.org/10.26881/gsp.2024.1.06

Engineering Structures and Their (non)Taxation by Slovak Real Property Tax (in the V4 Context)[1]

Introduction

Real property tax (RPT) is a standard local tax (LT)[2] or, in a broader sense, a tax used to finance the needs of local self-governments.[3] The latter have long argued that one of the problems associated with its existence and the exercise of self-government and transferred competencies is its inadequate funding in Slovakia (SK). Although the central government tends to deny this conclusion, it is supported mainly by the findings of academics.[4] Although, as Vybíhal points out,[5] LTs are one of the pillars of decentralization, especially fiscal decentralization in SK. However, LT revenues, and especially RPT as the backbone of LTs,[6] do not constitute a significant share of the total revenues

[1] This study was carried out in the Local Taxation and Fiscal Policy Research Group framework of the Central and Eastern European Association for Public Administration, https://kte.sze.hu/ and as a partial output of the VEGA 1/0214/21 and VEGA č. 1/0485/21 projects implemented at Pavol Jozef Šafárik University in Košice.

[2] R.M. Bird, E. Slack, *International Handbook of Land and Property Taxation*, Northampton 2004, pp. 1–18.

[3] P. Mrkývka, *Některé úvahy o materiálním základu veřejné správy*, "Časopis pro právní vědu a praxi" 2003, nr. 2, pp. 153–157.

[4] For example, V. Papcunová, E. Balážová, P. Agh, *The Evaluation of the Relations Between the State Budget and the Local Self-Government Budgets (Case Study of the Slovak Republic)* [in:] *22nd International Colloquium on Regional Sciences. Conference Proceedings*, eds. V. Klímová, V. Žítek, Brno 2019, pp. 369–377; V. Vybíhal, *Comparative study of the impact of local taxes and other revenues on the financial self-sufficiency of municipalities* [in:] *PUBLICY 2020 I. – 30 rokov verejnej správy*, eds. P. Horváth, J. Machyniak, Trnava 2020, pp. 7–26; K. Liptáková, Z. Rigová, *Financial creditworthiness of Slovak municipalities* [in:] *Interpolis '20*, eds. D. Cevárová *et al.*, Banská Bystrica 2020, pp. 418–428.

[5] V. Vybíhal, *Comparative study…*, pp. 7–26.

[6] D. Belkovicsová, *Daň z nehnuteľností ako významný zdroj financovania územnej samosprávy*, "Acta aerarii publici" 2020, nr. 1, pp. 93–111.

of local self-government (LG),[7] which has long been largely dependent on revenues provided by the state.[8] The situation is also very similar in the Czech Republic (CZ) and, as far as RPT revenues are concerned also in Hungary (HU), but the last of the V4 countries, Poland (PL), is a notable exception in this respect. As our previous research shows,[9] RPT revenues in PL are significantly higher than in the other V4 countries, and the reason for these deficits or differences in revenues compared to PL is, among other things, legislative differences in the individual legal regulations, including the breadth of the object of taxation.

A stimulus for a deeper analysis of this issue was the Act on the Tax on a Special Structure, amending certain acts (the "Special Structure Tax Act"),[10] which was adopted by the National Council of the Slovak Republic as the legislative body on 22 December 2022 and which was to introduce a new property tax levied on selected real properties in SK into the system of taxes applied in SK. This tax was intended to supplement the taxation of selected real properties located on the territory of SK that was not subject to RPT levied in SK under Act No. 582/2004 Coll. on local taxes and local fees for municipal waste and minor construction waste as amended (the "Act on Local Taxes"), but only with respect of gas pipelines used for transmission of gas on the territory of SK. However, this change was not to have been made by an amendment to the Act on Local Taxes but by a special law. Even though the Special Structure Tax Act was ultimately not adopted due to the veto of the President of the Slovak Republic, which was justified by the assumed contradiction with the Constitution of the Slovak Republic, it raises the question of the appropriateness of the definition of the object of the Slovak RPT in relation to the intended object of the planned tax, i.e., utility lines or, more broadly, engineering structures. RPT in SK applies not only to land, dwellings, and non-residential premises but also to structures. It does not tax several categories of engineering structures, including line structures, which would have been the object of the planned new tax on a special structure.

Therefore, within the framework of the analysis of the current state of the definition of the object of taxation, the authors' aim is primarily to identify the position of engineering structures as objects that are excluded from tax in SK and to determine the status of such structures concerning their inclusion in objects of taxation in other V4 countries (HU, CZ, PL), and on this basis to assess the scope for the possible expan-

---

[7] A. Vartašová, K. Červená, *Real Property Tax in the Countries of Visegrad Group – Comparative View*, "Studia Iuridica Lublinensia" 2022, no. 1, pp. 191–211.

[8] E.g. V. Papcunová, D. Országhová, R. Hornyák Gregáňová, *Evaluation of Tax Incomes of Municipalities in Conditions of the Slovak and Czech Republics*, "Acta Universitatis Bohemiae Meridionalis: scientific journal for economics, management and trade" 2018, no. 2, pp. 1–12; L. Poliak, *Finančná autonómia obcí – mikroekonomické východiská*, "Societas et Iurisprudentia" 2016, nr. 1, pp. 122–138.

[9] A. Vartašová, K. Červená, *Real Property Tax*…, pp. 191–211.

[10] National Council of the Slovak Republic, Details of the bill: Act of 22 December 2022 on the tax on a special structure, amending certain acts, returned by the President of the Slovak Republic to the National Council of the Slovak Republic for reconsideration, https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9041 [accessed: 2023.06.23].

sion of the object of RPT in SK. Thus, this research should serve as a starting point for the further exploration of this issue.

For this purpose, the analysis of the legal regulation of RPT in SK, especially with regard to the regulation of the taxation of structures, the analysis of professional and scientific literature, and the comparison of the situation in SK with the legal regulation of the taxation of structures in selected countries were used, where the authors chose the micro-region of the V4 countries as a sample, based on the economic, social and, above all, historical and political proximity of its member countries. The authors' research was also based on previous research in the field of RPT.[11] The data presented in the paper were obtained from Eurostat and the Hungarian Statistical Office (KSH) databases.

1. Legislative background – object of the planned new tax on special structures vs. current RPT in the Slovak Republic

The proposed Act on the Tax on a Special Structure was very short and contained very concise regulations in 11 sections. The object of taxation was to be a special structure on the territory of SK, i.e., a gas pipeline, legally defined for the purposes of this tax as a network of gas pipelines serving for the transmission of gas on the territory of SK, except a network of gas pipelines serving primarily for the distribution of gas within part of its territory. The taxpayer was to be the operator of the special structure – a gas company authorized to transport gas on the territory of SK. Since, in practice, only one company would be considered a taxpayer, such discriminatory targeting of the new tax was criticized as contrary to the Constitution, and this was one of the arguments for the veto of the bill by the President.[12] The tax was to be based on the total length of the special structure in kilometers, and a fixed rate of EUR 6,000 was to be applied to it for each (even incomplete) kilometer of the special structure.

A closer look at the intended object of the new tax required it to be classified under the relevant type of real property. According to the Concise Dictionary of the Slovak Language, a gas pipeline is a pipeline for gas transmission, whereas a pipeline is a system of pipes for the distribution (of liquid or gaseous material). Under Act No. 50/1976 Coll. on land-use planning and building regulations (Building Act), as amended, Section 139(3)(a), gas pipelines are line structures – a type of engineering structure within the meaning of Section 43a(3)(f). Certain structures in this category are excluded from objects of RPT under Section 10(3)(b) of the Local Taxes Act, namely dams, water sup-

[11] A. Vartašová, K. Červená, *Views on Quality of Tax Regulation in the Slovak Republic (Focused on Real Property Taxation)*, Prague 2019; *iidem*, *Real Property Tax*…, pp. 191–211; G. Hulkó, J. Fehér, *Hungary* [in:] *Real Property Taxes and Property Markets in CEE Countries and Central Asia*, eds. M. Radvan, R. Franzsen, W.J. McCluskey, F. Plimmer, Maribor 2021, pp. 143–176.

[12] SITA, *Eustream will not have to pay the pipe tax, MPs agree with President Čaputová's comment*, 17 February 2023, https://sita.sk/venergetike/eustream-nebude-musiet-platit-dan-z-rury-poslanci-sa-stotoznili-s-pripomienkou-prezidentky-caputovej/ [accessed: 2023.04.14].

ply and sewerage systems, flood protection structures, and heat distribution systems. Although gas pipelines are not mentioned here, a complete exclusion of most engineering structures from the objects of RPT can be inferred from Section 10(2) in conjunction with Section 12(4) of the Local Taxes Act, according to which only structures with one or more stories above or below ground (connected to the ground by a solid foundation or anchored by piles) are subject to the tax on structures, where a storey of a structure is part of the interior space of the structure defined by its floor and ceiling structure, or roof structure if the structure has no ceiling structure. This restriction limits the scope of structures subject to the tax on structures. Concerning the tax on land, land or parts of land on which roads other than special public roads and national and regional railways are built, as well as land or parts of land on which structures are erected that are not subject to the tax on structures pursuant to Section 10(3) of this Act, shall also not be subject to the tax in accordance with Section 6(2)(b) and (c) of this Act. It follows from the above that a gas pipeline, as the object of the new tax on a special structure, could not be subject to RPT primarily due to the limiting element, which is the definition of a structure as the object of the tax on structures, i.e., RPT.

2. Approach to taxation of engineering structures in other Visegrad countries

RPT is applied in different forms in all V4 countries. In CZ, it is RPT (daň z nemovitých věcí), which is enshrined in Act No. 338/1992 Coll. on the tax on immovable property, as amended, which divides it similarly as in SK into the tax on land and the tax on structures and units.[13] Despite being a state tax, according to Radvan, it has the characteristics of an LT.[14] The object of the tax on structures and units, as regards structures, is, pursuant to Section 7(1)(a), taxable structures, which, for the purposes of this tax, are defined by the Act as any completed or used buildings (within the meaning of a building under the Land Register Act) and engineering structures listed in the Annex to the Act (including parts thereof, if completed and used).[15] In the case of buildings, reference is therefore made to Act No. 256/2013 Coll. on the Land Register (Land Register Act), which defines a building in Section 2(l) as an above-ground structure connected to the ground by a solid foundation, which is spatially concentrated and predominantly enclosed externally by perimeter walls and a roof structure. As regards taxable engineering structures, the above-mentioned Annex to the Act enumerates the following: transmission towers, repeater towers, and telecommunication masts;

[13] I.e., flats and non-residential premises.

[14] M. Radvan, *Correction Elements in Case of Czech Local Charges* [in:] *The Challenges of Local Government Financing in the Light of European Union Regional Policy*, eds. P. Mrkývka *et al.*, Brno 2018, pp. 474–486.

[15] A. Vartašová, *Komparácia systémov miestnych daní v krajinách Vyšehradskej štvorky* [in:] *Miestne dane v krajinách Vyšehradskej štvorky: zborník vedeckých prác*, Prague 2021, p. 144.

towers, masts, and storage towers for mining and quarrying; cooling towers for the power industry; chimneys and stacks for the power industry; towers, masts, storage towers for chemical plants; industrial chimneys for chemical plants; blast furnaces (buildings for metallurgy and heavy industry); towers, masts, storage towers – for other industries; industrial chimneys for other industries. From the above, it can be seen that in CZ, despite a similarly limited definition of a structure and a limited scope of the objects of taxation, at least selected types of engineering structures are nevertheless taxed. From the definition of the object of taxation, it is clear that, despite a similarly strict definition of a building as in CZ, the Czech RPT taxes at least a limited range of other (industrial) structures, but neither line structures nor engineering structures, in general, are subject to taxation.

In PL, RPT is regulated by the Act of 12 January 1991 on local taxes and fees (Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych). RPT is levied on land, buildings or parts thereof, and structures or parts related to business activities (Section 2(1) of the Act); however, some land, namely agricultural and forest land, is regulated by special laws.[16] As regards the definition of buildings and structures for tax purposes, the Act provides their legal definitions, where a building is a construction object within the meaning of the Building Act, which is firmly connected to the ground, separated from the space by building partitions and has a foundation and a roof, and a structure is a construction object within the meaning of the Building Act, other than a building or a small architectural object, as well as a construction installation within the meaning of the Building Act connected to a construction object that ensures the possibility of using the object per its purpose. The Act of 7 July 1994, Building Act (Ustawa z dnia 7 lipca 1994 r. – Prawo budowlane) defines a building in Section 3(2) in the same way as the Act on Local Taxes and Fees, but in the case of a building it is more detailed. Paragraph 3 of the same Section defines a structure as any construction object other than a building or a small architectural object, such as line structures, airports, bridges, viaducts, overpasses, tunnels, culverts, technical networks, stand-alone aerial masts, stand-alone signs permanently fixed to the ground and advertising structures, earthworks, defensive structures (fortifications), protective structures, hydrotechnical structures, reservoirs, stand-alone industrial or technical installations, wastewater treatment plants, landfills, water treatment stations, retaining structures, overhead and underground pedestrian walkways, engineering structures, sports grounds, cemeteries, memorials, as well as structural parts of technical installations (boilers, industrial furnaces, nuclear power plants, wind power plants, offshore wind turbines, and other facilities) and foundations for machinery and equipment as technically separate parts of objects forming a utilitarian whole. Paragraph 3a further defines the line structures mentioned in the preceding paragraph (a structure the characteristic parameter of which is its length, in particular a road, including exits, a railway, a water supply system, a sewerage system, a heat supply line, a gas pipeline,

[16] See in more detail e.g. *ibid.*, pp. 157 *et seq.*; W. Miemiec, P. Zawadzka, *Poland* [in:] *Real Property Taxes*…, pp. 121 *et seq*.

an electric power line and traction, overhead and underground cable lines, a dike and cable ducts, where cables laid in a cable duct, cables laid in a conduit, and telecommunications cables connected to an existing overhead cable line do not constitute an engineering structure or part thereof or a construction object), and paragraph 4 defines small architectural objects (small objects and in particular objects of religious rites such as chapels, roadside crosses, statues; sculptures, fountains, and other garden objects; utilitarian facilities for everyday recreation and maintaining order, such as sandpits, swings, ladders, litter bins). Some of these structures are exempt from the tax, namely a large part of structures forming part of railway infrastructure, ports, airports, protective embankments, or some agricultural production structures. However, the legal definitions show the different approach of Polish legislation to the taxation of other structures (in addition to standardly defined buildings) than that applied in SK, i.e., the whole broadly defined range of various structures, mainly those that can be considered as engineering structures in the sense of the Slovak Building Act, are subject to RPT if they are related to the conduct of business activities, which significantly expands the object of taxation by this tax.

In HU, LGs are financed in two ways. One source of revenue comes from the central budget, which is used to provide compulsory LG services. The other source of income comes from the LGs' own revenues, the most important of which are LTs. Local authorities can use their own revenue to finance the performance of their voluntary tasks once the financial resources for the performance of the compulsory tasks have been thoroughly secured.[17] Act C of 1990 on local taxes ("1990. évi C. törvény a helyi adókról"; hereinafter as Hungarian Local Taxes Act)[18] defines the types of LTs: property-type taxes (building tax and land tax), communal-type taxes (communal tax on individuals and tourism tax), and local business tax. In addition, settlement tax ("Települési adó") may be introduced in addition to LTs. However, the introduction of a single type of tax is subject to the restriction that only one type of tax can be introduced: the right of the municipality to assess taxes is limited by the fact that taxpayers are only obliged to pay one type of tax as decided by the municipality for a specific taxable property (building, part of a building, plot of land).[19] Local taxation policies are one of the most important instruments of economic autonomy in the LT system, which gives municipalities the right to exercise local sovereignty in exercising their right to tax and, in turn, developing LT policy.

---

[17] More on the topic of local taxes relevance in the V4 countries local government budgets see L. Pardavi, *Az önkormányzati adók és a közteherviselés* [in:] *A települési adók elmélete és gyakorlata különös tekintettel Győr-Moson-Sopron Megyére*, ed. *idem*, Győr 2022, pp. 24–28; G. Hulkó, *A cseh, szlovák és lengyel helyi adók és illetékek szabályozási rendszerének elemzése, különös tekintettel a szabályozás gyakorlati problémáira* [in:] *A települési adók*…, pp. 115–150 or *idem*, *A V4-országok helyi önkormányzati rendszerének összehasonlító elemzése* [in:] *A helyi önkormányzatok nemzetközi környezete*, ed. E. Farkasné Gasparics, Budapest 2021, pp. 239–279.

[18] 1990. évi C. törvény a helyi adókról, https://net.jogtar.hu/jogszabaly?docid=99000100.tv [accessed: 2023.04.14].

[19] Article 7 section a) Hungarian Local Taxes Act.

Since there is no general central property tax in HU, it exists only for LTs, divided into building tax ("Építményadó") and land tax ("Telekadó"). The building tax covers buildings and parts of buildings for residential and non-residential purposes. All rooms of a building are subject to tax regardless of their purpose or use.[20]

Article 52 of the Hungarian Local Taxes Act (in connection with Act LXXVIII of 1997 on the Shaping and Protection of the Built Environment[21]) clarifies the definition of a building, according to which, as such, can be considered a space artificially formed in whole or in part from the surrounding external space and separated by building elements, thereby providing conditions for permanent or temporary habitation or use, including a separate installation situated in whole or in part below the level of the surrounding adjacent ground. Furthermore, it defines a "part of a building" as a room or group of rooms in a building that has a separate function and a separate entrance under the open sky or from a common corridor of the building and that is adjacent to a dwelling, holiday home, commercial unit, or other non-residential building, but that is not registered as a separate property. According to these definitions, therefore, structures that are not considered buildings or parts of buildings are not subject to the building tax, regardless of whether they are low or high buildings. So a cellar or a bunker is covered by the law because they are buildings. Still, a wire or an antenna is not because it is not a building (or part of a building) under the provisions of the Local Taxes Act or Act LXXVIII of 1997 on the Shaping and Protection of the Built Environment.[22] Given these definitions, engineering structures are not subject to building tax.

However, the specificity of HU lies in the special tax on public engineering structures, regulated by Act No. CLXVIII of 2012 on the tax on public utility lines ("2012. évi CLXVIII. törvény a közművezetékek adójáról").[23] The public utility line tax is levied from the sixth year following the date of commissioning, as defined: water, sewage and stormwater, natural gas, heat, electricity, and communications services, as well as part of pipelines located in public areas on the surface, below or above the surface of public areas, or not in public areas, utilities situated above or below the surface of the land, except utilities located on public land or not on public land, which are designated for the exclusive use of the user of the land and which are recorded under the appropriate parcel number in connection with the use of the land. The taxpayer is the owner of the public distribution system or the operator in the case of distribution systems owned by the State or local authorities.[24] The tax is based on the length of the lines in meters, adjusted by the statutory coefficients set out in regulation in the case of drinking water lines, sewage lines, and electricity and natural gas lines. The tax rate

[20] Article 11 Hungarian Local Taxes Act.

[21] 1997. évi LXXVIII. törvény az épített környezet alakításáról és védelméről, https://net.jogtar.hu/jogszabaly?docid=99700078.tv [accessed: 2023.04.14].

[22] G. Hulkó, J. Fehér, *Hungary*…, p. 151.

[23] 2012. évi CLXVIII. törvény a közművezetékek adójáról, https://net.jogtar.hu/jogszabaly?docid=a1200168.tv [accessed: 2023.04.14].

[24] The State and local governments are exempt from this type of tax; telecommunications lines are also partially exempt.

is HUF 125[25] per meter. In HU, therefore, some civil engineering works, namely linear works, are subject to a special tax in addition to the building tax. The planned Slovak tax on a special structure would be similar to this special tax model, as it was to be introduced as a state tax (not a LT such as RPT), flowing into the state budget (not to municipalities) and, unlike other state taxes, administered by the Office for Selected Economic Entities (*Úrad pre vybrané ekonomické subjekty*).

However, it is worth noting that these structures are not subject to building tax, which does not mean local authorities cannot receive revenue when they are built or even afterward. This revenue will also be their own revenue, which may not be tax revenue, but in the form of the use of a property. The utility lines will be installed on public land (underground or in the air). Their installation requires the consent of the owner, for which they may charge a fee. A lump sum or an annual installment may then be agreed upon. However, if a local authority fails to ask for this at the time of the owner's consent, it will not be able to exercise this right in the future. Nor should it be overlooked that no distinction should be made between the requirements of free competition (and avoidance of prohibited state aid) and the condition of equal treatment. In other words, compensation must be sought from everyone or no one. A difference in remuneration is only possible to the extent that it can be justified based on objective criteria.

Today in HU, underground utility lines are less useful for other purposes. However, overhead utility lines and their supporting cables/poles have the potential to generate revenue for the utility operator. Support poles can be let out to other utility companies, advertising can be placed on support poles or lines, etc. Since support poles are not subject to building tax or public utility lines tax, they are not subject to direct taxation, even though they are typically used for profit-oriented economic activities.

Since January1, 2015, LGs can introduce a settlement tax.[26] LGs may introduce the settlement tax, but it is not an LT as defined in the Hungarian Local Taxes Act, but rather a special type of tax. The term settlement tax is used alongside LTs and not as part of them. Settlement taxes may be used for municipal development and social welfare purposes.

Many local authorities saw the introduction of the settlement tax as an opportunity to increase their revenues. However, an analysis of the detailed rules reveals that it is, in fact, a nice-sounding option that is difficult to implement in any substantial way. In essence, only natural persons are subject to the settlement tax; thus, organizations and/or businesses with the most substantial financial resources are not. Consequently, natural persons, not residents of a municipality, could also be subject to the tax, but there would have to be a link connecting them to the municipality. In addition, the

[25] Equivalent of 0.33 EUR (April 13, 2023).

[26] See: A. Bencsik, *A helyi önkormányzatok (pénzügyi) autonómiájáról*, "Pro Publico Bono – Magyar Közigazgatás" 2017, nr. 1, pp. 56–69, https://bit.ly/3Urxarm [accessed: 2023.04.14]; P. Bordás, *A települési adó rendszertani és gyakorlati kérdései*, "Pro Publico Bono – Magyar Közigazgatás" 2015, nr. 3, pp. 4–12, http://bit.ly/3APVRXF [accessed: 2023.04.14] or Zs. Ercsey, A. Bencsik, *A helyi önkormányzatok pénzügyi autonómiájának átalakulása*, "Glossa Iuridica" 2020, nr. 1–2, pp. 225–237.

object of the tax can be any taxable object not covered by other public charges. To avoid double taxation, only taxable property not yet taxed can be subject to the tax. This needs to be revised. Defining a taxable subject that is not subject to other public charges is difficult. This could be the case for a pole supporting a utility line since, as a structure, it is not taxed by either the building tax or the utility line tax. However, it does not make sense to introduce it because of the taxable person limitation since natural persons own no utility poles.

Local authorities have tried introducing the settlement tax, but few proper solutions have been found. Where they have been introduced, the primary function of taxation, which is to raise revenue, has yet to be effected, while rather the secondary function of influencing behavior has. However, they were doomed to failure from the outset because the tax could only be levied on natural persons, while legal persons would have been a more proper subject for this type of public burden. An example of this is when the height of a building was taxed so that the height of a church tower would not be taxed. In contrast, a mobile phone tower would have been, or a very high number of animals in a municipality would have been taxed, which only an animal rescue foundation could achieve. Since, in both cases, the tax would have been levied on a legal entity, the main objective of the settlement tax, i.e., to raise local income, could not be achieved. Of course, the regulations would not have passed the test of legality either since no discriminatory tax can be introduced concerning a settlement tax assessment. A tax is discriminatory if it imposes a tax obligation on one or a minimal number of taxpayers regarding a given taxable object while exempting many others.[27]

However, there are other international examples of the taxation of energy structures, such as in Latvia and partially in Lithuania and France.[28]

3. Discussion

There are different approaches to the inclusion of different types of real property in the object of recurrent property taxes. For example, while some countries tax only structures and/or only land, others apply taxation globally to all real properties. In theory, property taxes are generally levied on all types of properties – residential, commercial, industrial, and farm properties; sometimes, different categories of property are treated differently, and certain classes of property, or property owners, or uses of property, are

[27] For more detail concerning settlement taxes in Hungary see: D. Borsa, G. Hulkó, P.B. Király, L. Pardavi, *A települési adók szabályozási környezete, gyakorlata és kihívásai: Van-e jelentősége a települési adónak krízishelyzetekben vagy egyáltalán?*, "KözigazgatásTudomány" 2022, nr. 2, pp. 22–34; P. Bordás, *A települési adó kivetésének korlátai a Kúria joggyakorlatának fényében*, Kúria 2021, http://bit.ly/3VxyH0h [accessed: 2023.04.14] or G. Hulkó, L. Pardavi, *Practical Experience and the Significance of the Settlement Tax in Hungary*, "Annual Center Review" 2022, no. 14–15, pp. 43–49.

[28] European Commission: Taxes in Europe database, https://ec.europa.eu/taxation_customs/tedb/index.html [accessed: 2023.01.11].

exempt.[29] For example, non-residential properties include a wide variety of property uses, including commercial uses (such as offices, banks, retail outlets, restaurants, and hotels), industrial uses (such as mines, manufacturing plants, and shipyards), and special uses (such as pipelines and railway rights-of-way).[30]

In the case of SK, although the object of RPT generally includes all types of real properties, i.e., land, structures, dwellings, and non-residential premises, due to the limiting definition of the object of taxation, in the case of the tax on structures, it would be more appropriate to speak only of the tax on buildings, as all other structures that do not meet the condition of having a ceiling/roof are excluded from taxation. The situation is very similar in CZ, and Radvan also presents the view that the object of RPT should be broader.[31] On the other hand, Hungarian definitions are not that strict; the definition of a building covers even "a stand-alone installation that is partially or completely below the surrounding connecting ground level with its internal height," which serves as the basis for taxing advertising media (e.g., billboards).[32]

The differences in the approach of the countries compared to the definition of the object of RPT have already been noted in our previous research, where we identified differences in the definition of the object of RPT in the overall perspective, including the different definition of the object of taxation in relation to structures;[33] however, a deeper analysis is needed. Even in the context of the difference in the budgetary significance of the RPT examined there, such a significant difference in the definition of the scope of the taxed structures leads us to believe that the much broader definition of the object of taxation in the Polish legislation compared to the other V4 countries can also have a significant impact on the significantly higher RPT revenue to GDP ratio than in the other V4 countries (on average, for 2010–2020, it was as high as 1.181%, compared to 0.411% in SK, 0.394% in HU, and only 0.216% in CZ).[34] The taxation of structures is all the more important because in SK, HU, and PL, their revenue accounts for the majority of RPT revenue.[35] The specific regime in HU, after taking into account the income from the tax on public engineering structures, would mean that the total RPT revenue would represent an average share of 0.543% of GDP over the 2013–2020 period (after the introduction of the tax)[36] (see Fig. 1).

---

29 R.M. Bird, E. Slack, *Land and Property Taxation: A Review*, World Bank 2002, p. 12.

30 *Ibid.*, p. 25.

31 M. Radvan, *Major Problematic Issues in the Property Taxation in the Czech Republic*, "Analysis and Studies CASP" 2019, no. 2, p. 20.

32 I. Hoffman, *Only a Theoretical Possibility of the Ad Valorem Property Tax System – the Regulation on Immovable Property Taxes in Hungary*, "Analysis and Studies CASP" 2019, no. 2, p. 65.

33 A. Vartašová, K. Červená, *Real Property Tax*…, p. 204.

34 *Ibid.*, pp. 196–197.

35 A. Vartašová, *Buildings & Structures as the Object of Real Property Taxes in the Countries of Visegrad Group* [in:] *Challenges of Contemporary Tax Law: Jubilee Book Dedicated to Professor Włodzimierz Nykiel on His 70th Anniversary*, Łódź 2023 – in print.

36 Own calculation based on data from the Hungarian Central Statistical Office (Központi Statisztikai Hivatal).

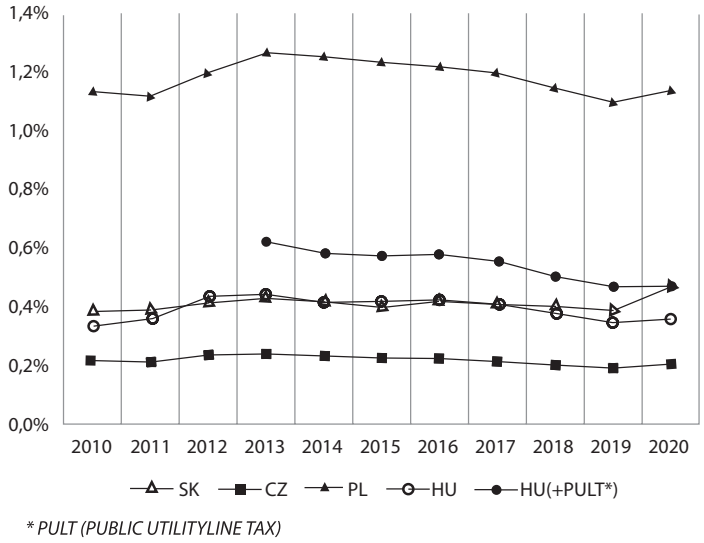

Fig. 1. RPT to GDP ratio

Source: authors' own elaboration based on Eurostat data.

At least in the case of SK (and CZ), according to our analysis, there is much scope for expanding the object of RPT, but in our opinion, it would be more appropriate to do this more conceptually and reasonably than by introducing a special tax on only one type of line structure (as intended). According to the Explanatory Memorandum to the Special Structure Tax Bill, "one of the reasons for introducing the tax on a special structure is that this is not subject to RPT." Although the Explanatory Memorandum is silent on other reasons, this one was vague and questionable since, in our opinion, the justification for introducing the new tax on the grounds that its object has not previously been subject to taxation does not stand up. Moreover, since the fiscal function of taxes is one of their essential functions, we see no reason why this rationally justifiable reason for introducing the tax should be obscured by another very poorly justified reason. The fiscal objective could be better fulfilled by a comprehensive review of the scope of RPT after expert discussion and consideration of its potential benefits and risks (e.g., by shifting the tax burden from operators/owners of certain engineering structures to energy consumers). This issue is even more topical in the context of a long-term trend of dependence of municipalities in SK on state-transferred funds and shared tax (personal income tax – PIT) and the generally low share of budget incomes covered by LTs, which is also the case in CZ and PL (see Fig. 2). Since, in absolute terms, municipalities in HU yield significant incomes from local business tax, broadening the taxable objects of the Hungarian building tax does not seem to be such an urgent topic.

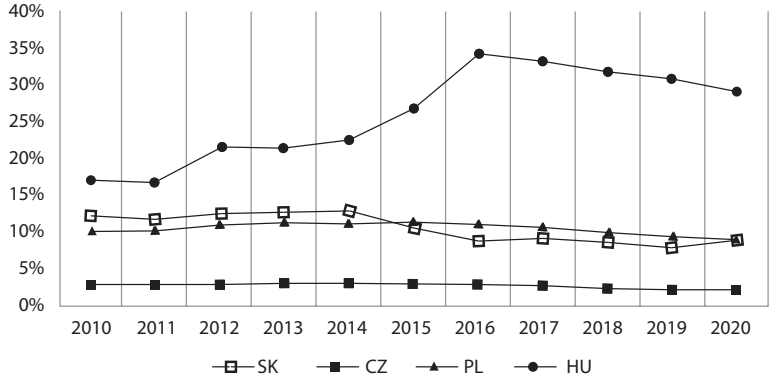

Fig. 2. LT to total revenues of LG (S1313)

Source: according to A. Vartašová, K. Červená, *Real Property Tax in the Countries of Visegrad Group – Comparative View*, "Studia Iuridica Lublinensia" 2022, no. 1, pp. 191–211.

The vulnerability of this system, especially in SK, was highlighted during the COVID-19 crisis, when, because of lock-downs, lower PIT revenues accrued in the state budget. Thus, the shares of the tax transferred monthly to the budgets of municipalities suddenly dropped drastically, which led to ad hoc agreements with municipalities on the provision of repayable financial support from the Ministry of Finance to compensate for the shortfall in the share of tax and taking loans.[37] Another example is the PIT share reduction caused by the state-increased personal tax benefits since 2023 forcing municipalities to raise LTs and fees for services or to limit services provided.[38] Such a revenue source model is susceptible to the economic situation in the country and updates of personal tax benefits, which is very likely to cause fluctuation in municipal incomes, as demonstrated in SK's case. Therefore, this state-fund dependence is hardly sustainable, and a conceptual solution should be sought, one of which could be rethinking the concept of local taxation, especially RPT.

Conclusions

The relevance of LTs in the V4 countries varies, but they play an important role in funding LGs and providing public services to residents. A critical feature of the V4 countries is that they have different levels of decentralization in terms of LG structures and funding. PL and CZ generally have more decentralized systems. HU tends towards an operation under a more centralized approach, while the Slovak LG system is roughly in the

[37] See e.g. A. Vartašová, K. Červená, *Finančné hospodárenie mesta Košice v kontexte pandémie Covid-19* [in:] *4. Slovak-Czech days of tax law: Taxation of Virtual Currency and Digital Services*, Košice 2021, pp. 384–398.

[38] See e.g. ZMOS, *Samosprávy: Zvýšenie daňového bonusu môže spôsobiť dvojitý postih*, November 29, 2022, https://www.zmos.sk/samospravy--zvysenie-danoveho-bonusu-moze-sposobit-dvojity-postih-oznam/mid/405616/.html [accessed: 2023.04.14].

middle of the range of the former in terms of decentralization and centralization. In PL, LGs have a significant degree of autonomy in taxing and spending. They are responsible for a wide range of public services, including education, healthcare, and public transportation. LGs have similarly broad tasks and responsibilities in CZ and SK. Given the strict separation of functions and powers between the state administration and LGs, the Hungarian system of tasks and responsibilities differs from the other V4 states, nevertheless, it also focuses on the provision of public services to residents. Overall, while the specific role and importance of LTs vary among the V4 countries, LTs are crucial sources of revenue for funding LG operations and providing public services to residents.

Furthermore, it is generally true that state financing is an essential source of revenue for LGs in the V4 countries and that LTs play a less significant role compared to state transfers. However, it is important to note that they still play an essential role in financing LGs and providing public services in the V4 countries, as they are the source that might be – to a certain and varying extent – influenced by the municipality itself.

As for the situation of LG funding in SK in particular, we conclude that there is a relatively high dependence on state-transferred and shared revenue sources. The LGs' own source of tax revenue, consisting of LTs, is important but it cannot be described as sufficient to secure fiscal autonomy for Slovak municipalities. This includes RPT and seven other LTs of lesser budgetary significance, where the municipalities have a certain range of competencies even regarding customizing legislation, but this covers only one of the four most relevant tax elements, i.e., tax rates. The others (taxpayers, tax bases, and taxable objects) are out of their scope of competence. This type of limitation is very similar in the other V4 countries, where even the existence of a "bianco tax" (i.e., the settlement tax) in HU does not, in practice, enable municipalities to compensate the state-determined legislative framework for local taxation possibilities and implement a settlement tax that would, e.g., target engineering structures or other possible structures not taxed by the building tax.

In recent times, we have experienced how a high dependence on state funding causes problems in municipal budgets, and for this reason, we are of the opinion that LGs' own sources of municipal tax revenues needs to be strengthened. We see room for a debate on the appropriateness of the narrow concept of taxable objects under RPT. The example of PL is noteworthy of mention here since the tax's scope is of a much more complex nature and covers a wide range of various structures used for business. We see that, very much like SK, CZ and HU also do not collect high revenues from RPT in contrast to the Polish case, and so it is the difference among these countries regarding the limited or broader scope of property taxation, as practically none of the three low-revenue countries taxes actual structures (including engineering ones), but only "regular" buildings with their RPTs. For example, should we consider the special situation of HU, where some engineering structures (public utility lines) are subject to a separate state tax, including this revenue would raise the property tax revenue share in GDP by one-third. Even though much has been debated[39] on potential reform to-

[39] E.g. K. Červená, C. Olexová, *Realita zdaňovania nehnuteľností na Slovensku (ekonomický pohľad)* [in:] *Stav a perspektívy verejných financií v EÚ = The condition of public finances in the EU and their future per-*

wards ad-valorem change of the tax base determination, to the best of our knowledge, no debate has been entertained on updating taxable objects. These, however, are considerable thoughts, and a more comprehensive discussion should be endorsed.

Literature

Belkovicsová D., *Daň z nehnuteľností ako významný zdroj financovania územnej samosprávy*, "Acta aerarii publici" 2020, nr. 1.

Bencsik A., *A helyi önkormányzatok (pénzügyi) autonómiájáról*, "Pro Publico Bono – Magyar Közigazgatás" 2017, nr. 1, https://bit.ly/3Urxarm.

Bird R.M., Slack E., *International Handbook of Land and Property Taxation*, Northampton 2004.

Bird R.M., Slack E., *Land and Property Taxation: A Review*, World Bank 2002.

Bordás P., *A települési adó kivetésének korlátai a Kúria joggyakorlatának fényében*, Kúria 2021, http://bit.ly/3VxyH0h.

Bordás P., *A települési adó rendszertani és gyakorlati kérdései*, "Pro Publico Bono – Magyar Közigazgatás" 2015, nr. 3, http://bit.ly/3APVRXF.

Borsa D., Hulkó G., Király P.B., Pardavi L., *A települési adók szabályozási környezete, gyakorlata és kihívásai: Van-e jelentősége a települési adónak krízishelyzetekben vagy egyáltalán?*, "KözigazgatásTudomány" 2022, nr. 2.

Červená K., Olexová C., *Realita zdaňovania nehnuteľností na Slovensku (ekonomický pohľad)* [in:] *Stav a perspektívy verejných financií v EÚ = The condition of public finances in the EU and their future perspectives*, Košice 2022.

Ercsey Zs., Bencsik A., *A helyi önkormányzatok pénzügyi autonómiájának átalakulása*, "Glossa Iuridica" 2020, nr. 1–2.

European Commission, *Taxes in Europe database*, https://ec.europa.eu/taxation_customs/tedb/index.html.

Explanatory Report on the Proposal of the Members of the National Council of the Slovak Republic Milan Vetrák, Petr Liba, Richard Nemec and Ján Szőllős for the Issuance of the Act on the Special Structure Tax and on Amendment of Certain Acts.

Hoffman I., *Only a Theoretical Possibility of the Ad Valorem Property Tax System – the Regulation on Immovable Property Taxes in Hungary*, "Analysis and Studies CASP" 2019, no. 2.

Hulkó G., *A cseh, szlovák és lengyel helyi adók és illetékek szabályozási rendszerének elemzése, különös tekintettel a szabályozás gyakorlati problémáira* [in:] *A települési adók elmélete és gyakorlata különös tekintettel Győr-Moson-Sopron Megyére*, ed. L. Pardavi, Győr 2022.

Hulkó G., *A V4-országok helyi önkormányzati rendszerének összehasonlító elemzése* [in:] *A helyi önkormányzatok nemzetközi környezete*, ed. E. Farkasné Gasparics, Budapest 2021.

Hulkó G., Fehér J., *Hungary* [in:] *Real Property Taxes and Property Markets in CEE Countries and Central Asia*, eds. M. Radvan, R. Franzsen, W.J. McCluskey, F. Plimmer, Maribor 2021.

Hulkó G., Pardavi L., *Practical Experience and the Significance of the Settlement Tax in Hungary*, "Annual Center Review" 2022, no. 14–15.

Liptáková K., Rigová Z., *Financial creditworthiness of Slovak municipalities* [in:] *Interpolis '20*, eds. D. Cevárová *et al.*, Banská Bystrica 2020.

---

spectives, Košice 2022, pp. 145–154; A. Románová, *Adequacy of Current System of Property Taxation in the Slovak Republic* [in:] *Real Property Taxes…*, pp. 80–116; I. Hoffman, *Only a Theoretical Possibility…*, pp. 71–83; M. Radvan, *Major Problematic Issues…*, pp. 15–35.

Miemiec W., Zawadzka P., *Poland* [in:] *Real Property Taxes and Property Markets in CEE Countries and Central Asia*, eds. M. Radvan, R. Franzsen, W.J. McCluskey, F. Plimmer, Maribor 2021.

Mrkývka P., *Některé úvahy o materiálním základu veřejné správy*, "Časopis pro právní vědu a praxi" 2003, nr. 2.

National Council of the Slovak Republic, *Details of the bill: Act of 22 December 2022 on the tax on a special structure, amending certain acts, returned by the President of the Slovak Republic to the National Council of the Slovak Republic for reconsideration*, https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9041.

Papcunová V., Balážová E., Agh P., *The Evaluation of the Relations Between the State Budget and the Local Self-Government Budgets (Case Study of the Slovak Republic)* [in:] *22nd International Colloquium on Regional Sciences. Conference Proceedings*, eds. V. Klímová, V. Žítek, Brno 2019.

Papcunová V., Országhová D., Hornyák Gregáňová R., *Evaluation of Tax Incomes of Municipalities in Conditions of the Slovak and Czech Republics*, "Acta Universitatis Bohemiae Meridionalis: scientific journal for economics, management and trade" 2018, no. 2.

Pardavi L., *Az önkormányzati adók és a köztehervise*lés [in:] *A települési adók elmélete és gyakorlata különös tekintettel Győr-Moson-Sopron Megyére*, ed. *idem*, Győr 2022.

Poliak L., *Finančná autonómia obcí – mikroekonomické východiská*, "Societas et Iurisprudentia" 2016, nr. 1.

Radvan M., *Correction Elements in Case of Czech Local Charges* [in:] *The Challenges of Local Government Financing in the Light of European Union Regional Policy*, eds. P. Mrkývka *et al.*, Brno 2018.

Radvan M., *Major Problematic Issues in the Property Taxation in the Czech Republic*, "Analysis and Studies CASP" 2019, no. 2.

Románová A., *Adequacy of Current System of Property Taxation in the Slovak Republic* [in:] *Real Property Taxes and Property Markets in CEE Countries and Central Asia*, eds. M. Radvan, R. Franzsen, W.J. McCluskey, F. Plimmer, Maribor 2021.

SITA, *Eustream will not have to pay the pipe tax, MPs agree with President Čaputová's comment*, 17 February 2023, https://sita.sk/venergetike/eustream-nebude-musiet-platit-dan-z-rury-poslanci-sa-stotoznili-s-pripomienkou-prezidentky-caputovej/.

Vartašová A., *Buildings & Structures as the Object of Real Property Taxes in the Countries of Visegrad Group* [in:] *Challenges of Contemporary Tax Law: Jubilee Book Dedicated to Professor Włodzimierz Nykiel on His 70th Anniversary,* Łódź 2023 – in print.

Vartašová A., *Komparácia systémov miestnych daní v krajinách Vyšehradskej štvorky* [in:] *Miestne dane v krajinách Vyšehradskej štvorky: zborník vedeckých prác*, ed. K. Liptáková, Prague 2021.

Vartašová A., Červená K., *Finančné hospodárenie mesta Košice v kontexte pandémie Covid-19* [in:] *4. Slovak-Czech days of tax law: Taxation of Virtual Currency and Digital Services*, Košice 2021.

Vartašová A., Červená K., *Real Property Tax in the Countries of Visegrad Group – Comparative View*, "Studia Iuridica Lublinensia" 2022, no. 1.

Vybíhal V., *Comparative study of the impact of local taxes and other revenues on the financial self--suffiency of municipalities* [in:] *PUBLICY 2020 I. – 30 rokov verejnej správy*, eds. P. Horváth, J. Machyniak, Trnava 2020.

ZMOS, *Samosprávy: Zvýšenie daňového bonusu môže spôsobiť dvojitý postih*, November 29, 2022, https://www.zmos.sk/samospravy--zvysenie-danoveho-bonusu-moze-sposobit-dvojity-postih-oznam/mid/405616/.html.

Summary

Anna Vartašová, Mária Bujňáková, Gábor Hulkó, Lajos Csörgits

Engineering Structures and Their (non)Taxation by Slovak Real Property Tax (in the V4 Context)

The paper deals with real property tax regulation, especially in the Slovak Republic, but also in the rest of the Visegrad group countries (Czech Republic, Poland, and Hungary) in the context of its position and role in funding local self-governments in all the countries studied, with a particular focus on engineering structures as a potential object of taxation, which is excluded from taxation in Slovakia. The authors focus primarily on the legislation of the Slovak Republic, and using the comparative method, they search for models of (non)inclusion of these objects into real property taxation among the V4 countries. They draw conclusions on the different approaches applied and suggest the most comprehensive system is in Poland. Based on a comparison of the real property tax revenues in the countries studied, these different approaches can be connected to the low real property tax revenues in the Slovak Republic (and also in the Czech Republic).

Keywords: real property tax; object of taxation; tax on buildings, engineering structures, utility lines; local government financing.

Streszczenie

Anna Vartašová, Mária Bujňáková, Gábor Hulkó, Lajos Csörgits

Budowle inżynieryjne i ich (nie)opodatkowanie słowackim podatkiem od nieruchomości (w kontekście V4)

Artykuł poświęcony jest problematyce podatku od nieruchomości w kontekście jego miejsca i roli w finansowaniu samorządu terytorialnego na Słowacji, a także w pozostałych krajach Grupy Wyszehradzkiej (Czechy, Polska, Węgry). W szczególności uwzględnione zostało zagadnienie obiektów inżynieryjnych jako potencjalnego przedmiotu opodatkowania, który został wyłączony z opodatkowania na Słowacji. Autorzy skupiają się przede wszystkim na ustawodawstwie Republiki Słowackiej i metodą porównawczą poszukują modeli (nie)włączenia tych obiektów do opodatkowania nieruchomości wśród krajów V4. Wnioskując z różnych stosowanych podejść, dochodzą do konkluzji, że najbardziej kompleksowy system istnieje w Polsce. Na podstawie porównania dochodów z podatku od nieruchomości w badanych krajach te różne podejścia można wiązać z niskimi wpływami z podatku od nieruchomości uzyskiwanymi na Słowacji (a także w Czechach).

Słowa kluczowe: podatek od nieruchomości; przedmiot opodatkowania; podatek od budynków, budowli inżynieryjnych, przyłączy; finansowanie jednostek samorządu terytorialnego.

Magdalena Budziarek
University of Łódź, Poland
mbudziarek@wpia.uni.lodz.pl
ORCID: 0000-0001-8512-1570

https://doi.org/10.26881/gsp.2024.1.07

Municipal Financing of Environmental Protection Activities as Part of the Sustainable Development Strategy of Local Governments in Poland (Selected Issues)

Introduction

Sustainable development is considered the basic and most important principle of both European and national environmental law. The implementation of its assumptions comprises a major part in the system for ensuring environmental security, which is among the priority tasks of European Union Member States.

From the principle of sustainable development derives the duty of each state as an entity responsible for the protection and rational shaping of the environment to create such conditions in which present and future generations can and will be able to employ its resources in a real and equal manner. Achieving this objective requires the pursuit of harmonized actions in the field of ecology, economy and social policy at the global, regional (e.g., European Union), national and local levels. To take pro-environmental action merely at the supranational or national level with the exclusion of the local level would significantly weaken the effectiveness of these activities, and sometimes even nullify their outcomes. Given the above, it should be stated that the municipal government is a key actor in the local implementation of sustainable development,[1] and environmental protection activities set before it are a substantial area of activity of this local government unit.

This article is devoted to the issues of financing environmental tasks in the form of targeted grants from the municipal budget to finance or subsidize the cost of pro-environmental investments. Given their purpose, these donations should be considered one of the instruments used by local government units to achieve local sustainable development goals. The article comprises an attempt to answer the question of the

[1] See more: P.B. Zientarski, *Zrównoważony rozwój samorządu terytorialnego z perspektywy polityki państwa* [in:] *Wybrane aspekty realizacji zasady zrównoważonego rozwoju samorządu terytorialnego*, eds. M. Sitek, P.B. Zientarski, Warszawa 2019, pp. 7–14; A. Katoła, *Oddziaływanie samorządu lokalnego na zrównoważony rozwój gmin*, "Zeszyty Naukowe Uniwersytetu Szczecińskiego. Studia i Prace Wydziału Nauk Ekonomicznych i Zarządzania" 2011, no. 24, pp. 51–62.

adequacy (appropriateness) of the legal provisions regarding financing of environmental tasks by municipal governments by means of targeted subsidies in the context of the obligations incumbent on these local government units under the principle of sustainable development. This issue, evaluating recent decisions of supervisory bodies connected with the financial management of local government units and the jurisprudence of administrative courts on the financing of environmental activities in the form of a targeted subsidy from the municipal budget, is a matter of much controversy.

1. Local government units as entities responsible for the state of the environment

According to Article 5 of the Constitution of the Republic of Poland of April 2, 1997,[2] environmental protection is a state task, the implementation of which is directly determined by the principle of sustainable development.[3] With this task, the legislature associates specific duties incumbent on public authorities. Pursuant to Article 74(2) of the Constitution, these duties include environmental protection.[4] Because local government bodies are – by virtue of Article 163 of the Constitution – organs of public authority,[5] the duty to protect the environment is addressed not only to state bodies, but also to local government ones.

Constitutional regulations that stipulate the obligation of public authorities to protect the environment determine the legal position of local self-government as an entity responsible for the condition of environmental resources jointly with the state. The obligation to protect natural resources incumbent on local governments cannot be limited merely to the municipality's duty to carry out environmental and nature protection tasks referred to in Article 7, para. 1, item 1 of the Act of March 8, 1990 on Municipal Government.[6] The constitutional obligation of public authorities to protect the environment (Article 74(2) of the Constitution) implies that in the execution by a municipality of any public tasks incumbent upon it related to satisfying the collective needs of its residents, as referred to in Article 7(1) of the Municipal Government Act, the unit should take into account the need to protect natural resources in accordance with the principle of sustainable development. Thus, the local government unit should choose such a manner of performing a given task that will not only best meet the needs of its local community in a given area, but also will not cause negative effects on the environment. At the very least, it should reduce such effects to a significant

---

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

3 A. Chmielarz-Grochal, J. Sułkowski, *O potrzebie świadomej konstytucjonalizacji statusu zwierząt*, PiP 2021, no. 9, p. 17.

4 M. Florczak-Wątor, *Komentarz do art. 74* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, 2nd edition, LEX/el. 2021.

5 W. Piątek, A. Skoczylas, *Komentarz do art. 163* [in:] *Konstytucja RP. Tom II. Komentarz do art. 87–243*, eds. M. Safjan, L. Bosek, Warszawa 2016.

6 Consolidated text: Journal of Laws 2023, item 40.

degree. As an example, the municipal government should provide such equipment for public facilities that, according to current knowledge, will meet the objectives of environmental protection.[7] All municipal activities for the implementation of its own tasks should be undertaken in line with the principle of sustainable development, and thus should aim to preserve the environment in an undeteriorated state, so that everyone, including future generations, will have equitable access to its resources.

The municipality's duty of general care for the environment, which should accompany the implementation of the entirety of its own tasks, should be distinguished from the municipality's satisfaction of the collective needs of the community's residents in the field of environmental and nature protection from Article 7(1) item. 1 of the Local Government Law. The municipal obligation to protect the environment and to conserve nature is implemented on the basis of the Act of April 27, 2001 the Environmental Protection Law,[8] which defines the scope of tasks incumbent on the municipality and the rules for their performance.

2. Rules for financing environmental protection by the municipal government in light of Article 403 of the Environmental Protection Law

According to Article 403(2) of the Environmental Protection Law, municipalities' own tasks include financing environmental protection within the scope specified by the legislator in Article 400a(1) of the Environmental Protection Law. Tasks that are financed by municipalities as part of environmental protection include projects related to water protection, waste management, preservation of the earth's surface (excluding remediation involving self-purification) and air protection, as well as activities in the field of environmental education and promotion of pro-environmental activities and the principle of sustainable development. The tasks financed by municipal governments as serving environmental protection comprise an open catalog, which is evidenced by the fact that these units can also finance other tasks that serve environmental protection and water management than those enumeratively indicated by the legislator, that is if they result from the principle of sustainable development and are consistent with environmental policy.

As follows from Article 403(2) of the Environmental Protection Law, the amount of municipal financing of the above tasks must be not less than the revenues from fees and penalties for the use of the environment constituting the income of municipal budgets, less the surplus on account of such income transferred to provincial funds. This method of determining the minimum amount of funds that a municipality is obliged to allocate to finance environmental tasks in a given year is not tantamount to

[7] K. Czajkowska-Matosiuk, *Dotacje na ochronę środowiska z budżetu gminy i budżetu powiatu*, "Prawo i Środowisko" 2011, no. 2, p. 53.

[8] Consolidated text: Journal of Laws 2022, item 2556.

the obligation to allocate revenues from fees and penalties for environmental purposes.[9] The legislator in Article 403(2) of the Environmental Protection Law merely stipulates that the funds allocated for these tasks in a given budget year should not be less than the amount of proceeds from fees and penalties referred to in Article 402(4–6) of the Environmental Protection Law.[10] Thus, a municipality is also authorized to finance environmental protection within the scope specified by the legislator in Article 404(2) in conjunction with Article 400a of the Environmental Protection Law with other funds constituting income in its budget.

Municipal financing of environmental protection activities takes place in accordance with the procedure specified in separate regulations, subject to para. 4–6. By virtue of Article 403(4) of the Environmental Protection Law, the legislator has made it possible to finance environmental protection in the form of a targeted subsidy from the municipal budget. The condition for providing such financial support is that the municipal council shall adopt a resolution specifying the principles for granting the subsidy, the procedure for granting such subsidy and the manner of accounting for it (Article 403(5) of the Environmental Protection Law), and furthermore that the municipality concludes an agreement applicable in this regard with the subsidy beneficiary (Article 403(6) of the Environmental Protection Law).

The obligation to refer to separate provisions defining the mode of financing environmental protection should be interpreted as the obligation to apply the provisions of the Act of August 27, 2009 on Public Finance,[11] which sets out the rules of budgetary spending by a local government unit. Financing environmental protection activities from the municipal budget – if the unit implements the task directly – is subject to the legal regime as expenditures for the implementation of other tasks of the municipality. The legislator does not prescribe any special rules in this regard.

The second mode of financing environmental protection by the municipality is to make expenditures in the form of an earmarked subsidy, as provided for in Article 403(4) of the Environmental Protection Law.

3. Legal limits to the application of Article 403(4) *et seq*. of the Environmental Protection Law in the light of case law and decisions of supervisory authorities

Municipal financing of environmental protection in the form of a special-purpose grant may only be carried out in accordance with the law. The municipality's use of such disbursement of budget funds for pro-environmental activities must be supported by

[9] Different: K. Gruszecki, *Komentarz do art. 403* [in:] *Prawo ochrony środowiska. Komentarz*, 6th edition, Warszawa 2022.

[10] M. Górski, M. Pchałek, W. Radecki, *Komentarz do art. 403* [in:] *Prawo ochrony środowiska. Komentarz*, 3rd edition, Warszawa 2019.

[11] Consolidated text: Journal of Laws 2022, item 1634.

Article 403(2–6) of the Environmental Protection Law, as well as by the provisions of the Public Finance Act setting the basic rules for the management of public financial resources by units of the public finance sector, including defining legal instruments for the disbursement of budget funds.

The basic condition for a municipality to finance environmental protection under Article 403(4) *et seq*. of the Environmental Protection Law concerns the legal form of spending municipal budget funds on environmental protection. Pursuant to Article 403(4) of the Environmental Protection Law, such financing may consist of the provision of a targeted grant within the meaning of the Public Finance Act. The legislator's stipulation in the text of this provision that the grant provided is a targeted grant within the meaning of Article 127(1) pt. 1(f) of the Public Finance Act is tantamount to being a grant within the meaning of Article 126 of the Public Finance Act. Thus, a grant under Article 403(4) of the Environmental Protection Law should have characteristics of such a form of expenditure of public funds.

Referring to the legal definition of a subsidy, which implies its monetary nature, it should be stated that benefits that are not monetary in nature are not a subsidy within the meaning of Article 403(4) of the Environmental Protection Law. This is because such benefits are not a subsidy as referred to in 126 of the Public Finance Act.[12] Notably, the assessment of the pecuniary nature of a given benefit constituting a subsidy within the meaning of the Public Finance Act must follow not only from the perspective of the subsidizing entity, but also of the subsidy beneficiary. This is because the entity is obliged to account for the subsidy in accordance with the principles set forth in Articles 252 and 252 of the Public Finance Act, and – in the event that statutorily defined circumstances are found – to return the subsidy and pay interest upon a violation of the repayment deadline. Considering the above, it should be stated that Article 403(4) and (5) of the Environmental Protection Law does not constitute a legal basis for the adoption of a resolution in which the municipal council specifies the principles of subsidizing pro-environmental projects in line with which the financial support granted from the municipal budget is not a subsidy within the meaning of Article 126 of the Public Finance Act.[13]

Secondly, the legislator has been prejudged in the wording of Article 403(4) of the Environmental Protection Law that the subsidy may serve to finance or subsidize investment projects in the field of environmental protection from Article 400a of the Environmental Protection Law. Thus, there is no possibility of granting a subsidy for current expenses; these funds, according to the case law, can only serve to finance or

[12] See more: E. Chojna-Duch, *Struktura dotacji budżetowej. Studium teoretycznoprawne*, Warszawa 1988, p. 44; K. Czarnecki, *Komentarz do art. 126* [in:] *Ustawa o finansach publicznych. Komentarz*, ed. Z. Ofiarski, LEX/el. 2021.

[13] See: resolution No. LI/329/2023 of the Paradyż Municipality Council of March 16, 2023 on adopting the rules for granting targeted subsidies to subsidize the implementation of sewerage connections in the Paradyż Municipality area, for the years 2023–2024, Official Gazette of Lodz Province 2023.2396.

subsidize the costs of an investment, understood as a specific good of a permanent nature, and not to cover current expenses.[14]

The provisions of the Environmental Protection Law also define a catalog of potential beneficiaries of the subsidy. In accordance with Article 403(4) of the Environmental Protection Law, such a subsidy may be granted to entities not included in the public finance sector, in particular to natural persons, housing communities, legal persons, entrepreneurs or units of the public finance sector that are municipal or district legal entities. A municipality, upon deciding to finance environmental protection by way of targeted subsidies, is required to specify in the resolution referred to in Article 405(5) of the Environmental Protection Law, the potential beneficiaries of such a subsidy. Indeed, the subject circle of subsidies is contained in the concept of "subsidy rules."[15] It should be noted, however, that the decision-making body does not hold complete freedom in determining the entities that can apply for a subsidy. It is true that the authority may select the eligible entities from among those listed in Article 403(4) of the Environmental Protection Law, and may also designate other entities as potential subsidy recipients, but it may not modify the given statutory category.[16] On the other hand, the municipal council is not allowed to limit the category of entities explicitly listed in Article 403(4)(1) of the Environmental Protection Law as potential beneficiaries, by stipulating that not all individuals (or, for example, not all housing communities, not all legal persons, not all entrepreneurs) are entitled to receive the subsidy, but only those who possess some additional characteristic.[17]

Another condition that the municipality must meet in order to grant targeted pro-environmental subsidies is the need to adopt a resolution, the scope of which shall be determined by law. In accordance with Article 403(5) of the Environmental Protection Law, the resolution prepared by the decision-making body shall determine the principles for granting targeted subsidies, including in particular the criteria for selecting investments for financing or subsidizing, as well as the procedure for granting the subsidy and the method of accounting for it. In light of Article 403(3) of the Environmental Protection Law, it is not legally permissible to grant subsidies from the municipal budget without first adopting a resolution under Article 403(5) of the Environmental

[14] Ruling of the Provincial Administrative Court in Warsaw of June 22, 2012, V SA/Wa 1112/12, https://orzeczenia.nsa.gov.pl; Ruling of the Supreme Administrative Court of October 5, 2021, I GSK 406/21, https://orzeczenia.nsa.gov.pl; Ruling of the Provincial Administrative Court in Lodz of September 6, 2022, I SA/Łd 597/22, https://orzeczenia.nsa.gov.pl.

[15] Ruling of the Provincial Administrative Court in Poznań of September 28, 2017, III SA/Po 513/17, https://orzeczenia.nsa.gov.pl.

[16] Resolution No. 2/2/2023 of the College of the Regional Chamber of Accounts in Lodz of January 16, 2023, Official Gazette of Lodz Province 2023.1721; Resolution No. III/11/2023 of the College of the Regional Chamber of Accounts in Bydgoszcz of January 18, 2023, Official Gazette of Bydgoszcz Province 2023.585; Resolution No. III/13/2023 of the College of the Regional Chamber of Accounts in Bydgoszcz of January 18, 2023, Official Gazette of Bydgoszcz Province 2023.582.

[17] Ruling of the Provincial Administrative Court in Poznań of April 27, 2022, III SA/Po 46/22, https://orzeczenia.nsa.gov.pl; Ruling of the Provincial Administrative Court of Krakow in the judgment of November 21, 2014, I SA/Kr 1656/14, https://orzeczenia.nsa.gov.pl; Ruling of the Provincial Administrative Court in Lodz of July 8, 2015, I SA/Łd 636/15, https://orzeczenia.nsa.gov.pl.

Protection Law. The above condition stems from the public-legal nature of the legal relationship of subsidizing, which is established between the subsidizing entity and the subsidized entity, and therefore must be authorized by the applicable legal provisions.[18] The legal basis for the subsidy relationship is Article 403(4) of the the Environmental Protection Law, in which the legislator has allowed for the possibility of providing subsidies for environmental protection while making the above financing conditional on the adoption of a resolution under Article 403(5) of the Environmental Protection Law. In the resolution, the decision-making body is to regulate the basic issues of subsidizing, i.e., the principles of granting the subsidy, the procedure for granting the subsidy, and the method of accounting for it. Failure to specify the above, e.g., the scope of potential beneficiaries, or the criteria for selecting investments for financing or co-financing, precludes the granting of a subsidy from the municipal budget. In the light of Article 403(4) and (5) of the Law, a targeted subsidy from the municipal budget for financing or subsidizing the costs of investments serving environmental protection is granted on the basis of the provisions of the Environmental Protection Law supplemented by local acts defining the principles for granting the subsidy, the procedure for its granting, and the manner of accounting for it. In light of this fact, it should be added that the current content of Article 403(5) of the Environmental Protection Law excludes the possibility of providing subsidies from the municipal budget if, for example, the rules would be determined by a body other than the municipal council (e.g., the executive body) or would result from acts, guidelines or programs issued by another entity (such as the Regional Fund for Environmental Protection and Water Management – WFOŚiGW or the National Fund for Environmental Protection and Water Management – NFOŚiGW).

The legitimacy of adopting a resolution on the basis of Article 405(5) of the Environmental Protection Law has been questioned by the supervisory authorities in the case of financing environmental protection by the municipality by way of a targeted subsidy, if the funds for such a subsidy originate from a grant from the Regional Fund for Environmental Protection and Water Management under priority programs implemented by the National Fund for Environment Protection and Water Management.[19] The starting point for consideration in this regard was an analysis of the municipality's position as an entity entering into the implementation of such a program. It was pointed out that the local government unit is required to fully accept the terms and conditions of a subsidy established by the fund and that modifications are not permitted.

[18] K. Sawicka, *Wydatki z budżetu gminy w formie dotacji. Zagadnienia prawnofinansowe*, "Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" 2009, vol. 80(3127), p. 151.

[19] Resolution No. 67/2022 of the College of the Regional Chamber of Accounts in Wroclaw of November 28, 2022, Official Gazette of Wroclaw Province 2022.5922; Resolution No. KI.411.24.2023 of the College of the Regional Chamber of Accounts in Krakow of February 8, 2023, Official Gazette of Krakow Province 2023.1541; Resolution No. 5/10/2023 of the College of the Regional Chamber of Accounts in Opole dated February 15, 2023, Official Gazette of Opole Province 2023.719; Resolution No. 179/g283/D/22 of the College of the Regional Chamber of Accounts in Gdańsk of December 21, 2022, Official Gazette of Gdańsk Province 2023.82.

Secondary to this, the content of the resolution adopted on the basis of Article 405(5) of the the Environmental Protection Law was, in fact, a duplication of the assumptions developed by the NFOŚiGW, with the local government unit acting only as an intermediary entity in the transfer of funds between the provincial fund for environmental protection and water management, and the final beneficiary. This led the supervisory authorities to conclude that there was no matter that could be regulated by a local law act on the basis of Article 403(5) of the Environmental Protection Law. In the opinion of the supervisory authorities, this provision provides a basis for the adoption of a resolution by a municipality's governing body only when it decides to subsidize investment tasks for environmental protection in the form of a grant, within the scope of its own tasks, as defined in Article 400a(1), (2), (5), (8), (9), (15), (16), (21) to (25), (29), (31), (32) and (38) to (42) of the Environmental Protection Law, in an amount not less than the proceeds from fees and penalties referred to in Article 402(4), (5) and (6) of the Environmental Protection Law, constituting income of the municipal budget, reduced by the surplus of such income transferred to the provincial fund, as provided for in Article 403(2) of the Law. The supervisory authorities believe that the above indicates that there is no legal basis for the decision-making body to adopt the resolution, and the adoption of such a resolution was considered pointless. In order to implement the program, the local government unit should conclude an appropriate agreement with the WFOŚiGW, as well as develop and publish documents related to the call for applications for final beneficiaries. However, a separate resolution of the decision-making body is not required for these activities. At the end of its considerations, the supervisory body referred to the principle of legalism of the actions of public authorities arising from Article 7 of the Constitution.[20]

The conclusion that there is no legal basis for a resolution to be adopted by the constituent body in the case of municipal financing of environmental protection by way of a targeted subsidy if the funds for such a subsidy come from a grant from the WFOŚiGW under priority programs implemented by the NFOŚiGW is not supported by current legislation.

This is because there is no legal basis for differentiating the legal position of a local government unit as an entity performing its own task in the field of environmental protection and the principles of financing such a task, depending on whether the funds for this purpose are obtained from an external entity (e.g., WFOŚiGW), or constitute revenues from fees and penalties for the use of the environment. It should be noted that the funds obtained by the municipality in the form of a grant from an external entity constitute revenues of its budget, which the entity – in accordance with the provisions of the program – is obliged to allocate for financing environmental protection. The provisions of financing environmental protection by the municipality are set forth in Article 403(3) of the the Environmental Protection Law ordering that the provisions of a separate law (the Public Finance Act) be applied in this regard, sub-

[20] Resolution No. 179/g283/D/22 of the College of the Regional Chamber of Accounts in Gdańsk of December 21, 2022, Official Gazette of Gdańsk Province 2023.82.

ject to the possibility of providing an earmarked subsidy under the principles set forth in para. 4–6. Therefore, questioning the obligation of the constituting body to adopt a resolution setting forth the principles of providing an earmarked subsidy, the procedure for providing the subsidy, and the method of accounting for it means rejection of the possibility of financing environmental protection by way of a subsidy from the municipal budget. This is because the granting of a subsidy from the municipal budget for environmental protection can only take place on the basis of Article 403(4) of the Environmental Protection Law as well as a resolution of the constituent body.

It must also be mentioned that the role ascribed to the municipality as an intermediary entity in the transfer of funds between the WFOŚiGW and the beneficiary of a grant from the municipal budget is in contradiction with Article 7(1) of the Municipal Government Act, as the analysis of its content indicates that the municipality is not authorized to carry out a task, the essence of which comes down only to the transfer of funds, by which it is supposed to play the role of an intermediary entity. The position emphasizing exclusively such a role of the local government unit and obliging it to pursue a number of actions related to the implementation of the program (e.g., to conclude an agreement with the WFOŚiGW, to develop and publish documents related to the call for applications for the final beneficiaries of the program) is therefore in contradiction with the constitutional principle of legalism. Indeed, according to Article 7 of the Constitution, public authorities act on the basis and within the limits of the law. Municipal bodies may therefore act only if a provision of the law so stipulates, and this action has limits defined by an act of statutory rank.

The provision by a municipality of targeted subsidies for environmental protection from funds that the entity has previously obtained from an external entity does not mean that it is not carrying out its own task in the field of environmental protection and nature conservation, as referred to in Article 7(1), item 1 of the Municipal Government Act. This task is performed by the municipality from its own income, independently, on its own behalf and on its own responsibility.

It should also be added that Article 403(4) and (5) of the Environmental Protection Law obligates the municipality to adopt a resolution specifying the rules for granting subsidies, the procedure for granting such subsidies and the manner of accounting for them, and the body exercising the law-making authority contained in the statutory authorization is obliged to act within the limits of this authorization. It is therefore not authorized to move beyond the scope of the statutory authorization or to regulate what has already been statutorily regulated. Furthermore, it is not allowed to include provisions in resolutions that are inconsistent with the Environmental Protection Law, even if such provisions result from acts, guidelines or programs formulated by external entities to finance environmental protection and are a condition for the municipality to obtain such funds. Therefore, under the current state of the law, the municipality's decision-making body has no legal possibility to adopt a resolution that, on the one hand, takes into account the provisions of such acts, guidelines or programs defining the principles of financing environmental protection in a manner different from that resulting from Article 403 of the Public Finance Act, and, on the other hand, does

not violate the provisions of the Environmental Protection Law and the Public Finance Law, which the local government unit is obliged to observe when performing its tasks within the scope of its authorizations. In order to enable units to obtain such funds, the wording of Article 403 of the Public Finance Act must be amended. Taking into account the conditions resulting from Article 403(4–6) of the the Environmental Protection Law for financing environmental protection by a municipality in the form of a targeted grant, it is reasonable to supplement it with a provision from which it would follow that in the case of implementation by a local government unit of a priority program of the National Fund for Environmental Protection and Water Management or the Provincial Fund for Environmental Protection and Water Management, the rules set forth in Article 403(4–6) shall not apply, as long as the local government unit fully implements the aforementioned program. It would also be necessary to stipulate the necessity for the decision-making body to adopt a resolution by virtue of which the municipality would accept the program in question for implementation. Such a resolution would constitute, together with the aforementioned provision, the legal basis for the disbursement of funds for a given purpose. In order to preserve the internal consistency of Article 403 of the Environmental Protection Law, the wording of paragraph 3 would also need to be amended accordingly.

It has already been demonstrated in light of the current wording of Article 403(4) and (5) of the the Environmental Protection Law that the condition for a municipality to provide targeted subsidies for environmental protection is the adoption of a resolution, the scope of which is determined by law. Thus, the failure of the decision-making body to regulate the issue (e.g., the method of accounting for the subsidy) in the resolution means that the resolution reviewed was adopted in violation of Article 403(5) of the Public Finance Act.[21] The legislator also stipulates that in the event that the subsidy constitutes public aid or de minimis aid, its award shall be made taking into account the conditions for the admissibility of such aid specified in the provisions of European Union law (Article 403(6) of the Environmental Protection Law).

The last condition for financing environmental protection in the form of a targeted grant under Article 403(4) *et seq*. of the Environmental Protection Law is the signing of an agreement concluded by the municipality with the grant recipient. This agreement – in accordance with Article 403(6) of the Environmental Protection Law – shall constitute the basis for the donation.

Conclusion

Consideration of sustainable development cannot proceed in isolation from environmental issues. This results not only from the assumptions of the 1992 Rio Declaration on Environment and Development and other international regulations, but also from

[21] Resolution No. 9/27/2023 of the College of the Regional Chamber of Accounts in Lodz of March 1, 2023, Official Gazette of Lodz Province 2023.2338.

national legislation. This is prevented both by Article 5 of the Constitution, in light of which the principle of sustainable development represents a kind of core around which the actions of public authorities to protect the environment are to be focused, and by Article 74 of the Constitution, which obligates public authorities to pursue a policy that ensures the ecological security of present and future generations (para. 1) and imposes an obligation on these authorities to protect the environment (para. 2). The above conclusion is also confirmed by the provisions of the Environmental Protection Law, which repeatedly refer to the principle of sustainable development [article 1, 3, 8, 13 etc.].

The degree to which local government units implement the objectives of sustainable development in the field of environmental protection depends on their financial capabilities. A lack of funds or the inadequacy thereof comprise the main barrier to the implementation of sustainable development. Therefore, any funds that local government units can obtain from external entities to cover the costs of environmental tasks should be considered a stimulating factor in the implementation of the concept of sustainable development. On the other hand, the inadequacy of legal provisions that comprise the basis for the activities of the local government unit in this regard, constituting a legal barrier to obtaining such funds, should be assessed as a limiting factor. Eliminating such barriers by changing the law is the duty of the Polish state, which bears responsibility for the current and future state of environmental resources.

Literature

Chmielarz-Grochal A., Sułkowski J., *O potrzebie świadomej konstytucjonalizacji statusu zwierząt*, "Państwo i Prawo" 2021, no. 9.

Chojna-Duch E., *Struktura dotacji budżetowej. Studium teoretycznoprawne*, Warszawa 1988.

Czajkowska-Matosiuk K., *Dotacje na ochronę środowiska z budżetu gminy i budżetu powiatu*, "Prawo i Środowisko" 2011, no. 2.

Czarnecki K., *Komentarz do art. 126* [in:] *Ustawa o finansach publicznych. Komentarz*, red. Z. Ofiarski, LEX/el. 2021.

Florczak-Wątor M., *Komentarz do art. 74* [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, ed. P. Tuleja, 2nd edition, LEX/el. 2021.

Gruszecki K., *Komentarz do art. 403* [in:] *Prawo ochrony środowiska. Komentarz*, 6th edition, Warszawa 2022.

Górski M., Pchałek M., Radecki W., *Komentarz do art. 403* [in:] *Prawo ochrony środowiska. Komentarz*, 3rd edition, Warszawa 2019.

Katoła A., *Oddziaływanie samorządu lokalnego na zrównoważony rozwój gmin*, "Zeszyty Naukowe Uniwersytetu Szczecińskiego. Studia i Prace Wydziału Nauk Ekonomicznych i Zarządzania" 2011, no. 24.

Piątek W., Skoczylas A, *Komentarz do art. 163* [in:] *Konstytucja RP. Tom II. Komentarz do art. 87–243*, eds. M. Safjan, L. Bosek, Warszawa 2016.

Sawicka K., *Wydatki z budżetu gminy w formie dotacji. Zagadnienia prawnofinansowe*, "Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji" 2009, vol. 80(3127).

Zientarski P.B., *Zrównoważony rozwój samorządu terytorialnego z perspektywy polityki państwa* [in:] *Wybrane aspekty realizacji zasady zrównoważonego rozwoju samorządu terytorialnego*, eds. M. Sitek, P.B. Zientarski, Warszawa 2019.

Summary

Magdalena Budziarek

Municipal Financing of Environmental Protection Activities as Part of the Sustainable Development Strategy of Local Governments in Poland (Selected Issues)

Local government units are obliged to implement sustainable local development strategies in the field of environmental protection. This article presents the scope of pro-environmental tasks incumbent on the municipality and the principles of their financing. For this purpose, an analysis of the provisions of the law was carried out with simultaneous reference to the literature, and court decisions and decisions of supervisory bodies were presented. The work established that the currently applicable regulations regarding the financing of environmental protection tasks by local government units constitute a legal barrier to the implementation of these tasks, and changes to the law in this area are proposed.

Keywords: sustainable development, local government unit, municipality, environmental protection, grants.

Streszczenie

Magdalena Budziarek

Finansowanie przez gminy zadań z zakresu ochrony środowiska jako element strategii zrównoważonego rozwoju samorządu terytorialnego w Polsce (wybrane zagadnienia)

Jednostki samorządu terytorialnego są zobowiązane do wdrażania lokalnych strategii zrównoważonego rozwoju w zakresie ochrony środowiska. W artykule przedstawiono zakres zadań prośrodowiskowych spoczywających na samorządach oraz zasady ich finansowania. W tym celu dokonano analizy przepisów prawa z jednoczesnym powołaniem się na literaturę, a także przedstawiono orzeczenia sądów oraz rozstrzygnięcia organów nadzorczych. W pracy ustalono, że aktualnie obowiązujące przepisy normujące zasady finansowania przez jednostki samorządu terytorialnego zadań z zakresu ochrony środowiska stanowią barierę prawną dla realizacji tychże zadań oraz zaproponowano zmiany prawa w tym zakresie.

Słowa kluczowe: zrównoważony rozwój, jednostka samorządu terytorialnego, gmina, ochrona środowiska, dotacje.

Hana Marková
Charles University in Prague, Czech Republic
markova@prf.cuni.cz
ORCID: 0000-0002-0204-4571

Marian Horváth
Danubius University in Sládkovičovo, Slovakia
marian.horvath@vsdanubius.sk
ORCID: 0000-0003-2792-2219

https://doi.org/10.26881/gsp.2024.1.08

Possibilities and Limits of Legal Instruments in the Field of State Support under the Current Conditions of the Czech Republic and Slovakia

Introduction

In recent years, many if not all spheres of life have been affected by the economic crisis that has gradually emerged as a result of the previous financial turmoil, and this has certainly been intensified by the COVID-19 epidemic. Last but not least, the deterioration of security has also contributed negatively to the current situation, with harsh economic consequences, especially in terms of security, stability and predictability in the energy sector.

Given the current state of play, demands for strengthening timely, effective support from public funds have inevitably increased. It is safe to say that without the support of public finances, the vast majority of small and medium-sized enterprises would not have been able to cope with the escalating economic crisis. There definitely would have been problems in the stability and functioning of large companies, which, in the long run, would have been reflected in emerging, deepening of problems in multinational companies. The need to strengthen the functioning of the economy is therefore a prerequisite to preserving society as we know it. The daunting economic situation of recent years is ultimately reflected in a poorer quality of life which affects everyone in some way, for example through the decreased availability of goods and services, inflation, the increased threat of widespread energy poverty from rising energy prices, and, not least of all, security risks.

The COVID-19 pandemic stunned the world not only from health and economic points of view, but the situation also surprised legislators from a legal point of view. At a time when it was necessary to deal with the situation on a society-wide basis and thus to take extraordinary legal steps to stabilise and manage the situation, government measures were adopted in both the Czech Republic and Slovakia on the basis of which forms of direct and indirect support from public finances were regulated.

The initial measures and decrees mainly concerned the modification of the form and manner of restricting rights and legally protected freedoms to prevent the spread

of disease, to ensure the availability of health-care, and to ensure the operation of essential sectors. Subsequently, measures to mitigate the impact of the crisis which gradually manifested itself in all sectors of the functioning of the state and society also came into play.

As a result of the restrictions on the freedom of association, both countries (but with different applications) temporarily froze or restricted the functioning of sectors such as tourism, trade and services, in a broad sense, industry, agriculture and many other sectors. The major economic impact of revenue shortfalls, disruptions in the supply of goods and restrictions on the performance of work was experienced by almost all companies, whether large or small, self-employed and, last but not least, by individuals.

The constraints caused by the COVID-19 crisis caused a chain reaction globally, to which, of course, public officials reacted.

The primary goal of this paper is to define the existing forms of state support that are currently applicable in the Czech Republic and Slovakia. The authors provide insight into the possibilities of receiving state support resulting from membership in the European Union, as well as an overview of national systems of subsidies, state guarantees, investment support and various tax relief that is available in the Czech Republic and Slovakia. The comparison of the method of application of the state support system in the Czech Republic and Slovakia aims to provide a theoretical perspective on relevant legal instruments and to underline their limitations.

In order to achieve these goals, standard scholarly methods were used especially description, analysis and synthesis. The sources used were the literature on financial law, internet sources and relevant legal regulations.

State Support from EU Funds

In this situation, membership in the European Union (EU) brought a number of economic benefits to both the Czech Republic and Slovakia, especially in terms of the possibility to benefit from European funds.[1]

"In order to organize funding efficiently, the EU budget is divided into headings (spending categories) and programmes that support groups in different EU policy areas. In principle, each individual programme supports a different policy area and group of recipients, but there are also some transversal priority areas that may receive funding from several programmes. The programming period 2021 to 2027 covers the following headings:

- Single market, innovation and digitisation;
- Migration and border management;
- Natural resources and the environment;

[1] See further H. Marková, R. Boháč, *Rozpočtové právo*, 1. ed., Praha 2007, p. 98; M. Karfíková *et al.*, *Teorie finančního práva a finanční vědy*, Praha 2018, p. 131.

– Security and defence;
– Neighbourhood and the world;
– European public administration."[2]

The EU's long-term goals and visions are implemented through European Structural Funds. The disbursement of these funds is based on the principles set out in the Partnership Agreement.[3] Based on this agreement, the national operational programme of a particular Member State (New Czechia, Modern Czechia, Slovakia Programme) is drawn up and approved. The operational programme identifies the objectives and priorities of each Member State, based on which national strategies, action plans or other documents are drawn up and through which the calls themselves are implemented. The individual recipients apply for the possibility to benefit from subsidies based on these calls. Some of the calls are addressed to natural persons as individuals (e.g. grants related to the renovation of houses), while others are addressed to companies carrying out certain types of activities only (depending on the part of the earmarked grants and the objective to be pursued by the use of the funds).

However, the EU also has mechanisms and capacities to respond to emergencies that require redirecting funds to meet emerging EU needs and objectives. These mechanisms were activated, for example, in the response to the COVID-19 pandemic and to deal with the energy crisis.

In response to the COVID-19 pandemic that affected Europe and the world, the EU allocated a stimulus package of EUR 2.018 trillion, made up of funds from the EU's long-term budget for 2021–2027, an increase through the NextGenerationEU programme and the Temporary Recovery Facility. This funding was intended to help overcome the economic and social damage caused by the pandemic and the transition towards a modern, sustainable, resilient Europe. The EU's long-term budget (seven years), which sets limits on EU expenses to provide the finance needed to meet policy priorities such as digitisation and the Green Deal, also provides room for flexibility, allowing the EU to respond to unforeseen circumstances. This can help boost investment in EU regions, offer support to farmers, businesses, researchers, students and citizens, as well as neighbouring countries.[4]

The NextGenerationEU programme with EUR 806.9 billion is designed to help rectify the immediate economic and social damage caused by the pandemic and prepare the market for the future. The aim is to create a European Union which is greener, more digital, more resilient and fit for current and forthcoming challenges. The focal point

[2] *The EU's 2021–2027 long-term budget and NextGenerationEU*, p. 15, https://op.europa.eu/sk/publication-detail/-/publication/d3e77637-a963-11eb-9585-01aa75ed71a1/language-sk [accessed: 2023.03.02].

[3] Basically, it is a document drawn up by the Member State together with its partners, in accordance with a multi-level governance approach, setting out the Member State's strategy, priorities and conditions for using the ESIF in an efficient and effective manner in order to deliver the Union's strategy for smart, sustainable and inclusive growth, and endorsed by the Commission after evaluation and dialogue with the Member State concerned.

[4] *The EU's 2021–2027 long-term budget*…

is the facility for providing grants and loans to support reforms and investment in EU Member States for a total of EUR 723.8 billion.[5]

Based on these basic documents and visions, each Member State has drawn up its specific plan for the use of the funds in question, from which the various options for drawing on funding support for specific projects are then derived. The plan submitted by the Czech Republic, called the National Recovery Plan, was approved in September 2021. The plan submitted by Slovakia, called the Recovery Plan, was approved in July 2021.

The recovery plans in question are based on priorities set by the EU (see above) and the visions and priorities in question are detailed in specific thematic clusters, or components, which inevitably included reforms and investments with precise allocation and timetables for funding. These components are further specified and broken down into specific milestones and targets against which they can be monitored and evaluated.

The National Recovery Plan of the Czech Republic set out the following priorities:
- digital transformation;
- physical infrastructure and green transition;
- education and labour market;
- institutions and regulation and business support in response to COVID-19;
- research, development and innovations;
- public health and resilience.

The National Recovery Plan contains six key areas which are implemented in 26 components. In total, the Czech Republic can draw EUR 7,035.7 million (CZK 179.1 billion) under this programme.[6]

The Recovery Plan approved by Slovakia specifies the following priorities:
- quality education;
- science, research and innovations;
- efficient public administration and digitisation;
- better health.

The thematic headings are subsequently subdivided into eighteen components, whereby a total of EUR 6.575 million could be drawn under this approved Recovery Plan.[7]

Interestingly, there are also programmes specifically targeted at certain territorial areas and their specificities. They include national cooperation programmes (e.g. the Central Europe 2021–2027 Interreg Programme or the Danube Transnational Programme 2021–2027), interregional cooperation (e.g. the ESPON Programme (2021–2027)) or cross-border cooperation. "We would like to note the Interreg Slovakia-Czech Republic Cross-border Cooperation Programme for the period 2021–2027. The pro-

[5] *Ibid.*, p. 8.
[6] *Národní plán obnovy*, 2021, https://www.planobnovycr.cz/pilire-a-komponenty [accessed: 2023.03.03].
[7] *Kompletný plán obnovy*, 2021, https://www.planobnovy.sk/kompletny-plan-obnovy/ [accessed: 2023.03.03].

grammes budget from the European Regional Development Fund (ERDF) amounts almost to EUR 85.5 million. Depending on the recipient type, the projects will be supported up to 92% of the budget, with a maximum of 80% from ERDF support. The programme is under the umbrella of the managing authority, the Ministry of Investment, Regional Development and Informatisation of the Slovak Republic and the national authority – the Ministry for Local Development of the Czech Republic."[8] The Czech Republic cooperates similarly with Poland, Austria, Bavaria, Saxony; the Slovak Republic has similar cross-border programmes with Austria, Hungary, Poland and the Interreg VI-A NEXT – Hungary – Slovakia – Romania – Ukraine multi-country programme.

At this point, it is also worth mentioning a programme that has been approved from the current budget period (the EU's long-term budget), namely the Fit for 55 package approved in December 2022. It is a set of proposals for review and update of the EU legislation and the introduction of new initiatives to ensure that EU policies are in line with the climate targets agreed to by the Council and the European Parliament.[9] The climate targets are implemented under the European Green Deal which aims to commit EU countries to the achievement of the climate neutrality by 2050 and to meeting their commitments under the Paris Agreement. European green deal is the EU's strategy for reaching the objective by 2050.[10]

Similarly to the its response to the COVID-19 emergency, the EU has also taken measures to mitigate and overcome the energy crisis. Europe's heavy dependence on Russian imports of strategic energy raw materials (such as crude oil and natural gas) and the consequent significant disruption of the security and reliability of the supplies in recent years have had a significant impact on the energy crisis and deepening it. These price increases have inevitably been reflected in raising overall production and operating costs for companies, not only in industry and agriculture sectors but transversally and in end-use energy prices as well. The European response to rising energy prices, together with the threat to energy security and the stability of the supply of energy raw materials coming from Russia, was the introduction of the REPowerEU plan[11] in 2022. The aim of this plan is to cut Russian gas supplies by 2030 by promoting an increase in the share of renewable energy sources and the substitution of fossil fuels, increasing energy efficiency and, not least, by reducing energy consumption and diversifying suppliers of strategic raw materials.

In line with these objectives and ideas, the options and forms of funding and support are set to overcome the energy crisis in the coming years. Member States can

---

[8] *Cross-border Cooperation Programme Interreg Slovakia-Czech Republic 2021–2027*, 2022, https://www.eurofondy.gov.sk/operacne-programy/programy-cezhranicnej-spoluprace-interreg/program-cezhranicnej-spoluprace-interreg-slovensko-cesko-2021-2027/index.html [accessed: 2023.03.03].

[9] *Fit for 55*, 2022, https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/ [accessed: 2023.03.10].

[10] *European Green Deal*, 2022, https://www.consilium.europa.eu/en/policies/green-deal/ [accessed: 2023.03.10].

[11] *REPowerEU plan: affordable, secure and sustainable energy for Europe*, 2022, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_sk [accessed: 2023.03.02].

use the remaining loans from the Recovery and Resilience Facility (currently EUR 225 billion) and new grants under the Facility, financed by auctioning emission allowances under the Emissions Trading Scheme, which are in the Market Stabilisation Reserve and are currently EUR 20 billion.[12]

At the same time, there are several other adjacent programmes from which EU subsidies can be drawn. It is possible to draw subsidies from some of the transversal programmes in combination, but it is essential to ensure that there is no overlap among individual programmes or duplication of subsidies. Furthermore, it is essential that the limits on state aid are respected and any exemptions in this area are applied equally across the EU. For this purpose, both the Czech Republic and the Slovakia have established national inspection services to carry out the tasks entrusted to them and to provide assistance to the European Anti-Fraud Office (OLAF – *Office européen de lutte antifraude*).[13]

In this section we focus on the outline of the EU subsidy system. The principles and rules set out at this level are central for determining the possibilities and limits of legal instruments in the field of EU-directed state support. European legislation does not apply to subsidies from EU funds only but the principles of state aid also apply to other forms of state aid from Czech and Slovak national sources.

Limits of Legal Instruments for National Public Support

The basic limits for the provision of public/state support in the Czech Republic and Slovakia are set by European legal acts. The European legal acts set out the main criteria and basic principles for state aid, ensuring that state aid does not unduly interfere with competition or the functioning of the EU's single internal market. Individual countries subsequently adopt national state aid legislation within defined frameworks.[14]

The main reason why state support is also limited by the EU is that a company receiving government support gains an advantage[15] against its competitors. As a gen-

[12] *Ibid.*

[13] European Anti-Fraud Office, 2023, https://anti-fraud.ec.europa.eu/index_sk [accessed: 2023.03.11].

[14] For example: act 215/2004 Coll. of laws on the regulation of certain relations in the field of state support and on the amendment of the act on support for research and development, as amended; act 117/1995 Coll. of laws on state social support, as amended; act 211/2000 Coll. of laws on the State Investment Support Fund, as amended; act 358/2015 Coll. of laws on the regulation of certain relations in the field of state aid and minimal aid and on the amendment and supplementation of certain acts (State aid act); act 57/2018 Coll. of laws on regional investment support as amended and supplemented by certain acts, act 368/2021 Coll. of laws on the recovery and resilience support mechanism and on amendments to certain acts; act 292/2014 Coll. of laws on the contribution from the European structural and investment funds and on amendments to certain acts (for the 2014–2020 programming period), act 121/2022 Coll. on the contributions from the European Union funds and on the amendment and supplementation of certain acts (for the programming period 2021–2027) and others.

[15] According to point 66 of the Commission Notice on the concept of State aid referred to in Article 107(1) of the Treaty on the Functioning of the EU (2016/C 262/01), an advantage is any econom-

eral rule, state aid is prohibited. Where state aid is granted in a manner incompatible with the internal market, both the provider and the beneficiary are exposed to the risk of having to reimburse this aid, with the recipient repaying aid including interest.

Pursuant to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), unless otherwise provided by the Treaties, an aid granted by a Member State or from state funds in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.[16]

An exception to the prohibition of state aid is the granting of state aid which is justified on grounds of general economic development, support of a social character, aid in connection with natural disasters or exceptional occurrences, and state aid to promote culture, preserve cultural heritage, promote the economic development of less-developed regions and to promote the common European interest, etc.

"The scope of benefits which constitute State aid is clarified, inter alia, by the Communication from the European Commission on the concept of State aid referred to in Article 107(1) TFEU (2016/C 262/01), according to which State aid may be, in particular:

- Direct provision of funds: subsidies, grants, loans, guarantees, direct investment in the capital of companies, or benefits in kind;
- Foregoing revenue that would otherwise have been paid to the State[17] (e.g. tax and social security receipts as a result of government tax exemptions or reductions, or exemptions from or reductions in social security contributions, or exemptions from the obligation to pay fines or other pecuniary penalties);
- Clear and specific commitment to provide state funds later;
- The provision of goods or services at below-market prices;
- Granting access to public property or natural resources or granting special or exclusive rights without reasonable remuneration in accordance with market prices;
- Exemption from costs necessarily connected with the economic activity of the undertaking (any reduction in charges; reimbursement of a part of the undertaking's staff costs relieving the undertaking of costs necessarily connected with its economic activity)."[18]

---

ic advantage which an undertaking would not be able to obtain under normal market conditions, i.e. without State intervention.

[16] Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union, Treaty on European Union (Consolidated version), Treaty on the Functioning of the European Union (Consolidated version) Protocols to the Annexes to the Treaty on the Functioning of the European Union Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 Correlation tables, 2016, https://eur-lex.europa.eu/legal-content/SK/TXT/?uri=CELEX%3A12016ME%2FTXT&qid=1678256407087 [accessed: 2023.03.08].

[17] Judgement of the Court of 16 May 2000, France v Ladbroke Racing Ltd and Commission, C-83/98 P, ECLI:EU:C:2000:248, paragraphs 48–51.

[18] Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (C/2016/2946), 2016, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.262.01.0001.01.ENG&toc=OJ:C:2016:262:TOC [accessed: 2023.03.08].

Based also on the aforementioned, we can say that the concept of public/state support can include a number of individual as well as areas/blocks and financial or non-financial state measures. In this way, the state can take into account, for example, the specific situation of an economic sector (e.g. compensation for adverse weather in agriculture) or exceptional events caused by natural or ecological disasters. Furthermore, the state may take into account the need to provide direct/indirect state support to a certain group of undertakings or, in specific cases, to individual companies (e.g. those which are in a certain sense of strategic importance for the state).

Moreover, direct and indirect state support can be used in the same way as in the cases of the COVID-19 pandemic or the energy crisis. This use of state aid took into account the exceptional situation which concerned all entities operating in the state's market economy, as well as individuals. As the globalised world is at greater risk of similar pandemics and recurrent outbreaks, it is not excluded that similar measures will also be used in the future. State support measures related to the energy economic crisis are also now being implemented. In the following section we will therefore take a closer look at some selected instruments of state aid introduced by the Czech Republic and Slovakia in this context.

De Minimis State Aid

In the context of the prohibition of state aid, it is also worth mentioning small-scale state aid, referred to as *de minimis* aid, the specification of which can be found in Commission Regulation 1407/2013 on the application of Articles 107 and 108 TFEU to *de minimis* aid.[19]

Given the limited amount and the conditions for granting this aid (EUR 200 000 per single undertaking over three years), it does not distort competition and is therefore not considered state aid. Unlike other types of state aid, this aid may also be granted as aid of an investment nature.[20]

Temporary Framework of State Aid

In response to the COVID-19 pandemic emergency, the EU adopted a temporary state aid framework in March 2020 to take full advantage of the flexibility of state aid legislation (authorised state aid) to support the economy. This temporary framework was based on Article 107(3)(b) TFEU and complemented other options available to Mem-

[19] Commission Regulation No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, 2023, https://eur-lex.europa.eu/legal-content/SK/TXT/PDF/?uri=CELEX:32013R1407&from=SK [accessed: 2023.03.11].

[20] *State support*, 2021, https://www.uohs.cz/cs/verejna-podpora/podpora-de-minimis-a-registr-de-minimis.html [accessed: 2023.03.06].

ber States to mitigate the social and economic impact of the COVID-19 pandemic in accordance with EU state aid rules (in particular the possibility under Article 107(2)(b) TFEU to compensate specific companies or sectors for damage directly caused by emergencies such as the COVID-19 pandemic). The temporary framework was in place until the end of June 2022 (with a number of targeted adjustments).[21]

Financial Contributions and Compensations Aimed at Maintaining Employment

The COVID-19 pandemic itself, as well as the extraordinary temporary restrictions on the rights and freedoms of society in order to control the spread of the disease also had serious economic consequences in both the Czech Republic and Slovakia. In order to support the sectors of the economy, employers, tradespeople and employees most affected by the pandemic and the constraints of COVID-19, both direct and indirect support was provided to companies as well as individuals from public funds between 2020 and 2021 (with an extended drawdown until 2022). In both countries the adopted measures had time limitations taking into account the evolution of the COVID-19 pandemic.

For example the Czech Republic implemented the measures in the packages named: Program Antivirus, Antivirus A,[22] Antivirus B[23] and in Slovakia similar measures were called: *Prvá sociálna pomoc* (The First Social Assistance) and *Druhá sociálna pomoc* (The Second Social Assistance)[24] or *Kurzarbeit*.[25] The measures in question were implemented mainly in the form of allowances and compensations granted to em-

[21] Coronavirus Outbreak – List of Member State Measures approved under Articles 107(2)b, 107(3)b and 107(3)c TFEU and under the State Aid Temporary Framework, 2016, https://competition-policy.ec.europa.eu/system/files/2023-02/State_aid_decisions_TF_and_107_2b_107_3b_107_3c.pdf [accessed: 2023.03.08].

[22] Compensation amounted to 80% of the salary paid, including insurance premiums, with a maximum amount per employee of EUR 1,659.01/CZK 59,000.

[23] Compensation worth 60% of the costs which consisted of the salary reimbursement paid to the employee and the corresponding amount of the statutory contributions - with a maximum value of EUR 1,233.62/CZK 39,000.

[24] Compensation to employers: a contribution to an employee's wages in the amount of 80% of their average earnings (up to a maximum of EUR 1,100), or to self-employed persons who were forced to close their enterprises pursuant to decisions of the Public Health Office, or a contribution to compensate for the loss of income from self-employment (in case of a drop in sales of at least 20%).

[25] Under *Kurzarbeit*, the form of public aid was basically set up for two possibilities of drawing contributions, either in the form of reimbursement of wages up to a maximum of 80% in the event of an impediment on the part of the employer (whereby the company does not have to prove a drop in sales); or in the form of proving a drop in sales, on the basis of which the company will receive the relevant amount for employee wages up to a maximum of EUR 540 per month. The method of determining the decrease in net turnover and income from business was regulated by government decree 76/2020 Coll. of laws on the method of determining the decrease in net turnover and income from business and other self-employment activities.

ployers whose employees were in ordered quarantine or isolation or did not work due to obstacles on the employer's side.

The form of application of state aid from the aforementioned packages was basically set up in the Czech Republic and Slovakia in such a way that recipients of aid (employer or self-employed person) submitted an application for the provision of the specified compensation and on the basis of this application the financial contribution was paid to them. Both countries set out the conditions for recipients which had to by met in order to qualify for the compensation allowance.

The Czech Republic provided allowances "on the basis of an agreement concluded between the recipient and the Czech Labour Office (or through an application in which they filled in the relevant application form), and the funds were provided on the basis of an account processed by the employer after the end of the calendar month in which the wages and statutory contributions in question were paid by the employer. Only those employers were entitled who strictly comply with the Labour Code; who have paid the wages and contributions in question; they (the employers) may claim compensation for only employees who are not on notice/no notice is given to them, who are employees and are covered by sickness and pension insurance."[26] Similar conditions for recipients were set in Slovakia.

As part of the above-mentioned packages of measures, Slovakia modified, inter alia, the conditions for providing public support in the form of sickness and nursing benefits to parents for all days during the closure of schools and pre-schools, which was also a form of a direct state aid, this time to employees, who were compensated in some way for the loss of income.

An indirect state support related to the situation caused by the COVID-19 pandemic was implemented, for example, in the form of the deferral of levies (in Slovakia, employers and self-employed persons were allowed to defer paying levies to health and social security insurance companies for March 2020), postponing of tax return submission (implemented by both the Czech Republic and Slovakia in the form of not charging the default interest on the late submission of tax returns or penalties for the late submission of tax returns), but also by deferring payment of value added tax (allowed by the Czech Republic for 12/2020, 01/2021 to 03/2021, for the fourth quarter of 2020 and the first quarter of 2021). As for other forms of direct and indirect state support included the possibility of tax payment in instalments, the remission of administrative fees and many other measures.

Bank Guarantees and Loan Moratoriums

Both Slovakia and the Czech Republic took measures in the monetary area concerning credit moratoriums and state bank guarantees. One of the measures taken by the

[26] *Antivirus – employment protection – employment support*, 2021, https://www.mpsv.cz/antivirus [accessed: 2023.03.06].

Czech government to combat the COVID-19 pandemic was the adoption of a credit moratorium for persons unable to repay their debts by Act 177/2020 Coll. of laws on certain measures in the field of repayment of loans in connection with the COVID-19 pandemic. It was possible to postpone loan instalments for three or six months. Slovakia adopted Act 67/2020 Coll. of laws on certain extraordinary measures in the financial sector in connection with the spread of the dangerous contagious human disease COVID-19, which allowed bank customers to apply once for a deferment of loan repayments for nine months maximum.

In the Czech Republic state bank guarantees were provided to loans with a maximum amount of CZK 50 million for the purposes of financing company operation. In the case of companies with 250 to 500 employees, the guarantee was 80%, in case of fewer employees the Czech-Moravian Guarantee and Development Bank guaranteed 90% of the loan volume. On the other hand, in Slovakia, guarantees were provided for loans worth between EUR 2 million and EUR 50 million. These are significantly higher volumes than in the Czech Republic. At the same time, the purpose was not only to finance operations but also investment activities. As in the Czech Republic, the level of the guarantee was 80% of the loan amount.

Energy Crisis

In response to the energy crisis, the Temporary Framework for State Aid has been adapted for the use of state aid to support the economy under the circumstances of the energy crisis. A temporary crisis framework for state aid was adopted in March 2022, which was subsequently adjusted in line with the objectives of the aforementioned REPowerEU plan. This temporary crisis framework will be in force until 31 December 2023; its possible further duration will be assessed on an ongoing basis.[27]

In the context of the energy crisis, coupled with a sharp rise in energy prices, the Czech Republic and Slovakia have also taken extraordinary measures to support small and large employers and tradespeople in order to preserve employment and the functioning of the market.

The Czech Republic has adopted a government aid programme called Umbrella Against Expensiveness, which encompasses a number of instruments of both direct and indirect state support targeting companies as well as individual groups of the population. Currently, this state support also includes, for example, provision of advice on the use of subsidies for the renovation of buildings, housing allowance (in the event that housing costs - rent, electricity, gas, utilities, water charges, etc. are higher than 30% of net income), housing supplement, a one-off child allowance of EUR 5,000, as well as immediate emergency assistance. It is also worth mentioning, for example, the

[27] *State aid: Commission prolongs and amends Temporary Crisis Framework*, 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_6468 [accessed: 2023.03.08].

reduction of excise tax on diesel and various support instruments for the elderly.[28] In the context of the energy crisis, the Czech Republic has further agreed to cap energy prices from 1 January 2023. The government has allocated more than EUR 1.2 billion (over CZK 30 billion) to support large energy consumers.[29]

At the end of 2022, Slovakia adopted support schemes for individual groups of consumers affected by the surge in energy prices. In December 2022, the Ministry of Economy of the Slovak Republic announced a call for all entities carrying out economic activities. Not only could companies ask for compensation, but so could the public sector such as municipalities, social care centres and civic societies. Large, energy-intensive companies could also apply. Publishing the call, processing and the disbursement of compensation was carried out by the Ministry of Economy of the Slovak Republic until the end of 2022. Applicants who met the conditions set out in the call received a subsidy of 100% of the eligible energy costs of the difference from the sum they paid for the supply of the commodity during the eligible period. Furthermore, in January 2023, the Slovak government proceeded to cap energy prices, but the capping was for a group of customers from the small business category[30] and for household consumers. Another form of state support was the announcement of the first call for EUR 40 million to help energy-intensive businesses to combat high energy prices. The total allocated amount was disbursed to 138 companies. Further, many other measures have been taken to the aid citizens as individuals.[31]

Conclusion

A company that receives public/state support gains an advantage over its competitors. It can be said that the possibilities of legal instruments in the field of state support are limited to a large extent by the fact that state aid is generally prohibited unless it is justified on the grounds of general economic development, other exceptional situations and events or unless it is aid in amounts that do not pose risks to the market or is granted in accordance with the principles of *de minimis* aid.

This article deals with the framework of possibilities and limits of legal instruments in the field of state support under the current conditions in the Czech Republic and Slovakia. Based on the aforementioned we can say that they do not differ much in principle as they are based on European legislation, which lays down the basic principles and rules for granting state support. Adherence to the same principles and practices

---

[28] *"Umbrella against Expensiveness" – government aid programme*, 2023, https://www.destnikprotidrahote.cz/ [accessed: 2023.03.11].

[29] *Large companies applied for compensation of expensive energy for more than CZK 5.5 bln*, 2023, https://oenergetice.cz/energetika-v-cr/velke-firmy-zazadaly-o-kompenzace-za-drahe-energie-za-vice-nez-55-miliardy-kc [accessed: 2023.03.11].

[30] These are businesses with electricity consumption up to 30 MWh per year and gas consumption up to 100 MWh per year.

[31] *Overview of aid*, 2023, https://www.mhsr.sk/prehlad-pomoci [accessed: 2023.03.12].

in the area of state support as well is a fundamental prerequisite for the functioning of the single European internal market; therefore it is highly appropriate that the application of these rules in various Member States be uniform in principle.

Literature

Karfíková M. *et al.*, *Teorie finančního práva a finanční vědy*, Praha 2018.
Marková H., Boháč R., *Rozpočtové právo*, 1. ed., Praha 2007.

Summary

Hana Marková, Marian Horváth

Possibilities and Limits of Legal Instruments in the Field of State Support under the Current Conditions of the Czech Republic and Slovakia

Currently, more and more companies are facing difficult financial situations under the influence of the ongoing financial and energy crisis. Often, the survival of companies depends on timely, appropriate financial assistance from the state. In the following article, the authors take a closer look at the forms of state support that are currently applicable in the Czech Republic and Slovakia. The authors provide insight into the possibilities of receiving state support resulting from membership in the European Union and an overview of national systems of subsidies, state guarantees, investment support, and various tax relief schemes that can be used in the Czech Republic and Slovakia. The comparison of how the state support system is applied in the Czech Republic and Slovakia aims to provide a theoretical perspective on the relevant legal instruments as well as to underline their limitations.

Keywords: financial law, state support, legal instruments.

Streszczenie

Hana Marková, Marian Horváth

Możliwości i ograniczenia instrumentów prawnych w zakresie państwowego wsparcia w obecnych warunkach Republiki Czeskiej i Słowacji

Obecnie coraz więcej firm znajduje się w trudnej sytuacji finansowej pod wpływem trwającego kryzysu finansowego i energetycznego. Często przetrwanie firm zależy od terminowej i odpowiedniej pomocy finansowej państwa. W artykule autorzy przyjrzeli się bliżej formom pomocy oferowanym przez państwo, które obowiązują obecnie w Czechach i na Słowacji. W opracowaniu omówiono możliwości otrzymania pomocy od państwa wynikającej z członkostwa w Unii Europejskiej, a także zaprezentowano przegląd krajowych systemów dotacji, gwarancji państwowych, wsparcia inwestycji czy różnych ulg podatkowych, z których można skorzystać w Czechach i na Słowacji. Porównanie sposobu stosowania systemu wsparcia państwa w Cze-

chach i na Słowacji ma na celu przedstawienie teoretycznego spojrzenia na odpowiednie instrumenty prawne, a także podkreślenie ich ograniczeń.

Słowa kluczowe: prawo finansowe, pomoc państwa, instrumenty prawne.

Adrián Popovič
Pavol Jozef Šafárik University in Košice, Slovakia
adrian.popovic@upjs.sk
ORCID: 0000-0003-0676-7168

https://doi.org/10.26881/gsp.2024.1.09

Evaluation Criteria of the EU's Own Resources[1]

Introduction

The issue of the EU budget is undoubtedly extremely complex, but also quite complicated. In this context, it can be pointed out that this complexity is essentially inherent to the EU budget and largely characterizes it. This is supported by the fact that the issue of the EU budget is basically divided into two major parts, which are the revenue and the expenditure sides. Each of these parts reflects the implementation of different relationships that are inherently related to their essence.

The expenditure part of the EU budget is mainly focused on financing various activities for which the EU as a whole has competencies and the performance of which ultimately reflects the implementation of its policies. These include financing rural development, cohesion policy, maintaining and preserving the environment, climate protection, support for human rights, maintenance and support of the single internal market, joint solutions to the impacts of various crises on EU Member States, and more. The expenditure part of the EU budget serves to achieve real goals according to the policies, consensus, and direction of the EU (and undoubtedly also its individual Member States).

On the other hand, the revenue side of the budget reflects a complex set of relationships and rules that create the main fund of financial resources. Based on this, the expenditure part of the EU budget is then implemented, and at the outset, it is possible to define the basic interdependent relationship between the expenditure and revenue sides of the EU budget. Without the revenue side, the expenditure side of the EU budget could not be implemented, but without the expenditure side, the creation of the revenue side of the EU budget would lose its meaning. The methods and rules for ensuring the fulfillment of this financial fund are quite complicated, and this complexity is conditioned by achieving the rare consensus of all EU Member States which

[1] This work was supported by the Slovak Research and Development Agency under Contract no. APVV-19-0124 and was written as part of grant project VEGA no. 1/0485/21: "Simultaneity and possibilities of reforming the system of own resources of the EU budget (legal and economic aspects also in the context of the consequences of the COVID-19 pandemic)."

agreed to these rules. It is necessary to state that the revenue side of the EU budget is an extremely sensitive issue for EU Member States, as it is precisely the Member States that finance the EU budget and fulfill their financial obligations to the EU based on predetermined rules and conditions.

In connection, and not only, with the issue of the difficulty of reaching a consensus on the issue of own resources of the EU budget, the evaluation criteria of own resources have an irreplaceable place. Evaluation criteria can be defined as measures according to which it is possible to assess an object of evaluation from various perspectives that are considered relevant for certain reasons and that are part of the evaluation process. Such an approach allows for the interdisciplinary, or multidimensional, evaluation of the selected object (e.g. own resources of the EU budget) to take into account the broadest possible framework of circumstances. The result should be the adoption of the most objective conclusion on the objects evaluated and their suitability for application with regard to predetermined standards, or minimum requirements.

The main content of this article examines the current determinants expressing qualitative and quantitative factors that affect the final shape of the revenue side of the EU budget and that are reflected in the evaluation criteria of the EU's own resources budget.[2] The priority goal of this contribution is to establish a current and effective system of evaluation criteria for the EU's own resources. To this end, the contribution will include an assessment of the evaluation criteria for the EU's own resources as viewed by the European Commission and the High-Level Group on Own Resources, an assessment of the evaluation criteria for the EU's own resources studied in the academic community, and a synthesis of these findings for the purpose of establishing a current and effective system of evaluation criteria for the EU's own resources. The hypothesis of this contribution will be to answer the question of whether it is necessary to reform the evaluation criteria for the assessment of current and potential own resources, and if so, in what way.

To answer the question posed in the hypothesis, the author will use various methods for writing academic papers, mainly analysis, synthesis, comparison, and others.

Many academic and professional articles have been published in the field under study since the early days of the development of the EU and its budget, the significant findings of which, with regard to recent developments in this area, will be mentioned further in the article.

---

[2] Currently, within the framework of the Multiannual Financial Framework for the years 2021–2027, the financing of the EU budget (excluding the Recovery Plan) is secured by the following own resources of the EU budget: traditional own resources (customs duties), own resource based on VAT, own resource based on GNI, and own resource of the EU budget based on the weight of non-recycled plastic packaging waste. See: A. Popovič, *Systém vlastných zdrojov rozpočtu EÚ ako materiálna podstata fondového hospodárstva EÚ – súčasnosť a budúcnosť* [The EU Own Resources System as the Material Basis of the EU Budget – Present and Future] [in:] *Právo fondov EÚ v teórii a praxi* [The Law of EU Funds in Theory and Practice], Košice 2020, pp. 17–25; R. Buzková, *Own Resources in the Light of European Council Conclusions on the MFF and Next Generation EU*, "Financial Law Review" 2020, no. 4, pp. 22–34.

1. Determination of evaluation criteria for own resources of the EU budget

Without doubt it can be stated that setting the right evaluation criteria by which current and proposed own resources of the EU budget are evaluated can help facilitate the reform process of the own resources system and achieve a jointly agreed reform goal in the desired change of EU financing.[3] The strength and importance of these evaluation criteria can also be emphasized by stating that the final form of the reformed system of own resources will reflect the evaluation criteria agreed upon by the Member States and EU institutions, which they will prioritize and which they will not consider significant.[4]

There has been a large number of proposed evaluation criteria in the literature, political documents, evaluation reports, and proposals from EU institutions (especially the European Commission) as well as in academic publications over the past two decades. This has created a system of requirements, absolute respect, and unconditional application of which would largely hinder the reform of own resources. This applies especially because it is unlikely that a certain proposed own resource would fully meet all given criteria. Some criteria may even be contradictory or mutually exclusive. Therefore, it will depend on the Member States and EU institutions themselves which evaluation criteria they prefer. The requirement to assess current own resources or the conformity of new own resources with the purpose and objective of the founding treaties cannot, of course, be affected.

For these reasons, it is necessary to first examine the content and meaning of the evaluation criteria to identify those that will ensure objectively determining the most acceptable own resources for future EU budget financing, for the purposes of as objective as possible further assessment of current and proposed own resources.

2. The evaluation criteria established by the European Commission and the High-Level Group on Own Resources

The European Commission has declared from the beginning that basic evaluation criteria for the EU budget financing system should include simplicity, transparency, equality, and democratic accountability. Recently, the High-Level Group on Own Resources examined these values and concluded that they are not new and have been

---

[3] See: A. Popovič, *Vlastné zdroje rozpočtu EÚ a ich reforma* [Own Resources of the EU Budget and their Reform] [in:] *COFOLA 2022: Sborník příspěvků mladých právníků, doktorandů a právních vědců: část 3* [COFOLA 2022: Collection of Papers by Young Lawyers, PhD Students, and Legal Scholars: Part 3], Brno 2022, pp. 128–138.

[4] For more information on the methodology of selecting appropriate evaluation criteria, see: I. Begg *et al.*, *Financing of the European Union Budget. Study for European Commission, Directorate General for Budget – Final report*, 2008, pp. 70–74.

repeatedly identified as necessary for the further reform of the own resources system. However, these general criteria are too vague and conflicts arise when they are analyzed in detail and applied. This conclusion stems from the broad possibilities for interpretation and the varying degrees of applicability necessarily tied to the level of subjective influence of the evaluator of each own resource.

The High Level Group on Own Resources devoted substantial attention to the assessment of these evaluation criteria and concluded that, based on previous research, analysis, and taking into account the specific nature of the EU budget and its own resources, it would be appropriate to divide conceptually the evaluation criteria as follows:

1. general criteria applied in economic theory;
2. criteria established after taking into account the specific character of EU law, its meaning, and significance.[5]

Based on the above, the evaluation criteria for the EU's own resources specified by the European Commission and the High-Level Group on Own Resources can be concretized as follows, and the following questions can be asked:

I. General criteria:

1. justice – this criterion expresses the requirement of the fair implementation of own resources and the fair functionality of any corrective mechanism. Within this criterion, it is necessary to seek answers to the following questions when examining current own resources or creating potential own resources:
   a. vertical justice – will the introduction of own resources affect income redistribution and to what extent?[6]
   b. horizontal justice – will the own resource have a comparable impact on comparable taxpayers?
   c. fair contribution – will this own resource increase the contribution of Member States to this budget in line with their economic strength?
2. efficiency – applying this criterion can examine any additional burden on selected sectors or administrative burden on the EU administrative structure. Subsequently, the following questions can be posed:
   a. efficient allocation of resources – will financing the EU budget through its own resources lead to efficient allocation of resources in the EU?

---

[5] The European Commission prefers a different way of dividing criteria, which is explained in its working document, arguing that the system of financing the EU budget should be evaluated using these criteria: 1) budgetary criteria – ensuring sufficient and stable financing of the EU and budgetary discipline; 2) integration criteria – ensuring financial autonomy, transparency, and linkage to EU policies. Another aspect of this criterion is ensuring fiscal equivalence – those who benefit from EU programs financed by the expenditure side of the EU budget should also be those who finance these programs; 3) efficiency criteria – internalizing externalities, implementing the principle of subsidiarity in EU law, limiting and minimizing operating costs; 4) justice criteria – ensuring justice at the level of Member States, ensuring horizontal and vertical justice for taxpayers [COM(2011) 510 final, pp. 12–13].

[6] In general, it holds that payment capacity is usually proportionally higher among wealthier citizens (e.g. progressive taxation), which can achieve higher net income redistribution towards poorer citizens. See: I. Begg, *An EU Tax: Overdue Reform or Federalist Fantasy?*, Berlin 2011, p. 7.

   b. low operating costs – will it be easy to manage the own resource, and will the costs of ensuring its compliance with regulations be low?
3. sufficiency and stability – these criteria will allow for the evaluation of the estimated revenue from the own resource. In this sense, it will be necessary to pose these questions:
   a. sufficiency – will the revenue from the own resource represent a sufficient amount of financial resources needed to cover the EU's expenditures in the long term?
   b. stability – will the own resource represent stable income for the EU budget?
4. transparency and simplicity – this criterion evaluates the complexity of implementing an own resource, securing financial autonomy, and the time required for its implementation. Answers to the following questions are necessary:
   a. visibility and simplicity – will the own resource be visible and recognizable to EU citizens, and will it be easily understandable for them?
   b. gradual implementation of the new own resource – in what timeframe will it be possible to introduce and fully implement the own resource?
5. democratic accountability and budgetary discipline – this criterion can only be fully met when applied to the entire system of own resources. It will allow for an examination of whether the own resource restricts democratic accountability, how responsibilities are divided at various levels of managing the own resource, and whether it ensures and strengthens budgetary discipline. This criterion, however, is more dependent on the wording of the EU founding treaties and legal acts than on the nature of own resources.

II. Specific criteria conditioned by the nature of the EU:
1. focus on European added value (limitation of Member States' own interests) – this criterion will evaluate the relationship between own resources and EU law (*acquis Communautaire*), EU policies, their objectives, and the single internal market. In other words, it will be necessary to find clear political connections between revenue reform and expenditure reform. It will also be possible to assess whether own resources can be perceived in their true sense, that is, their wording and purpose as set out in the founding treaties in the section on EU financing through own resources;
2. subsidiarity principle and fiscal sovereignty of Member States – this criterion will serve to evaluate legal issues related to own resources and their harmonization and application across the EU. In this regard, it will be important whether Member States (national parliaments and their governments) agree to the introduction of EU own taxes and, on this basis, if it will be possible to examine the extent to which fiscal/tax sovereignty of Member States will be further implemented.[7] This criterion

[7] A. Popovič, R. Benko, *Limity ukladania vlastných daní EÚ* [Limits on Imposing EU Own Taxes] [in:] *Stav a perspektívy verejných financií v EÚ: recenzovaný zborník vedeckých prác* [State and Perspectives of Public Finances in the EU: Reviewed Collection of Academic Papers], Košice 2022, pp. 83–98.

is also more dependent on the wording of the founding treaties than on the nature of own resources;

3. expected political acceptability of new resources – this criterion is closely related to the overall direction of the EU and the agreement that Member States reach regarding the question of the EU's further direction. As it is not possible to predict with certainty the political will to accept an own resource, the application of this criterion will express the expected political acceptability of the new own resource.[8]

3. Evaluation criteria established by the academic community

For the purpose of maintaining the complexity of the research, it also seems necessary to point out the evaluation criteria of own resources that were identified and further analyzed by several scholars.[9]

In his research for the European Commission in 2004, Philippe Cattoir subjects own resources to these general evaluation criteria for EU own resources: budgetary criteria (including the assessment of sufficiency and stability), efficiency criteria (visibility, low operational costs, and efficient allocation of resources), and fairness criteria (horizontal fairness, vertical fairness, and fair contributions).[10] In 2009, he adds integration criteria to these criteria (ensuring financial autonomy, transparency, and focusing on European added value).[11]

Jacques Le Cacheux presented his view on the general evaluation criteria of the EU's own resources to the academic community in 2007. In this case, he also distinguishes between general evaluation criteria (simplicity and transparency, economic efficiency and fairness, elimination of externalities) and specific criteria conditioned by the nature of the EU (tax harmonization, criteria of justice, intentional interventionism – positive and negative externalities).[12]

Iain Begg *et al.* identified several (economic) evaluation criteria for EU own taxes in 2008, stating that EU own taxes should minimize inefficiency as much as possible by having a broadly defined tax base while applying the lowest possible tax rate. After sufficient consideration, distortions of prices should be introduced by them to eliminate negative external effects. An EU own tax should play an important role in macroeconomic stabilization. One of the fundamental tasks of EU own taxes should be to

---

[8] *High Level Group on Own Resources. First Assessment Report*, Brussels 2014, p. 26.

[9] The literature also reports on setting criteria focused on sustainability in order to evaluate potential options for financing the EU budget through the EU's own taxes. See: M. Schratzenstaller *et al.*, *EU Taxes as Genuine Own Resource to Finance the EU Budget – pros, cons and sustainability-oriented criteria to evaluate potential tax candidates* [in:] *FairTax*, Working Paper Series, No. 03, June 2016, pp. 43–47.

[10] P. Cattoir, *Taxation Papers – Tax-based EU own resources: An assessment*, Working Paper No. 1, 2004, pp. 7–13.

[11] P. Cattoir, *Options for an EU financing reform*, Brussels 2009, pp. 9–10.

[12] J. Le Cacheux, *Funding the EU Budget with a Genuine Own Resource: The Case for a European Tax*, Brussels 2007, pp. 11–16.

meet the requirement of horizontal and vertical justice. These authors further state that EU own taxes should represent a compromise between individual solvency and the solvency of Member States. Finally, EU own tax as such should be sufficiently stable and profitable to gradually replace current EU own resources.[13]

In 2008, Friedrich Heinemann, Philipp Mohl, and Steffen Osterloh present additional general evaluation criteria for EU own resources to be considered, in addition to those mentioned already, such as assessing the level of interference with national tax systems, the criterion of eliminating fiscal externalities, tax harmonization, a constant overall tax burden, integration compatibility, tangibility (equivalent to visibility – author's note), and budget autonomy at the EU level.[14] In the end, however, these evaluation criteria either represent only a secondary criterion or are a direct equivalent of those already mentioned.

In her publications from 2007 and 2013, Danuše Nerudová points out identical general evaluation criteria for own resources, which she uses to assess own resources. These criteria include adequacy, stability, visibility, low operating costs, efficiency, allocation of resources, horizontal and vertical justice, and fair contributions.[15]

In his work from 2012, Auke Rein Leen emphasizes, among other things, the requirement to evaluate new own resources of the EU through the criterion of political consensus among EU Member States in the area of tax harmonization and their implementation.[16]

In 2012, the authors Keti Medarova-Bergstrom, Axel Volkery, and David Baldock recognized another requirement that should be applied to the EU's own resources, which should prevent excessive burdens on some EU Member States at the expense of others. This criterion expresses the fair distribution of the financial burden in gross at national levels. The article also focuses on establishing detailed criteria to determine the level of European added value regarding the EU's own resources.[17]

In 2013, Margit Schratzenstaller focused on identifying criteria for evaluating the EU's own resources from the perspective of fiscal federalism theory, i.e., criteria that can help answer the question of which tax can be levied at which level of government. In this sense, she points out the following criteria: territorial (regional) allocation, negative cross-border externalities, mobility of tax base, short-term volatility, long-term

---

13 I. Begg *et al*., *Financing of the European Union Budget*…, pp. 81–93.

14 F. Heinemann, P. Mohl, S. Osterloh, *Who's afraid of an EU tax and why? – Determinants of tax preferences in the European Parliament*, ZEW Discussion Papers, No. 08-027, Mannheim 2008, pp. 2–7; *iidem*, *Reform Options for the EU Own Resources System*, Mannheim 2008, pp. 3–5.

15 D. Nerudová, *Tax-based EU own resources and tax harmonization*, Scientific Conference MIBES – Management of International Business and Economic Systems, Larissa (Greece) 2007, pp. 253–254; *eadem*, *Taxing of Financial Sector as possible Own Resource of EU Budget*, "Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis" 2013, no. 4(61), pp. 1057–1058.

16 A.R. Leen, *Note on the Budget of the European Union and an Internet Communication Tax*, "Policy & Internet" 2012, vol. 4, issue 1, pp. 1–11.

17 K. Medarova-Bergstrom, A. Volkery, D. Baldock, *Criteria for maximising the European added value of EU budget: The case of climate change*, Brussels 2012, pp. 4–27.

yield (income elasticity), visibility, and fair distribution of the gross financial burden at the national level.[18]

In 2014, Gabriele Cipriani published his scholarly work on financing the EU budget, in which he points out the general evaluation criteria for the EU's own resources, considering simplicity, transparency, fairness, and democratic accountability as the main criteria, but also focuses on specific criteria such as neutrality, an anti-cyclical criterion, effectiveness of inequality (applicable to the EU's own taxes), and targeting criteria.[19]

Viliam Páleník and Tomáš Miklošovič identify evaluation criteria for the EU's own resources in their 2015 scholarly contribution, in which they underscore the importance of evaluating them from the following perspectives, among others: support for creating European added value, expected political acceptability of the EU's own resources, and responsibility and budgetary discipline.[20]

In 2016, Adolf Constanze and Klaus Röhrig explored the idea of financing the EU budget through green taxes (environmental own resources). In addition to criteria mentioned previously such as sufficiency, stability, low operating costs, efficient redistribution of resources, and horizontal and vertical justice, they add a criterion closely related to the most important of EU policies, namely environmental impact. An important advantage of ecological own resources is that they can achieve double added value. In addition to solving democratic deficits and economic shortcomings of the current system of the EU's own resources, they facilitate the common efforts of the EU in achieving the goals in common policies, such as environmental protection and climate protection.[21] Their application can contribute to a positive impact on the environment and the efficient allocation of resources (more sustainable allocation of resources and capital, impact on consumer behaviour, etc.). This criterion appears to be significant and substantially relevant in the context of the current direction of the EU and the development of its policies.[22]

4. Establishing evaluation criteria for the EU's own resources

After conducting the research outlined in the previous sections, it can be concluded that the use of general evaluation criteria established by the High-Level Group on Own Resources and the European Commission makes it possible to objectively evaluate the

[18] M. Schratzenstaller, *The EU Own Resources System – Reform Needs and Options*, "Intereconomics" 2013, no. 5(48), pp. 310–311.

[19] G. Cipriani, *Financing the EU Budget: Moving Forward or Backwards?*, London 2014, pp. 71–73.

[20] V. Páleník, T. Miklošovič, *Environmental Tax as the Possible Part of EU Own Resources*, "Working Papers" 2015, vol. 72, pp. 7–8.

[21] See also: A. Popovič, M. Štrkolec, *Financing the Green Economy in the context of Slovakia's Recovery and Resilience Plan* [in:] *Economy in the synergy of economic, financial and environmental law*, ed. A. Powałowski, Warsaw 2022, pp. 129–138.

[22] A. Constanze, K. Röhrig, *Green Taxes as a Means of Financing the EU Budget: Policy Options*, Brussels 2016, pp. 29–31.

current own resources of the EU and assess the overall acceptability of new own resources. These criteria permit considering data, information, and principles not only from the economic and legal perspectives, but also from the political orientation of the EU and its Member States (political aspects), sociological research, ecology, and others. By incorporating these criteria in the creation of new own resources (and comparing them to current own resources), a comprehensive perspective on the overall acceptability and justification of such potential own resources can be provided. This complexity in reforming the system of own resources of the EU budget and its material component reflects, in essence, the complexity of relationships that exist within the EU.

The conclusion that there is no need for substantial reform of the evaluation criteria of own resources is mainly valid because the additional criteria established by the academic community are either just a renaming of these general evaluation criteria, or they are expressed in a narrower sense. Furthermore, their importance in the context of other evaluation criteria is not significant enough to elevate any particular evaluation criterion to a separate one. Therefore, they can mostly be subsumed under these general evaluation criteria.

However, the author notes a partial deviation from this conclusion regarding the criterion of environmental impact. The degree of EU engagement in environmental and climate protection policy is currently so significant and extensive that it is appropriate to consider expanding the set of evaluation criteria for own resources to include the criterion of the environmental impact of the own resource. These considerations are supported within the broader framework of Article 11 of the Treaty on the Functioning of the European Union (TFEU), according to which environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development (these activities are further developed in Articles 191 to 193 of the TFEU). Article 11 of the TFEU specifically sets out the values of preservation and enforcement of environmental protection beyond the scope of individual EU policies and activities, giving them a wider applicability and relevance. In light of these arguments, it would therefore not seem appropriate for the requirement for environmental protection to be subordinated to the criterion of focusing on European added value.

The author's opinion is that when making any further adjustments to the foundation of the EU's own resources budget system and evaluating potential own resources, it is important to not only consistently apply but also negatively evaluate cases where a potential own resource would have no environmental impact (not to mention situations in which proposals for own resources would have a negative environmental impact and should be disqualified to some extent, as their implementation could lead to or worsen environmental and climate degradation).

To support these claims, the author points to recent developments in the reform of the EU's own resources system. Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom introduces an own resource to the EU budget based

on the weight of non-recycled plastic waste packaging, which is intended to lead to a reduction in the amount of plastic waste and its increased recycling.[23] The adoption of this new own resource and the circumstances under which it was adopted testify to the need for a modern understanding of evaluation criteria and the requirement to take into account a new separate criterion of environmental impact. The overall concept of this idea is strengthened by the fact that such a significant change in the system of the own resources of the EU budget has occurred based on rare unanimity among all EU Member States, which has no parallel in the recent history of the EU budget (since such a significant change in financing the EU budget has not occurred on this scale for decades).

The question to consider is whether it is necessary (and appropriate) to assign different weights to individual evaluation criteria in the process of assessing own resources that could have a significant impact on the acceptability or unacceptability of a particular own resource. However, this appears to be essential in the actual assessment of own resources, and the resolution of this issue depends on the consensus of the individual EU Member States in the event of a reform of the EU budget's own resource system (such as prioritizing the criterion of profitability over the criterion of justice, assigning a lower weight to the evaluation criterion of simplicity, and so on).

Based on the conclusions presented above, the following evaluation criteria can be defined for the purpose of further evaluation of current and potential EU own resources:

1. fairness;
2. effectiveness;
3. sufficiency and stability;
4. transparency and simplicity;
5. democratic accountability and budget discipline;
6. focus on European added value;
7. subsidiarity and fiscal sovereignty of Member States;
8. expected political acceptability of the new resource;
9. environmental impact.

Conclusion

The article examines the evaluation criteria of the EU's own resources budget, after considering the conclusions of the European Commission and the High-Level Group on Own Resources, as well as the evaluation criteria of own resources identified and defined by the academic community. Insights gained from this analysis allow for their

[23] S. Simić, *Nový vlastný zdroj rozpočtu EÚ založený na hmotnosti nerecyklovaného odpadu z plastových obalov a jeho implementácia vo vybraných členských štátoch* [A New Own Resource of the EU Budget Based on the Weight of Non-Recycled Waste from Plastic Packaging and its Implementation in Selected Member States] [in:] *Stav a perspektívy verejných financií v EÚ…*, pp. 116–131.

synthesis, which is reflected in the formulation of the current system of evaluation criteria while preserving its effectiveness and applicability.

In this context, the objectives set out in the introduction of this article were achieved, and through the research conducted, it was possible to update the set of evaluation criteria that corresponds to the current, modern direction of the EU and the implementation of its policies (taking into account the implementation of policies of its individual Member States).

The hypothesis formulated in the introduction of the article is confirmed and the conclusions demonstrate that it is appropriate to reform the set of evaluation criteria for the assessment of current and potential own resources. This reform primarily consists of properly taking into account a new evaluation criterion in the evaluation process that of the criterion of the environmental impact of own resources.

In addition, it may be worth considering whether it is necessary to assign different weights to individual evaluation criteria, creating a hierarchy of evaluation criteria within the set of evaluation criteria. However, this issue is a matter of priorities in the negotiations of individual Member States and EU institutions and societal developments, and finding consensus in this area will be more than challenging (as evidenced by the development of the EU's own resources system since the inception of the EU).

The importance of further research into the issue of evaluation criteria for own resources cannot be underestimated. It is precisely through properly set evaluation criteria that individual potential own resources can be shown as suitable for further implementation and through which the policies of the EU and its individual Member States can ultimately be implemented. Incorrectly defined evaluation criteria can, on the other hand, prevent positive reforms or can be a means of introducing own resources that do not reflect current developments and the general welfare of society.

Literature

Begg I., *An EU Tax: Overdue Reform or Federalist Fantasy?*, Berlin 2011.

Begg I. *et al.*, *Financing of the European Union Budget. Study for European Commission, Directorate General for Budget – Final report*, Brussels 2008.

Buzková R., *Own Resources in the Light of European Council Conclusions on the MFF and Next Generation EU*, "Financial Law Review" 2020, no. 4.

Cattoir P., *Options for an EU financing reform*, Brussels 2009.

Cattoir P., *Taxation Papers – Tax-based EU own resources: An assessment*, Working Paper No. 1, 2004.

Cipriani G., *Financing the EU Budget: Moving Forward or Backwards?*, London 2014.

Constanze A., Röhrig K., *Green Taxes as a Means of Financing the EU Budget: Policy Options*, Brussels 2016.

Heinemann F., Mohl P., Osterloh S., *Reform Options for the EU Own Resources System*, Mannheim 2008.

Heinemann F., Mohl P., Osterloh S., *Who's afraid of an EU tax and why? – Determinants of tax preferences in the European Parliament*, ZEW Discussion Papers, No. 08-027, Mannheim 2008.

High Level Group on Own Resources. First Assessment Report, 2014.

Le Cacheux J., *Funding the EU Budget with a Genuine Own Resource: The Case for a European Tax*, Brussels 2007.

Leen A.R., *Note on the Budget of the European Union and an Internet Communication Tax*, "Policy & Internet" 2012, vol. 4, issue 1.

Medarova-Bergstrom K., Volkery A., Baldock D., *Criteria for maximising the European added value of EU budget: The case of climate change*, Brussels 2012.

Nerudová D., *Tax-based EU own resources and tax harmonization*, Scientific Conference MIBES – Management of International Business and Economic Systems, Larissa (Greece) 2007.

Nerudová D., *Taxing of Financial Sector as possible Own Resource of EU Budget*, "Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis" 2013, no. 4(61).

Páleník V., Miklošovič T., *Environmental Tax as the Possible Part of EU Own Resources*, "Working Papers" 2015, vol. 72.

Popovič A., *Systém vlastných zdrojov rozpočtu EÚ ako materiálna podstata fondového hospodárstva EÚ – súčasnosť a budúcnosť* [The EU Own Resources System as the Material Basis of the EU Budget – Present and Future] [in:] *Právo fondov EÚ v teórii a praxi* [The Law of EU Funds in Theory and Practice], Košice 2020.

Popovič A., *Vlastné zdroje rozpočtu EÚ a ich reforma* [Own Resources of the EU Budget and their Reform] [in:] *COFOLA 2022: Sborník příspěvků mladých právníků, doktorandů a právních vědců: část 3* [COFOLA 2022: Collection of Papers by Young Lawyers, PhD Students, and Legal Scholars: Part 3], Brno 2022.

Popovič A., Benko R., *Limity ukladania vlastných daní EÚ* [Limits on Imposing EU Own Taxes] [in:] *Stav a perspektívy verejných financií v EÚ: recenzovaný zborník vedeckých prác* [State and Perspectives of Public Finances in the EU: Reviewed Collection of Scientific Papers], Košice 2022.

Popovič A., Štrkolec M., *Financing the Green Economy in the context of Slovakia's Recovery and Resilience Plan* [in:] *Economy in the synergy of economic, financial and environmental law*, ed. A. Powałowski, Warsaw 2022.

Schratzenstaller M., *The EU Own Resources System – Reform Needs and Options*, "Intereconomics" 2013, no. 5(48).

Schratzenstaller M. *et al.*, *EU Taxes as Genuine Own Resource to Finance the EU Budget – pros, cons and sustainability-oriented criteria to evaluate potential tax candidates* [in:] *FairTax*, Working Paper Series, No. 03, June 2016.

Simić S., *Nový vlastný zdroj rozpoćtu EÚ založený na hmotnosti nerecyklovaného odpadu z plastových obalov a jeho implementácia vo vybraných členských štátoch* [A New Own Resource of the EU Budget Based on the Weight of Non-Recycled Waste from Plastic Packaging and its Implementation in Selected Member States] [in:] *Stav a perspektívy verejných financií v EÚ: recenzovaný zborník vedeckých prác* [State and Perspectives of Public Finances in the EU: Reviewed Collection of Scientific Papers], Košice 2022.

Summary

Adrián Popovič

Evaluation Criteria of the EU's Own Resources

The author in this article examines the assessment criteria of the EU's own resources budget. The main goal of this article is to establish an up-to-date, effective system of evaluation criteria for the EU's own resources budget. To achieve this, the article assesses the evaluation criteria for the EU's own resources budget through the objectives of the European Commission and the High-Level Group on Own Resources, as well as examining the evaluation criteria for the EU's own resources budget studied in the academic community. The hypothesis of this article poses the question of whether it is necessary to reform the evaluation criteria for the assessment of current and potential own resources, and if so, in what way. The author uses several research methods, especially analysis, synthesis, and comparison.

Keywords: budget, EU, own resources, evaluation criteria.

Streszczenie

Adrián Popovič

Kryteria oceny zasobów własnych UE

Autor w niniejszym artykule zajmuje się badaniem kryteriów oceny budżetowych zasobów własnych UE. Jego głównym celem jest stworzenie aktualnego i efektywnego systemu tych kryteriów. W opracowaniu dokonano ewaluacji kryteriów oceny budżetowych zasobów własnych UE według celów Komisji Europejskiej i Grupy Wysokiego Szczebla ds. Zasobów Własnych, a także przeanalizowano poglądy wyrażone w literaturze przedmiotu. Autor stara się znaleźć odpowiedź na pytanie, czy i w jaki sposób konieczna jest reforma kryteriów oceny obecnych i potencjalnych zasobów własnych. W opracowaniu zostało wykorzystanych kilka metod naukowych, zwłaszcza analiza, synteza i porównanie.

Słowa kluczowe: budżet, UE, zasoby własne, kryteria oceny.

Commentaries

Illegal Clauses in a CHF-denominated Loan Agreement

Supreme Court Judgment of 5 April 2023, II NSNc 89/23

1. **The manner and extent of implementation of conversion clauses contained in a typical CHF-denominated credit agreement are irrelevant for the assessment of their fairness under Article 385(1) of the Civil Code in conjunction with Article 385(2) of the Civil Code.**
2. **The foreign exchange risk clause is an inherent element of a CHF-denominated credit agreement which should be clearly explained to the consumer by the trader before the agreement is concluded.**
3. **The court is obliged to examine of its own motion the fairness of the terms of any contract concluded between a trader and a consumer regardless of the type of proceedings or the source of the claim asserted.**
4. **The consumer does not have the opportunity or obligation to prove the negative circumstances and the extent of the damage suffered in a dispute with the trader on the basis of a contract containing prohibited clauses.**

Aleksandra Nadolska
A. Nadolska Legal Office, Poland
a.j.nadolska@gmail.com
ORCID: 0000-0003-4903-8336

https://doi.org/10.26881/gsp.2024.1.10

Commentary

Today, sustainable development is not only a leading idea, but above all a blueprint for an all-human development agenda.[1] It has emerged as an alternative to the widely understood global crisis, including the economic crisis.[2] The multidisciplinary nature of this idea has contributed to the focus of detailed solutions in legal systems seeking

[1] L. Gawor, *Vision of a new human community in the idea of sustainable development*, "Problems of Ecodevelopment" 2006, vol. 1, no. 2, pp. 59–66.
[2] A. Klimska, A. Syryt, *Ethical and legal conditions of sustainable development – introduction to research*, "Zeszyty Naukowe Politechniki Śląskiej" 2018, series: Organisation and Management, no. 123, p. 199.

to find a normative solution that reconciles legally protected values in conflict with each other while taking into account the needs of future generations.[3]

In the Polish legal system, the principle of sustainable development is regulated in Article 5 of the Constitution of the Republic of Poland of 02.04.1997. Its addressee is undoubtedly the public authority, which is obliged, inter alia, to protect consumers (Article 76 of the Constitution of the Republic of Poland). At the same time, it should be noted that this principle is most fully realised only at the stage of the application of the law. Although it is not procedural in nature, its procedural dimension, which was not realised in the decision voted upon, should be taken into account. This is because the Supreme Court (hereafter SC) not only disregarded Article 76 of the Polish Constitution, but also the provisions of Article 385(1) of the Civil Code *et seq.* and its own body of case law issued on these grounds, and above all CJEU case law interpreting the provisions of Directive 93/13/EEC.

At the outset, it should be noted that the ruling in question was made in an action brought by a bank (trader) against a consumer for payment on account of the borrower's failure to repay a benefit under a CHF-denominated loan agreement based on conversion clauses based on reference to CHF/PLN buy and sell rates determined independently by the lender.

In the decision under review, the Supreme Court stated that the key "is not to establish that the contract concluded between the plaintiff and the defendant contained abusive clauses, but whether the court of appeal correctly verified their impact on the defendant." In doing so, the Supreme Court had no doubt that "some of the contractual provisions involved abuse of the bank's dominant position and the defendant's inability to negotiate their content." However, according to the Supreme Court, "the Court of Appeal […] did not question these circumstances, but at the same time accepted that the occurrence of abusive clauses, resulting in the need to eliminate them from the content of the agreement, did not render the agreement invalid in its entirety. Indeed, the reason for the termination of the loan agreement was the defendant's cessation of payment of successive matured loan instalments." In view of this, the Supreme Court held that "In examining the defendant's legal position, it was necessary to verify the content of the agreement in its entirety after eliminating the disputed clauses from it, as well as the very manner in which the contractual obligations were performed in order to assess the compliance of the plaintiff's conduct with the law and good morals." In this context, the Supreme Court accepted that:

- firstly, "the Respondent had a real right to choose the method of repayment of the loan instalments and the Claimant did not prevent or hinder them from repaying further instalments in the currency of the loan," therefore the bank's actions were not contrary to good morals;
- secondly, "the reason for the termination of the loan agreement was the failure to pay and be timely in the repayment of the outstanding debt, and the defendant

[3] B. Rakoczy, *The procedural dimension of the principle of sustainable development*, "Białostockie Studia Prawnicze" 2015, no. 18, pp. 35–44.

has not shown that this was related to the existence of prohibited clauses in the loan agreement;"
- thirdly, "the unfavourable actualisation of the exchange rate risk for the defendant, related to borrowing in a foreign currency, does not affect the validity of the loan agreement itself;"
- fourthly, the "clauses deemed abusive" contained in the contract at issue did not "affect the validity of the entire contract or the plaintiff's right to pursue his claim."

In addition, the Supreme Court pointed out that "the mere fact that a party [the defendant – A.N.] enjoys the status of a consumer does not mean that there cannot be an unfavourable outcome in this case. Indeed, the consumer is still a party to the legal relationship and is not exempt from the obligation to comply with the law. When issuing a ruling in which one of the parties is a consumer, the court may not at the same time disregard the interest of the other party. Moreover, when invoking the protection of the consumer's interests, the court may not fully compensate for all acts or omissions on the part of the consumer (cf. the judgment of the Supreme Court of 17 May 2022, I NSNc 622/21)."

In these circumstances, the Supreme Court held that the judgment of the Court of Appeal dismissing the defendant's appeal against the judgment awarding it the amount of the loan granted to the bank in the unpaid portion did not violate the constitutional principle of equality before the law or the right to a fair trial.

The judgment under review was issued in an extraordinary complaint proceeding (the aim of which is to eliminate defective court judgments that simultaneously violate the principles of social justice from circulation when cases concern individualised entities). In order to understand its motives more fully, it is necessary to cite the position of the Court of Appeal in Krakow.

The Court of Appeal in Krakow, in the justification of the judgment of 11.12.2019, I ACa 100/19, first stated that the loan granted to the respondent "was not a *strictly* foreign currency loan" (this is what the Court of first instance held), but a denominated loan, "and the essence of the assessment of this loan lies in the assessment of the provisions of the agreement concerning the rules of denominating the loan granted."[4] It went on to emphasise that "the provision in the loan agreement providing for the adoption of buy and sell rates for the conversion of the defendant's liability and balance from CHF to PLN, as applicable in the plaintiff Bank's exchange rate table, is abusive in nature […]." This, however, did not affect the assessment of the decision of the Krakow District Court (i.e. the acceptance of the bank's claim). This is because the Court of Appeal pointed out that "the recognition of a violation of the defendant's rights as a result of the omission of the defendant in the procedure for determining the mechanisms for converting the value of individual instalments does not imply an automatic

[4] On the difference between a foreign currency loan and a loan denominated in CHF, see M. Penczar, *Analysis of irregularities in the mortgage market with currency risk* [in:] *Manipulations and frauds in the financial market. Perspektywa konsumenta*, eds. A. Jurkowska-Zeidler, E. Rutkowska-Tomaszewska, A. Wiktorow, M. Monkiewicz, Warszawa 2020, p. 128.

deterioration of their economic interests." According to the Court of Appeal, "the defendant made no attempt in the initial period of repayment of the loan to repay the loan in the currency in which the loan was granted, and yet the loan instalments repaid in Polish zloty had to be converted into the currency of the loan. It is characteristic that, despite the passage of eight years from the date of termination of the repayment of the loan by the defendant in Polish zloty, the defendant did not concretise the allegations as to the gross violation of its interests in terms of the violation of the economic aspect of their interests." Summarising this, the Court of Appeal stated that "If the parties were still bound by the loan agreement, the finding that the amount of the instalment to be repaid is converted on the basis of the bank's exchange rate table would be relevant, as it would have to be determined how to replace the abusive clause referred to above […]. However, the dispute does not concern a factual situation in which the loan agreement is still in force. The subject matter of the dispute is a claim for payment of the amount of credit granted and not repaid after the termination of the credit agreement. It is not disputed that the defendant ceased to repay the loan and, if so, a finding that the plaintiff applied a method of converting the loan instalment that is an abusive clause could affect the outcome only if it were to be held that declaring the aforementioned contractual provision abusive leads to the invalidity of the agreement. However, in the case at hand, such a conclusion would be unjustified not only because in the case it would be possible to replace the abusive clause applied by the plaintiff with a different method of converting the loan instalment […]."

In reviewing the evidence in the case, the Court of Appeal, among other things, accepted that the assessment of the defendant's awareness and knowledge of the nature of the loan granted to them could be made on the basis of "their testimony, the fact that the loan granted to them was not the first loan of its kind, their belief that it was profitable to take a loan in a foreign currency" and not on the basis of the information material provided by the bank.

The view presented by the Supreme Court, based entirely on the reasoning of the Court of Appeal in Krakow, should be regarded as extremely inappropriate and deserving of disapproval, especially as it is contrary to the provisions of Article 385(1) of the Civil Code and Article 385(2) of the Civil Code, as well as EU law in the case-law of the CJEU interpreting Directive 93/13/EEC.

What is surprising in the position of the Supreme Court is the reference to the "manner of performance of contractual obligations", as this is in clear contradiction with the regulation of Article 385(2) of the Civil Code. This is because it is clear that the assessment of whether a contractual provision is prohibited is made according to the state of affairs at the time of the conclusion of the contract (SC in its resolution of 20.06.2018, III CZP 29/17). The linguistic interpretation of the first sentence of Article 385(1) § 1 of the Civil Code does not provide grounds for assuming that, within the framework of the assessment of the abusiveness of a provision, the manner in which it is applied by the trader is relevant. On the contrary, it leads to the conclusion that the decisive factor is not how the trader applies the provision and for whom it is beneficial, but how the provision shapes the consumer's rights and obligations. It follows directly from this

provision that the subject of assessment is the provision itself, i.e. the normative content expressed in a specific form (SC in its resolution of 20.11.2015, III CZP 17/15), and its point of reference – the way in which the provision affects the consumer's rights and obligations. The provision itself may directly shape rights and obligations only in a normative sense, affecting the scope and structure of the rights or obligations of the parties. Such an interpretation is in line with the disposition of Article 385(2) of the Civil Code and the generally accepted view that Article 385(1) of the Civil Code is an instrument for controlling the content of the contract (legal relationship). Consequently, how a provision is applied is a separate issue to which Article 385(1) § 1 sentence 1 of the Civil Code does not explicitly refer (SC in its resolution of 20.06.2018, III CZP 29/17).

Based on the preceding, the Supreme Court derived yet another unsubstantiated thesis, according to which "it was up to the defendant to freely shape the form of performance." In this way, the Supreme Court exposed the lack of basic knowledge of the nature of a CHF-denominated loan in this case. Irrespective of this, it should be emphasised that the SC has previously emphasised on several occasions that "[t]he choice of one of the available ways of repaying the loan already constitutes conduct on the part of the consumer subsequent to the conclusion of the contract" (instead of many SC in the order of 22.02.2023, I CSK 3231/22). Furthermore, in the judgment of 08.02.2023, II CSKP 978/22, the Supreme Court noted that "allowing the consumer to perform the contract in a certain way (in this case, repayment of the loan in CHF) does not eliminate the fundamental defect in the contract, existing from the moment of its conclusion."

In the context of the characteristics of a loan denominated in CHF, the currency risk must undoubtedly be pointed out. The SC referred to this risk only in terms of its materialisation on the part of the borrower on the basis of an assessment of the evidence (narrowed down in this case to a review of the evidence of the consumer's hearing). Such a procedure by the Supreme Court, setting aside the comments made above, raises legitimate doubts, since in a CHF-denominated credit agreement "the exchange rate risk borne by the trader is limited, whereas the risk borne by the consumer is not" (CJEU in its judgment of 10.06.2021, C776/19 to C782/19). Consequently, the terms of the CHF-denominated credit agreement "impose an unlimited and unhedged currency risk on the consumer in the event of a fall in the value of the domestic currency against the foreign currency", which the consumer does not have to prove at trial (as does the scale of the currency risk). It is also clear that the key issue in assessing the trader's conduct in terms of compliance with good practice is the nature and extent of the information provided to the customer at the pre-transaction and pre-contractual stage (CJEU in decisions of: 03.03.2021, C-13/19; 24.03.2022, C-82/20), rather than the consumer's experience or knowledge from other (non-bank) sources. The Court further clarified in its judgment of 18.11.2021, C-212/20, that the transparency condition must be interpreted broadly so that, on the basis of the condition of the denomination of the credit, the average consumer is able not only to know about the possibility of an increase or decrease in the value of the foreign currency to which the credit is denominated, but also to estimate the potentially significant economic consequences of such a condition on their financial obligations. This is because pre-

contractual information about the contractual conditions and the consequences of that conclusion is of fundamental importance for the consumer. It is in particular on the basis of this information that the consumer decides whether they intend to be bound by the terms and conditions formulated in advance by the trader in the contract (judgments of: 21.03.2013, C-92/11; 30.04.2014, C-26/13; 21.12.2016, C-307/15 and C-308/15; 20.09.2017, C-186/16). In addition to this, it should be stressed that the consumer's statement "that he is fully aware of the potential risks arising from the conclusion of the said contract is not in itself relevant for the assessment of whether the trader has complied with the said transparency requirement" (CJEU in its order of 6.12.2021, C-670/20).

On the other hand, the most astonishing is the position of the Supreme Court as to the fact that, in the case at hand, "the defendant has not shown that the failure to repay the loan was linked to the existence of prohibited clauses in the credit agreement", since the repayment of credit instalments relates to the sphere of the execution of the credit agreement, and the examination of the clauses contained in a contract signed between a consumer and a trader in terms of unfairness is to be carried out by each court of its own motion. The CJEU has indicated on several occasions that "the national court is required to examine of its own motion whether the terms of a contract falling within the scope of Directive 93/13 are unfair and, having carried out that examination, to correct the imbalance between the consumer and the trader, in so far as it has the necessary legal and factual information for that purpose" (Case C-415/11 and the case law cited therein; C-154/15, C-307/15 and C-308/15). The purpose of ex-officio inspection is to ensure that the result indicated in Article 6(1) of Directive 93/13/EEC is achieved in individual cases and to contribute to the objective set out in Article 7 of that act, since such inspection may act as a deterrent to unfair contractual terms in general.[5] The obligation of ex officio control applies all the more when the consumer essentially questions the validity or fairness of the contract, but without specifically invoking the legal provisions on unfair contractual terms (CJEU in its judgment of 30.05.2013, C-397/11). Thus, the issue of performance of the agreement from which the trader derives the asserted claim cannot be relevant in a situation where it contains unfair provisions concerning the borrower's main benefits (and such provisions include conversion clauses, as the exclusion of the denomination mechanism and reference to the CHF/PLN purchase rate set by the bank makes it impossible to determine the amount made available to the borrower in PLN, in turn, the lack of a denomination mechanism and reference to the CHF/PLN selling rate makes it impossible to determine the amount of the loan instalments payable in PLN which are equivalent to the instalments in the denomination currency, which ultimately leads to the fact that the agreement without the prohibited provisions does not specify the *essentialia negotii* of the loan agreement under Article 69 of the Banking Law).

Finally, it is worth noting that the Supreme Court has shared the Court of Appeal's view regarding the need for the consumer to demonstrate damage (in the economic

[5] EC Notice entitled *Guidelines on the interpretation and application of the Council Directive on unfair terms in consumer contracts* (OJ EU.C.2019.323.4, 27.09.2019, p. 51).

sense) in the context of benefiting from the protection guaranteed under Article 385(1) of the Civil Code *et seq*. This position is not correct, as a gross infringement of the consumer's interests does not have to have an economic dimension, reduced to an assessment of a quantitative nature (CJEU in the judgment of 13.10.2022, C-405/21). The CJEU, in its judgment of 18.11.2021, C-212/20, emphasised that "a significant imbalance may arise from the mere fact of a sufficiently serious breach of the legal position in which the consumer, as a party to the contract in question, finds himself under the relevant national rules, whether in the form of a limitation on the content of the rights to which he is entitled under the contract in question, an impediment to the exercise of those rights, or the imposition on him of an additional obligation not provided for by national rules."

The judgment under review contains more statements which fail to comply with the regulations concerning systemic consumer protection or their legal interpretation. Due to the space limitations of this gloss, the author did not comment, assuming that their significance is secondary. This does not mean that the arguments of the Supreme Court omitted in the gloss are less important, but only that they are in obvious contradiction with the existing case law of this Court (e.g. in the Supreme Court the prevailing view is that the clauses in a credit agreement denominated in CHF shaping the mechanism of denomination define the main benefit of the borrower [e.g. judgments of the Supreme Court of: 4.04.2019, III CSK 159/17; 9.05.2019, I CSK 242/18; 11.12.2019, V CSK 382/18; 21.06.2021, I CSKP 55/21; 3.02.2022, II CSKP 459/22], while in its order of 9.08.2022, I CSKP 2357/22, the SC stated that "As a rule, if the court perceives that a contract cannot be maintained after the removal of an abusive clause from it, it is obliged to declare such contract null and void").

It is difficult to find rational arguments in favour of defending the reasoning presented in the decision voted upon. What is striking is the fact that the Supreme Court, in its ruling of 5.04.2023, II NSNc 89/23, disregarded the basic legal principles stemming from the provisions of the Civil Code, as well as the CJEU case-law interpreting Directive 93/13/EEC. The inconsistency of this ruling with the previous position of the Supreme Court on the institution of credit denominated in CHF, formally admissible, may affect the deepening crisis of confidence in the national judiciary. Meanwhile, the protection of the rule of law in Poland is one of the main objectives of sustainable development, determining the shape and development of the new paradigm of public finance based precisely on stable law.

Literature

Gawor L., *Vision of a new human community in the idea of sustainable development*, "Problemy Ekorozwoju" 2006, vol. 1, no. 2.

Klimska A., Syryt A., *Ethical and legal conditions of sustainable development – introduction to research*, "Zeszyty Naukowe Politechniki Śląskiej" 2018, series: Organisation and Management, no. 123.

Penczar M., *Analiza nieprawidłowości na rynku kredytów hipotecznych obciążonych ryzykiem walutowym* [in:] *Manipulacje i oszustwa na rynku finansowym. Perspektywa konsumenta*, eds. A. Jurkowska-Zeidler, E. Rutkowska-Tomaszewska, A. Wiktorow, M. Monkiewicza, Warszawa 2020.

Rakoczy B., *The procedural dimension of the principle of sustainable development*, "Białostockie Studia Prawnicze" 2015, no. 18.

Summary

Aleksandra Nadolska

Illegal Clauses in a CHF-denominated Loan Agreement

In extraordinary complaint proceedings, the Supreme Court shared the findings and considerations of SA in Krakow, assuming that the elimination of conversion clauses from the loan agreement denominated in CHF does not result in its invalidity *ex tunc* and *ab initio* since the agreement was terminated due to the lack of repayment of loan installments, and the consumer did not demonstrate that the discontinuation of the provision in this respect resulted from the existence of prohibited provisions. In the glossed judgment, the Supreme Court devoted a lot of attention to the issue of the performance of the loan agreement, pointing out, among other aspects, that the consumer could have paid the loan installments directly in CHF from the beginning, which would have excluded the need to use the unfair conversion mechanism. The Supreme Court also emphasised that the consumer did not prove in this case damage caused by the materialization of the currency risk on their side. All these issues are analyzed in this critical gloss. In the opinion of the author, the judgment in question is inconsistent with the law *sensu largo*.

Keywords: consumer protection, contract performance, conversion clauses, CHF-denominated loan agreement, illegal clauses.

Streszczenie

Aleksandra Nadolska

Niedozwolone klauzule w umowie kredytu denominowanego w CHF

W postępowaniu ze skargi nadzwyczajnej Sąd Najwyższy podzielił ustalenia i rozważania Sądu Administracyjnego w Krakowie, przyjmując, że wyeliminowanie z umowy kredytu denominowanego w CHF klauzul przeliczeniowych nie skutkuje ustaleniem jej nieważności *ex tunc* i *ab initio*, skoro umowa została wypowiedziana z uwagi na brak spłat rat kredytu, zaś konsument nie wykazał, aby zaprzestanie świadczenia w tym zakresie wynikało z istnienia niedozwolonych postanowień. W glosowanym orzeczeniu SN wiele uwagi poświęcił zagadnieniu wykonania umowy kredytu, wskazując m.in., że konsument mógł od początku spłacać raty kredytu bezpośrednio w CHF, co wykluczałoby konieczność zastosowania nieuczciwego mechanizmu przeliczeniowego. SN podkreślił też, że konsument nie udowodnił w tej sprawie szkody powstałej

w związku z materializacją ryzyka walutowego po jego stronie. Wszystkie te kwestie zostały poddane analizie w glosie, która ma charakter krytyczny. W ocenie autorki badany wyrok jest bowiem niezgody z prawem *sensu largo*.

Słowa kluczowe: klauzule przeliczeniowe, kredyt denominowany w CHF, ochrona konsumenta, postanowienia niedozwolone, wykonanie umowy.

Presentation of Budgetary Balance as an Argument Justifying Granting Tax Payment Relief: Scope of Control of Discretionary Decisions by an Administrative Court

Ruling of the Voivodeship Administrative Court in Lublin of 20 January 2023, I SA/Lu 598/22

The discretionary decision of the tax authority regarding the granting of tax payment relief should be based on criteria related to accepted constitutional principles and values. Its justification should confirm that the assessment of the tax authority was logical, comprehensive, objective, and related to the circumstances and conditions of the case. Maintaining budgetary balance, both at the municipality and national level, can be considered as an argument in the proceedings concerning the granting of tax payment relief.

Kacper Kanka
Warsztat Podatkowy Kacper Kanka, EY, Poland
kacper.kanka@gmail.com
ORCID: 0000-0002-1214-9588

https://doi.org/10.26881/gsp.2024.1.11

Commentary

1. The subject of the ruling under discussion is the decision of the Director of the Tax Administration Chamber in Lublin upholding the decision of the first-instance authority refusing to grant the municipality relief in the form of cancelling interest on VAT arrears. The reason for the arrears was the submission of amendments to the VAT declaration by the municipality. These amendments resulted from a change in the tax classification of EU funds allocated for renewable energy sources.[1] The municipality, in justifying the request for interest cancellation, referred to the taxpayer's significant interest and the public interest related to the difficult, continuously deteriorating financial situation and the circumstances in which the tax arrears arose. The municipality indicated that in the year when the arrears arose, besides ongoing tasks, it carried

[1] This issue is the subject of a request for a preliminary ruling from the Supreme Administrative Court, Case C-612/21.

out numerous investments with the participation of EU funds, which required its own contribution. At the same time, when submitting the application, the municipality was struggling with problems related to underfunding of education and the effects of the pandemic. After receiving an unfavorable decision, the municipality lodged an appeal to the Voivodeship Administrative Court in Lublin. In its ruling of November 3, 2021 (file reference: I SA/Lu 433),[2] the court overturned both decisions issued in the case. The court found the complaint's allegation of the misinterpretation of Article 67a § 1(3) Tax Ordinance[3] legitimate.

After reconsidering the case, both the first and second-instance tax authorities once again refused to grant the requested relief despite it fulfilling both prerequisites under Article 67a § 1(3) of the Tax Ordinance (important interest of the taxpayer and public interest). In particular, the authority, while justifying the refusal, referred to the circumstances accompanying the case, such as the municipality's contribution to the tax arrears, the associated interest, and the recognition that its financial and material situation was not extraordinary.

In the ruling in question, the court of first instance overturned the contested decision. In its reasoning, the court emphasised that a decision made under administrative discretion cannot be arbitrary. It must result from a comprehensive and thorough consideration of all the circumstances of the case and effectively balance the important interest of the taxpayer and the public interest. When exercising administrative discretion, the authority should aim to issue the best possible decision based on various criteria and the specific factual situation. According to the court, the authority is bound by substantive and procedural norms, as well as the need to consider the relationships arising from constitutional norms. The review of such decisions by administrative courts does not involve examining the validity of the decision for relief itself but rather how the authority arrived at a particular decision and whether it falls within the legally defined limits. Administrative courts have the authority to scrutinize if an authority exercised its power in a wholly irrational manner or contrary to fundamental constitutional principles. In the court's opinion, the grounds of the contested decision do not indicate that the case was decided in accordance with these standards. The reference to the principle of universality of taxation and the related needs of the State Treasury, in the context of acknowledging the difficult financial situation of the municipality and the manner in which the tax arrears arose, does not justify the choice of legal consequences of the established facts in a manner consistent with the indicated standards. Therefore, the tax authority exceeded the limits of administrative discretion.

2. Turning to the assessment of the ruling in question, it is worth focusing on two fundamental aspects. The first concerns the argumentation presented by both parties,

[2] All rulings of the administrative courts mentioned in this commentary are available in the Central Database of Administrative Court Judgments (Centralna Baza Orzeczeń Sądów Administracyjnych).

[3] Tax Ordinance Act of 29 August 1997 (consolidated text: Journal of Laws 2022, item 2651 as amended).

namely the municipality and the tax authority, which relates to the material (budgetary) situation of the municipality and the State Treasury, respectively. The second is related to the extent of control over the legality of the authority's actions within the proceedings concerning the decision on granting relief as referred to in Article 67a of the Tax Ordinance. In my opinion, the court's key findings in this regard warrant approval.

3. The specificity of the case at hand is that the applicant seeking relief is a municipality. As a unit of local self-government, the municipality performs its own tasks as well as assigned ones, which are of a public nature. The municipality is obligated to maintain financial (budgetary) balance. Consequently, it is necessary to manage funds in a way that effectively meets the needs of the local community and fulfills the assigned tasks. The municipality may also act as a taxpayer of VAT, and settlements in this regard affect the budget it manages.

Upon reading the justification of the ruling under review, we can find extensive arguments presented by the municipality regarding its financial situation. Excerpts from the justification relating to this issue include:[4]

a. "[…] the authority's analysis of the financial position bears the hallmarks of a financial analysis of a profit-oriented enterprise. Above all, the assessment of the Municipality's financial condition was based on data concerning the level of the budget surplus/deficit, treating these figures respectively as the profit/loss of the enterprise. Meanwhile, in assessing the real ability to pay, account should have been taken of the serious constraints on the disposal of the available financial resources, resulting from the legislation in force;"
b. "[…] despite the accumulation of significant financial resources, the Municipality invariably struggles to meet its current obligations;"
c. "A major problem is the decline in revenue, including the current one. Income from shares of personal income tax revenue is showing a particular decline. The Municipality has problems with the current payment of pecuniary obligations. There is a lack of funds for the maintenance of schools, kindergartens, ongoing maintenance of roads, and for the maintenance of cleanliness and order in the city. In addition, the city's operating costs are increasing."

These arguments, along with others put forward by the municipality, can be categorized as arguments related to the implementation of the principle of preserving the municipality's budget balance. From the tax authority's perspective, these arguments formed the basis for assuming, in addition to the uncertainty related to the application of the provisions of the VAT Act, that the municipality had confirmed the existence of both an important interest of the taxpayer and the public interest, which are conditions for granting relief. Therefore, it can be assumed, as it seems to have been undisputed in this case, that preserving budgetary balance can be a valid interest of the taxpayer-municipality. Considering that the finances of the municipality are closely

[4] Author's own translation.

tied to flows of a public nature and the fact that the municipality's funds are dedicated to achieving public (local community) objectives, it seems more accurate to classify the effort to preserve the municipality's budget balance as a public interest.

Similar arguments were presented by the tax authority as part of their reasons for refusing to grant relief. In this regard, it is worth highlighting the following passage from the justification: "According to the authority, in this case, it is also necessary to take into account the situation of the state budget, and the current situation of public finances is objectively difficult. The budget must be able to cover the costs of the shielding measures, and the primary duty of the tax administration bodies is to secure regular revenue for the State Treasury."[5] The court, however, does not seem to agree with this argumentation, as evidenced by the following passage in the justification: "Based again on unsupported hypotheses […], it was instead concluded that the Municipality will not be significantly harmed by the payment of more than PLN 200,000 and that granting it relief (in view of its total debt) will not fundamentally improve its situation. Instead, it will impoverish the State Treasury, whereas, applying an estimate analogous to that of the authority, one would have to conclude that the amount of PLN 200,000 is a tiny part of the central budget deficit."[6]

In my opinion, the principle of budget balance of the State Treasury may serve as an argument justifying the refusal to grant relief for tax liability payment. Tax collection has a direct impact on the financial stability of the state, as taxes function to secure the budget balance. In light of this, it is important to emphasise that while each budget item, when considered individually, may appear insignificant or minor, their cumulative effect can be significant for the entire State Treasury. Therefore, the fact that a specific relief request does not impose a significant burden on the State Treasury does not mean that it does not impact the realization of the constitutional value of preserving budgetary balance. Consequently, I would not dismiss the argumentation put forward by the authority in the present case. However, it is crucial to consider the argumentation invoking budgetary balance within the specific context of the case and compare it with the argumentation and circumstances justifying granting relief.[7]

As a side note, it is worth mentioning that the principle of preserving budgetary balance has been referred to in tax case law and legal discussions, including issues related to the statute of limitations on tax liabilities,[8] the interpretation of provisions

[5] Author's own translation.

[6] Author's own translation.

[7] It is also pointed out that there is no basis for interpreting from the positive legal system the value of budgetary balance and the legal principle protecting it – A. Hanusz, *Równowaga budżetowa a zasady prawa*, PiP 2015, no. 9, p. 32. However, it seems that the Constitutional Court's jurisprudence transpired earlier provides a basis for assuming that budgetary balance is a constitutionally protected value and should be taken into account within the process of issuing a decision on relief.

[8] Ruling of the Voivodship Administrative Court in Lublin dated August 10, 2022 (file reference: I SA/Lu 278/22).

on tax credits,[9] the justification for the adoption of procedural deadlines,[10] the interpretation of provisions related to the prevention from tax avoidance,[11] or, more recently, in the discussion on the constitutionality of the introduction of a windfall profits tax.[12] In this regard, it is emphasized that the protection of the stability of the State's finances, particularly the preservation of the State's budgetary balance, should not be viewed solely in terms of safeguarding the State's fiscal interests. It serves the common good and enables the realization of the principle of social justice. Therefore, the principle itself does not possess inherent value, but rather provides a financial foundation for the implementation of other legally protected values, which should also be assessed on a case-by-case basis.

4. It is acknowledged, as the court also highlights in this ruling, that the procedure for granting relief for tax liability payment consists of two phases. The first phase involves determining whether there exists an important interest of the taxpayer or a public interest that justifies granting the relief.[13] If either of these interests is confirmed, the proceedings move on to the second phase, which pertains to the discretionary decision-making process.[14] The regulations do not specify what criteria the authority should adopt when making a decision in this regard. This aspect is significant from the perspective of the court's review of such a decision.

The case law on this matter does not provide a clear answer. There are administrative court rulings that suggest the authority has complete discretion.[15] Other rulings indicate that although the criteria adopted by the authority are not subject to review, choosing one of the discretionary alternatives cannot be done in flagrant violation of the principle of fairness, such as considering obviously irrelevant or unreasonable criteria or based on false premises.[16] Some judgments also intervene more significantly in the decision-making process of the authority. In these cases, the courts expect the authority, in this type of procedure, to be guided by principles and general directives specific to tax collection. Thus, the criteria employed by the authority in issuing the decision must be assessed. This position is shared by the court in the ruling in question.

---

[9] Ruling of the Voivodship Administrative Court in Gorzów Wlkp. dated October 21, 2020 (file reference: I SA/Go 298/20).

[10] Ruling of the Voivodship Administrative Court in Gorzów Wlkp. dated May 5, 2022 (file reference: I SA/Go 61/22).

[11] Ruling of the Supreme Administrative Court dated July 8, 2019 (file reference: II FSK 135/19).

[12] W. Marcinkowski, *Wprowadzenie podatku od nadzwyczajnych zysków a zasada niedziałania prawa wstecz*, "Przegląd Podatkowy" 2023, no. 1, pp. 27–33.

[13] For more on both criteria, see: R. Linka, *Ulgi w spłacie zobowiązań podatkowych jako forma wsparcia podatników w czasie kryzysu*, "Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych" 2020, no. 5, pp. 31–32, and M. Münnich, *Aksjologia zewnętrzna klauzul generalnych obowiązujących w polskim prawie podatkowym*, "Studia Prawnicze KUL" 2021, no. 2, pp. 154–168.

[14] M. Jaskowska, *Glosa do wyroku NSA z dnia 26 września 2002 r., III SA 659/01*, OSP 2003, no. 9, p. 112.

[15] Ruling of the Voivodship Administrative Court in Gliwice dated May 6, 2014 (file reference: I SA/Gl 1141/13).

[16] Ruling of the Supreme Administrative Court dated January 11, 2017 (file reference: II FSK 3824/14).

As mentioned earlier, Article 67a of the Tax Ordinance does not provide specific guidelines for selecting the legal consequences of a given factual situation (which qualifies as an important interest of the taxpayer or a public interest). Consequently, it can be assumed hypothetically that the authority has complete freedom in choosing criteria in this regard. However, it is reasonable to assume that the authority's decision should be guided by generally accepted constitutional values.[17] The normative basis for such a claim should be recognized standards, such as the expectation that the actions of the tax authority should be based on and within the limits of the law (Article 120 of the Tax Ordinance), as well as conducted in a manner that inspires confidence in its actions (Article 121 § 1 of the Tax Ordinance). Therefore, the actions of the tax authority should not only be legal but also reliable and free from arbitrariness.[18]

In light of this, it should be emphasized that the procedure for granting relief for tax liability payment is of an exceptional nature.[19] Such a decision interferes with several legal principles, including those of a constitutional nature (primarily the principle of equality, the universality of taxation, and the aforementioned principle of preserving budgetary balance). This leads to the assumption that the granting of tax liability payment relief is an exceptional institution that should only be applied in special circumstances.[20]

The aforementioned constitutional principles are not absolute, which is why the institution regulated by Article 67a of the Tax Ordinance exists. The function of this institution is to realize other legally and socially recognized principles and values related to tax collection, which ultimately justify granting preferential treatment to a specific taxpayer in an individual case. It is agreed with the court that these principles may include the principles of a democratic state governed by the rule of law, legalism, proportionality, equality (where fairness of taxation is an element), protection of individual rights and freedoms, as well as the principle of human dignity or, although not mentioned by the court, the principle of self-governance. However, these criteria thus defined do not directly determine the selection of a particular decision. Both the selection criteria and the decision itself should be based on the facts of the case. Operationalization in this regard may involve considering specific social and economic circumstances (such

---

[17] A. Niezgoda, *Sądowa kontrola decyzji organów podatkowych w sprawach ulg opartych na uznaniu administracyjnym*, ZNSA 2021, no. 3–4, p. 147.

[18] Ruling of the Voivodship Administrative Court in Wrocław dated September 9, 2020 (file reference: I SA/Wr 265/20).

[19] It should be pointed out, however, that it is possible to identify the position in the doctrine according to which the institution in question could be applied more widely and be an element of consensual enforcement of tax liabilities – see A. Dmowski, *Czy w polskim systemie podatkowym powinny funkcjonować konsensualne metody określenia wysokości zobowiązania podatkowego na wzór wniosku o wydanie na posiedzeniu wyroku skazującego i orzeczenia kar uzgodnionych z oskarżonym (art. 335) oraz dobrowolnego poddania się odpowiedzialności karnej (art. 387) w świetle Kodeksu postępowania karnego?*, "Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych" 2023, no. 3, pp. 5–17.

[20] Ruling of the Voivodship Administrative Court in Warsaw dated March 19, 2008 (file reference: III SA/Wa 2055/07).

as the taxpayer's financial difficulties and their contribution to their creation),[21] the taxpayer's past compliance with tax obligations, the circumstances surrounding the creation of the tax arrears, whether the relief will improve the taxpayer's financial situation and enable financial stability,[22] or refer to the scope of the relief requested.[23]

Therefore, it is necessary for the authority's decision to refer to the aforementioned principles, and the reasoning behind the decision should allow for an assessment of whether the authority's verification was logical, comprehensive, objective, and related to the circumstances and conditions of the case.[24] According to the court, the reasoning in the challenged decision did not provide a basis for concluding that the authority's verification met these criteria. On one hand, the authority acknowledges the existence of important interests of the taxpayer and the public interest justifying the granting of relief. On the other hand, the authority demonstrates that the analogous arguments, which in its view proved the existence of those interests, do not provide a basis for writing-off of the interest on the tax arrears. The court addressed these arguments comprehensively and convincingly, demonstrating their inconsistency in light of the evidence gathered. Therefore, the court rightly considered this defect to be an abuse of the authority's discretion.[25]

Literature

Brzeziński B., *Glosa do wyroku WSA z dnia 29 maja 2008 r., I SA/Gd 998/07*, "Przegląd Orzecznictwa Podatkowego" 2010, no. 2.

Dmowski A., *Czy w polskim systemie podatkowym powinny funkcjonować konsensualne metody określenia wysokości zobowiązania podatkowego na wzór wniosku o wydanie na posiedzeniu wyroku skazującego i orzeczenia kar uzgodnionych z oskarżonym (art. 335) oraz dobrowolnego poddania się odpowiedzialności karnej (art. 387) w świetle Kodeksu postępowania karnego?*, "Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych" 2023, no. 3.

Hanusz A., *Równowaga budżetowa a zasady prawa*, "Państwo i Prawo" 2015, no. 9.

Jaśkowska M., *Glosa do wyroku NSA z dnia 26 września 2002 r., III SA 659/01*, "Orzecznictwo Sądów Polskich" 2003, no. 9.

Linka R., *Ulgi w spłacie zobowiązań podatkowych jako forma wsparcia podatników w czasie kryzysu*, "Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych" 2020, no. 5.

[21] *Cf.* B. Brzeziński, *Glosa do wyroku WSA z dnia 29 maja 2008 r., I SA/Gd 998/07*, POP 2010, no. 2, pp. 105–107.

[22] Ruling of the Voivodship Administrative Court in Gdańsk dated January 29, 2009 (file reference: I SA/Gd 825/08).

[23] *Cf.* the ruling of the Supreme Administrative Court dated March 2, 2016 (file reference: II FSK 2474/15).

[24] As indicated by the Voivodship Administrative Court in Lublin in its judgment dated November 3, 2021 (file reference: I SA/Lu 433/21), the diligent handling of a taxpayer's request cannot be seen as an act of grace, but must be the result of a diligent assessment of what, in the established realities of the facts, will be more favorable from a social point of view: the application of relief or the refusal to grant the party's request.

[25] See J. Orłowski, *Uzasadnienie decyzji w sprawie ulgi w spłacie zobowiązania podatkowego niebędącej pomocą publiczną* [in:] *Ordynacja podatkowa: wokół nowelizacji*, ed. R. Dowgier, Białystok 2009, p. 176.

Marcinkowski W., *Wprowadzenie podatku od nadzwyczajnych zysków a zasada niedziałania prawa wstecz*, "Przegląd Podatkowy" 2023, no. 1.
Münnich M., *Aksjologia zewnętrzna klauzul generalnych obowiązujących w polskim prawie podatkowym*, "Studia Prawnicze KUL" 2021, no. 2.
Niezgoda A., *Sądowa kontrola decyzji organów podatkowych w sprawach ulg opartych na uznaniu administracyjnym*, "Zeszyty Naukowe Sądownictwa Administracyjnego" 2021, no. 3–4.
Orłowski J., *Uzasadnienie decyzji w sprawie ulgi w spłacie zobowiązania podatkowego niebędącej pomocą publiczną* [in:] *Ordynacja podatkowa: wokół nowelizacji*, ed. R. Dowgier, Białystok 2009.
Szumlakowski R., *Zasada zachowania równowagi budżetowej pomiędzy wydatkami a dochodami budżetowymi jednostek samorządu terytorialnego*, "Kortowski Przegląd Prawniczy" 2013, no. 2.

Summary

Kacper Kanka

Presentation of Budgetary Balance as an Argument Justifying Granting Tax Payment Relief: Scope of Control of Discretionary Decisions by an Administrative Court

The author analyzes a ruling of the Voivodship Administrative Court in Lublin concerning the application of Article 67a of the Tax Ordinance. The judgment in question raises the issue of the extent to which an administrative court can review the actions of a tax authority when exercising administrative discretion. The author agrees with the court in Lublin that the authority's decision in this regard should consider criteria that align with the recognized constitutional values in tax collection. In this regard, one hopes that the court's ruling will be the prevailing line of jurisprudence that will significantly improve the taxpayer's procedural position within the framework of the procedure for granting tax payment relief. Furthermore, the author examines the practical implications of arguments related to the preservation of budgetary balance for both the municipality (which applied for relief from the payment of a tax liability) and the State Treasury. In this respect, the author's basic thesis is that the argument of the preservation of budgetary balance should be taken into account when reviewing the legality of the tax authority's decision at hand. However, this cannot be an argument that once provided will exclude the possibility of granting of tax payment relief in every instance.

Keywords: budget balance, discretionary decision, fiscal stability, tax collection, tax relief.

Streszczenie

Kacper Kanka

Zachowanie równowagi budżetowej jako argument uzasadniający przyznanie ulgi w spłacie zobowiązań podatkowych. Zakres weryfikacji decyzji uznaniowej przez sąd administracyjny

Autor analizuje wyrok Wojewódzkiego Sądu Administracyjnego w Lublinie dotyczący stosowania art. 67a ordynacji podatkowej. Komentowany wyrok porusza kwestię zakresu, w jakim sąd administracyjny może kontrolować działania organu podatkowego w ramach uznania administracyjnego. Autor zgadza się z sądem w Lublinie, że decyzja organu w tym zakresie powinna uwzględniać kryteria zgodne z uznanymi wartościami konstytucyjnymi dotyczące poboru podatków. W tym zakresie można mieć nadzieję, że orzeczenie Sądu będzie dominującą linią orzeczniczą, która znacząco poprawi pozycję procesową podatnika w ramach postępowania o udzielenie ulgi w spłacie zobowiązań podatkowych. Ponadto autor analizuje praktyczne implikacje argumentacji związanej z zachowaniem równowagi budżetowej zarówno dla gminy (która wystąpiła z wnioskiem o udzielenie ulgi w spłacie zobowiązania podatkowego), jak i Skarbu Państwa. W tym zakresie podstawową tezą Autora jest stwierdzenie, że argument zachowania równowagi budżetowej powinien być brany pod uwagę przy kontroli legalności przedmiotowej decyzji organu podatkowego. Nie może to być jednak argument, który raz podniesiony będzie każdorazowo wykluczał możliwość udzielenia ulgi w spłacie zobowiązania podatkowego.

Słowa kluczowe: saldo budżetowe, decyzja uznaniowa, stabilność fiskalna, ściągalność podatków, ulgi podatkowe.

"The Never-Ending Story": Reflections on the Powers of the European Central Bank

Judgment of the German Constitutional Court of 5 May 2020 (*Weiss II*), 2 BvR 859/15, 2 BvR 1651/15, 2 BvR 2006/15, 2 BvR 980/16

In the light of Articles 119 and 127 *et seq.* TFEU, as well as Articles 17 *et seq.* Statute of the ESCB, the decision of the Governing Council of the ECB of 4 March 2015. (EU) 2015/774 and subsequent decisions (EU) 2015/2101, (EU) 2015/2464, (EU) 2016/702 and (EU) 2017/100 must be qualified as *ultra vires*. While it is true that the CJEU expressed a different position in its answers to the third and fourth preliminary questions of Senate II and that the interpretation provided by the CJEU is in principle binding on the Federal Constitutional Court, in this case, the delimitation of competence undertaken by the CJEU is simply untenable. Ultimately, the objections arising from the order of competence in respect of the ECB Governing Council's PSPP decision of 4 March 2015. (EU) 2015/774 and subsequent decisions (EU) 2015/2101, (EU) 2015/2464, (EU) 2016/702 and (EU) 2017/100 have not been overturned.

Tomasz Knepka
Kazimierz Wielki University in Bydgoszcz, Poland
tomasz.knepka@ukw.edu.pl
ORCID: 0000-0002-6848-8239

https://doi.org/10.26881/gsp.2024.1.12

Commentary

The judgment of the Federal Constitutional Court (FCC) under review (*Weiss II*) originates from the European Central Bank's (ECB) activity in connection with the financial turmoil initiated in late 2007 and early 2008. As a result of the ECB's involvement in restoring financial stability, a group of German politicians filed several constitutional complaints under the procedure for examining the constitutionality – the competence of state authorities – addressed to the FCC against the German laws stabilising the euro area. The FCC, by the order of 17 December 2013, excluded for separate examination the allegations concerning the compatibility with EU law of the ECB Council docu-

ment of 6 September 2012 on Outright Monetary Transactions (Technical features of Outright Monetary Transactions, OMT).[1] In contrast, by the order of 14 January 2014, the FCC made the determination to halt the proceedings in this matter and forwarded inquiries to the CJEU for a preliminary assessment of the legality of the actions taken by the ECB. Following this request, the CJEU, in the *Gauweiler* judgment ruled that the ECB's actions were compatible with EU law.

In subsequent years, the ECB's involvement in the functioning of the EU financial market increased, which resulted in several more constitutional complaints being brought before the FCC against the ECB's 2015 decision on the Secondary Markets Public Sector Asset Purchase Programme (PSPP).[2] In brief, this document involved the authorisation, specifically for national central banks (in proportions reflecting their respective shares in the capital key[3]) and for the EU central bank itself to be able to make outright purchases of eligible marketable debt securities from eligible counterparties in secondary markets.[4]

As a consequence of the ECB's act being issued and implemented, the CJEU was again referred to the CJEU for a preliminary ruling in 2017 by the FCC.[5] The FCC again asked the court to answer several questions for a preliminary ruling, which in their content included doubts about the compatibility of the ECB document with the TFEU provisions on economic and monetary policy and the provisions contained in the Protocol on the Statute of the European System of Central Banks and the European Central Bank (ESCB and ECB).[6] In addition, the complainants pointed to a violation of the division of competences between the EU and the Member States provided for in the TFEU. The issues in dispute mainly related to the provisions regarding the implementation of monetary policy by the ECB and the prohibition of deficit coverage by the central banks of EU Member States.

Undoubtedly, the background of the judgment under review is the earlier CJEU judgment in the *Gauweiler* case, which fits into the context of the following considerations. Firstly, the reference for a preliminary ruling was referred again to the CJEU by the FCC in the context of a procedure which seeks to establish that the ECB act is clearly *ultra vires* and contrary to German constitutional identity. Secondly, both acts

---

1 Press release, *Technical features of Outright Monetary Transactions*, 6 September 2012.

2 Decision of the European Central Bank (EU) 2015/774 of 4 March 2015 on a programme for the purchase of public sector assets in secondary markets. Since its adoption on 4 March 2015, this Decision has been amended by Decisions 2015/2101, 2015/2464, 2016/702 and Decision 2017/100. This programme is one of the four sub-programmes of the *Expanded Asset Purchase Programme* ("APP") announced by the ECB.

3 The distribution of purchases between jurisdictions is based on the ECB's capital subscription key as referred to in Article 29 of the ESCB and ECB Statute.

4 Article 1 of Decision 2015/774.

5 Reference for a preliminary ruling from the Bundesverfassungsgericht (Germany) lodged on 15 August 2017 – *Heinrich Weiss and Others* (Case C-493/17), Official Journal of the EU, 27.11.2017, C 402/9.

6 Chapter IV Monetary functions and operations of the ESCB, Articles 17–24 of Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank, Official Journal of the EU, 07.06.2016, C202/238.

considered in *Weiss* and the one at issue in *Gauweiler* are related to the ECB's unconventional programmes,[7] which, in the FCC's view, do not fall within the scope of monetary policy and violate the prohibition on lending set out in Article 123 TFEU.[8]

It is worth noting that the judgment in the *Gauweiler* case concerned an ECB press release reporting on a decision approving a programme for the purchase of government bonds issued by euro area Member States, which was not then nor has it ever been implemented subsequently. By contrast, the programme considered in *Weiss*, that for purchasing public sector assets on secondary markets (PSPP), was formally adopted and implemented.[9] The *Gauweiler* case resulted in a ruling in which both the CJEU and the FCC ruled in favour of the ECB. The case also marked an important procedural turning point since the FCC, for the first time in its history, referred to a preliminary ruling of the CJEU to reduce the risk of inconsistencies in the interpretation of the treaties and to maintain an open and productive dialogue between the two courts.

In the initial phase of the proceedings before the CJEU in the *Weiss* case, the doubts of the German constitutional court were confronted by Advocate General Melchior Wathelet, who, in his opinion of 4 October 2018, proposed that the CJEU should answer the preliminary questions submitted by the FCC as follows: the examination of Decision 2015/774 on the programme for the purchase of public sector assets on the secondary markets did not reveal anything that could call its validity into question.[10] Consequently, after reviewing the position of the Advocate General, the Luxembourg judges on 11 December 2018 announced their judgment in the *Weiss* case, in which they shared the position of Advocate Wathelet.[11]

The judgment of the FCC of 5 May 2020, is, as it were, a response to the position of the CJEU in the above-mentioned *Weiss* case; in the literature this judgment is referred to as *Weiss II*.[12] In its final decision, unlike in the *Gauweiler* case, the FCC disagreed with the CJEU judgment, which has drawn criticism.

In *Weiss II*, the CJEU found the ECB programme to be lawful, unfortunately, the FCC disagreed and held that the CJEU judgment was not binding in Germany and that the programme in question was unlawful and required further action by the ECB to bring it into conformity with German law.

In its judgment, the FCC seems to seek to maintain its position as the final arbiter in constitutional matters, while disregarding the role of the CJEU as the highest judicial authority in the EU and the process of financial market integration. By conceding to itself, in particular, but also indirectly, to the other constitutional courts of the Member

---

[7] A programme of this kind is usually considered to be *'Quantitative Easing'* (*QE*) because of the increase in the central bank's money supply, to which the purchase of a significant number of bonds leads.

[8] Paragraph 3 of the opinion of Advocate General Melchior Wathelet presented on 4 October 2018, Case C-493/17 *Weiss and Others*.

[9] Point 4 of the Advocate General's opinion.

[10] Paragraph 154 of the Advocate General's opinion.

[11] Judgment of the Court of Justice of the European Union of 11 December 2018, in Case C-493/17 *Weiss and Others*.

[12] BVerfG, Judgment of the Second Senate of 5 May 2020 – 2 BvR 859/15, paras. 1-237.

States the power to carry out *ultra vires* review in areas that undoubtedly fall within EU competence, the FCC fails to recognise that only the CJEU can declare invalid acts of EU law that violate the principle of proportionality.[13]

The judgment under review does not deserve approval as it contributes to destabilising judicial dialogue, which is based on the idea of avoiding escalation. It also increases challenges to the principle of the primacy of European law in the Member States. In doctrinal terms, the FCC judgment is based on a critique of the CJEU's understanding of the principle of proportionality. Well, in the judgment under review, the principle of proportionality plays an essential role in assessing whether sufficient safeguards have been provided by implementing the ECB programme; for example, a difficult economic situation justifies fewer safeguards, but in conducting its monetary policy the ECB should take into account the principle of proportionality.[14]

In addition, the FCC ruling raises several fundamental questions as to the state of judicial dialogue in the EU and the institutional position of the CJEU, the authority of European law and the sustainability of the above principles.[15] *Weiss II* may also have an impact on the Economic and Monetary Union (EMU) and its legal and institutional order. It cannot be denied that the impact of this judgment on the future integration of the financial market in Europe will be felt in the coming years.[16] The FCC, by challenging some of the most deeply rooted principles of Union law, sets a dangerous precedent for the long-term stability and effectiveness of the EU legal and political system.[17] The ruling of the FCC could become a milestone in the history of the EMU and its laws. Moreover, the decision by the German court directly undermines the integrity of Union law.[18]

Weiss II ends with an unusual, if not highly controversial solution; it orders the ECB to adopt a new decision within three months.[19] The problem, however, is that the FCC does not have the power to order the ECB to take a new decision, and the ECB is not obliged to comply with the FCC's request. Indeed, the ECB is not subject to the jurisdiction of any courts other than the CJEU. Moreover, the above would be tantamount to accepting some form of direct control of the ECB by national judges, in contrast to the independence conferred on the ECB by Article 130 TFEU.[20] The main manifestation of this functional independence is the ECB's exclusive competence to formulate

---

13 A. Śledzińska-Simon, *The end of the German Legal Culture? Authority v. Justification* [in:] *German Legal Hegemony*?, "MPIL Research Paper Series" 2020, no. 43, p. 2.

14 Ch. Andersson, *Whatever it takes ECB's Mandate of Purchasing Government Bonds on Secondary Markets*, LAGF03 Essay in Legal Science, 2018.

15 P. Dermine, *The Ruling of the Bundesverfassungsgericht in PSPP – An Inquiry into its Repercussions on the Economic and Monetary Union Bundesverfassungsgericht 5 May 2020, 2 BvR 859/15 and others, PSPP*, "EuConst" 2020, no. 16, p. 526.

16 *Ibid.*

17 *Ibid.*, pp. 550–551.

18 J. Baquero Cruz, *Karlsruhe and its Discontents*, "LAW Working Paper" 2022, no. 10, p. 2.

19 F. Annunziata, *Cannons over the EU legal order: The decision of the BVerfG (5 May 2020) in the Weiss case*, "Maastricht Journal of European and Comparative Law" 2021, vol. 28(1), pp. 140–141.

20 F. Annunziata, *Cannons*…, p. 141.

and implement monetary policy. For this purpose, the ECB is endowed with appropriate decision-making and operational powers.[21] The ECB formulates monetary policy in the countries that have entered the third stage of the EMU. It also determines the instruments for its implementation. Its powers concern the shaping of liquidity levels in the countries that have entered the third stage of the EMU.[22] The ECB can influence the value of money through legally permissible means (methods, instruments of monetary policy) and by using existing experience in this area. This makes central banks a peculiar link in the system of public finances since currency has a great influence on the real sphere of the economy and its performance, and it is not without justification that they are often referred to as monetary authorities.[23]

The *Weiss II* case is also crucial when it comes to the line delimiting the respective competences of the Union and its Member States. The EU derives its competences and powers by delegation from its Member States, in accordance with the Treaties, its *de facto* constitution.[24] By creating a community for an indefinite period of time, with its own institutions, its own personality, its own legal capacity and ability to represent itself on the international stage, and in particular the real power deriving from the limitation of sovereignty or the transfer of state powers to the Union, the Member States have limited their sovereign rights and thus created a body of rules that bind both their citizens and themselves.[25]

From the *Gauweiler* case to *Weiss II*, we see the development of standards for judicial review of ECB decisions, both in the field of monetary policy and banking supervision.[26] However, it seems that, both with regard to liability cases and judicial review of actions, there are now more frequent problems than in the past in sorting out the ECB activity in question.[27] Looking at the growing body of case law, one can find parallels that seem to indicate that general standards for judicial review of ECB decisions are developing and consolidating. Obviously, the application of these standards follows a different logic, as different levels of scrutiny have to be adopted if one considers, on the one hand, monetary policy decisions (where the absolute independence of the ECB has to be preserved) and, on the other hand, decisions on banking supervision and/or resolution. One might therefore think that this experience might even result in a more transparent, meticulous legal justification of the monetary policy measures adopted by the ECB in the future.[28]

---

21 J. Gliniecka, *European System of Central Banks* [in:] *System prawa finansowego…*, vol. 4, p. 159.

22 *Ibid.*, p. 180.

23 E. Fojcik-Mastalska, *Bank centralny* [in:] *System prawa finansowego…*, p. 99.

24 J.H.H. Weiler, D. Sarmiento, *The EU Judiciary After Weiss – Proposing a New Mixed Chamber of the Court of Justice*, "EU Law Live", 1 June 2020, pp. 2–3.

25 G. Barrett, *Reflections on the Revolution in Karlsruhe: the Bundesverfassungsgericht Ruling in Weiss*, "UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper" 2020, no. 18, p. 2.

26 F. Annunziata, *Cannons…*, p. 123.

27 M. Fedorowicz, *New tasks and functions of the European Central Bank in ensuring financial stability in the light of the European Banking Union regulations*, "Zeszyty Natolińskie" 2016, no. 62, p. 135.

28 G. Anagnostaras, *Activating Ultra Vires Review: The German Federal Constitutional Court Decides Weiss*, "European Papers" 2021, vol. 6, no. 1, p. 827.

The analysis of the judgment in question also gives grounds to conclude that *Weiss II* represents a breaking point in the long-standing dialogue between the FCC and the CJEU. It should be pointed out that if every constitutional court or supreme court in each Member State were to follow the German example, this could spell the end of the EU as an integrated legal area of justice and the rule of law and damage the single market.[29] The FCC's decision seeks to undermine the fundamental principles on which EU law is based and creates a breeding ground for dangerous imitators whose activity could have a lasting impact on the EU legal system, particularly in the area of the financial market.

It is crucial to emphasize that after the FCC judgment, there are new challenges for the ECB in the implementation of monetary policy, the ECB Mandate does not provide clear guidance on many of the recent challenges facing the central bank, even more so, the *Gauweiler* and *Weiss* cases have made the ECB Mandate unclear and vague,[30] which may generate more disputes in the future regarding the legal uncertainties of the ECB's activity.

Summarising the judgment under review, it should be pointed out that the FCC judgment deserves a negative response. An analysis of the voice of German jurisprudence gives rise to the following concluding statements:

1. The judgment under review deals with an issue much broader than the scope of the ECB's competence. The FCC seems to have overlooked the extremely important historical context and conditions for the creation of the EMU in Europe with the particular role of the ECB at the present time.[31]
2. The ECB's programmes are certainly a controversial measure used by the central bank, but probably the most effective,[32] especially with regard to problems such as the turmoil in the financial system, pandemics, climate change and the war in Ukraine.

Literature

Anagnostaras G., *Activating Ultra Vires Review: The German Federal Constitutional Court Decides Weiss*, "European Papers" 2021, vol. 6, no. 1.

Andersson Ch., *Whatever it takes ECB's Mandate of Purchasing Government Bonds on Secondary Markets*, LAGF03 Essay in Legal Science, 2018.

Annunziata F., *Cannons over the EU legal order: The decision of the BVerfG (5 May 2020) in the Weiss case*, "Maastricht Journal of European and Comparative Law" 2021, vol. 28(1).

Baquero Cruz J., *Karlsruhe and its Discontents*, "LAW Working Paper" 2022, no. 10.

---

29 J.H.H. Weiler, D. Sarmiento, *The EU Judiciary…*, p. 1.

30 Ch. Andersson, *Whatever it takes…*

31 *Cf.* A. Nowak-Far, *Unia Gospodarcza i Walutowa w Europie*, Warsaw 2001 and H. Gronkiewicz-Waltz, *Europejska Unia Gospodarcza i Walutowa*, Warsaw 2009.

32 Editorial Comments, *An unintended side-effect of Draghi's bazooka: An opportunity to establish a more balanced relationship between the ECJ and Member States' highest courts*, "Common Market Law Review" 2014, vol. 51, issue 2, pp. 376–377.

Barrett G., *Reflections on the Revolution in Karlsruhe: The Bundesverfassungsgericht Ruling in Weiss*, "UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper" 2020, no. 18.

Dermine P., *The Ruling of the Bundesverfassungsgericht in PSPP – An Inquiry into its Repercussions on the Economic and Monetary Union Bundesverfassungsgericht 5 May 2020, 2 BvR 859/15 and others, PSPP*, "EuConst" 2020, no. 16.

Fedorowicz F., *New tasks and functions of the European Central Bank in ensuring financial stability in the light of the European Banking Union regulations*, "Zeszyty Natolińskie" 2016, no. 62.

Fojcik-Mastalska E., *Bank centralny* [in:] *System prawa finansowego*, vol. 4, ed. J. Głuchowski, Warsaw 2010.

Gliniecka J., *European System of Central Banks* [in:] *System prawa finansowego*, vol. 4, ed. J. Głuchowski, Warsaw 2010.

Gronkiewicz-Waltz G., *Europejska Unia Gospodarcza i Walutowa*, Warsaw 2009.

Nowak-Far A., *Unia Gospodarcza i Walutowa w Europie*, Warsaw 2001.

Śledzińska-Simon A., *The end of the German Legal Culture? Authority v. Justification* [in:] *German Legal Hegemony?*, "MPIL Research Paper Series" 2020, No. 43.

Weiler J.H.H., Sarmiento D., *The EU Judiciary After Weiss – Proposing a New Mixed Chamber of the Court of Justice*, "EU Law Live", 1 June 2020.

Summary

Tomasz Knepka

"The Never-Ending Story": Reflections on the Powers of the European Central Bank

Since the financial crisis of 2007–2008, we have been dealing with a special dialogue between the European and German courts at the level of the European Union. The subject of this dialogue is the decisions of the European Central Bank on the programme for the purchase of public sector assets on secondary markets. The ECB's activity, as well as the involvement of the national central banks of the Eurosystem in the implementation of these decisions has been met with dissatisfaction by German politicians, culminating in the title judgment of the Constitutional Court of the Federal Republic of Germany. In the paper, the author analyses the judgment and passes critical commentary on the *Weiss II* judgment.

Keywords: European Central Bank, PSPP, *Weiss*, commentary.

Streszczenie

Tomasz Knepka

„Niekończąca się opowieść" – refleksje na temat uprawnień Europejskiego Banku Centralnego

Od kryzysu finansowego z lat 2007–2008 mamy do czynienia – na poziomie Unii Europejskiej – ze szczególnym „dialogiem" między sądami europejskimi i niemieckimi. Przedmiotem tego „dia-

logu" są decyzje Europejskiego Banku Centralnego w sprawie programu skupu aktywów sektora publicznego na rynkach wtórnych. Działalność EBC, a także zaangażowanie krajowych banków centralnych Eurosystemu w realizację tych decyzji spotkało się z niezadowoleniem niemieckich polityków, czego kulminacją było tytułowe orzeczenie Trybunału Konstytucyjnego RFN. W artykule autor analizuje wyrok i odnosi się krytycznie do wyroku *Weiss II*.

Słowa kluczowe: Europejski Bank Centralny, PSPP, *Weiss*, komentarz.

Implementation of Environmentally Friendly Investments by Municipalities and VAT Status

Judgment of the Court of Justice of the European Union of 30 March 2023, C-612/21

When implementing renewable energy projects, municipalities that have received subsidies for the implementation of such projects do not act as VAT taxpayers and thus the activities performed by them remain outside the scope of VAT taxation.

Łukasz Kielin
University of Gdańsk, Poland
kielin.lukasz1994@gmail.com
ORCID: 0000-0003-0046-9477

https://doi.org/10.26881/gsp.2024.1.13

Commentary

The Court of Justice of the European Union, in the judgment of 30 March 2023[1] (Case: C-612/21), ruled that a municipality implementing pro-ecological projects for the installation of renewable energy systems (RES) does not act as a VAT taxpayer and thus the activities it performs are not subject to the aforementioned tax. In the author's opinion, the Court standpoint is correct.

The judgment under review was delivered in response to a preliminary question posed by the Supreme Administrative Court,[2] which sought to determine whether the provisions of the VAT Directive[3] and, in particular, Articles 2(1), 9(1) and 13(1) of that Directive, should be interpreted as meaning that a municipality (a public authority) acts as a VAT payer when carrying out a project the objective of which is to increase the proportion of renewable energy sources by committing itself, by means of a contract concluded with the owners of immovable property, to a project aimed at increasing the proportion of renewable energy sources.

---

1 CJEU judgment of 30 March 2023, C-612/21.

2 Order of the Supreme Administrative Court of 16 April 2021, I FSK 1645/20.

3 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (Official Journal of the EU L series of 2006 No. 347/1, as amended).

In the case in question, the municipality of O. installed RES on behalf of its residents (with the involvement of a specialist company) as part of a regional operational programme project aimed at transitioning to a low-carbon economy. Seventy-five percent of the costs of the project were financed by a public subsidy, and 25% by the owners of the properties on which the RES were installed. Under the terms of the project contracts between the municipality and the residents, the systems supplied were to be owned by the municipality for five years.

In the opinion of the municipality, which applied for an individual tax ruling, it does not act as a VAT taxpayer with regard to the projects implemented, so that the contribution paid by individual property owners and the subsidy obtained by the municipality are not subject to VAT. However, the director of National Fiscal Information[4] and the Provincial Administrative Court in Warsaw[5] disagreed with this position. On appeal, the case was brought before the Supreme Administrative Court, which referred questions to the CJEU.

Responding to the questions referred for a preliminary ruling, the CJEU held that, in the present case, the municipality did not perform the economic activity of installing renewable energy systems and thus was not acting as a taxable person for VAT. In the Court's view, this is because the municipality of O. does not intend to provide the installation of RES on a regular basis and does not employ or intend to employ personnel. At the same time, as noted by the Court, the municipality of O. limits itself to offering its residents the supply and installation of RES (through a company selected by tender) in exchange for a share of no more than 25% of the subsidisable costs associated with the supply and installation of the systems, whereas the municipality pays the company concerned remuneration for the same supply and installation at the market price. In addition, in the Court's view, it does not seem economically viable for an installer of RES to charge the recipients of its supply of goods and provision of services only at most a quarter of the costs it incurs, while expecting to be compensated by subsidy for the bulk of the remaining three quarters of these costs.

Undoubtedly, the judgment under review constitutes an extremely important decision from the point of view of the implementation of pro-environmental projects implemented by municipalities. Indeed, to date, the practice in similar cases has not been uniform. For example, in the individual interpretation of 12 December 2018 (0114-KDIP4.4012.737.2018.2.AKO), the director of National Fiscal Information stated that a municipality acts as a VAT taxpayer when implementing projects to install RES, and the subsidy received should be included in the VAT tax base.[6] However, there are in jurisprudence practice positions to the contrary.[7]

---

[4] Individual interpretation by the Director of the KIS dated 7 August 2019, 0112-KDIL4.4012.277.2019.2.MB.

[5] Judgment of the Voivodship Administrative Court in Warsaw of 10 July 2020, III SA/Wa 2252/19.

[6] In a similar vein, the Director of the KIS expressed his opinion in individual interpretations of 21 May 2021, 0111-KDIB3-1.4012.254.2021.2.ASY and of 25 May 2021, 0111-KDIB3-1.4012.251.2021.2.MSO.

[7] Individual interpretation by the Director of the KIS of 17 May 2021, 0114-KDIP4-1.4012.168.2021.2.AK; see in more detail: A. Wesołowska, *Gminne inwestycje w OZE i usuwanie azbestu bez VAT. Omówienie wyroków TS z dnia 30 marca 2023 r., C-612/21 (Gmina O.) i C-616/21 (Gmina L.)*, LEX/el. 2023.

Taking this into account, it should be pointed out that the judgment under review should undoubtedly contribute to unifying, and above all changing, the practice to date of tax authorities and administrative courts on a key sustainable development issue, which is undoubtedly the development of RES. Interpretations to date have undoubtedly had a negative impact on the implementation of similar projects. When analysing the judgment under review, it is necessary, first of all, to agree with the position expressed by the Court that municipalities, when implementing pro-environmental projects aimed at the installation of RES, do not engage in economic activity and, consequently, do not act as VAT taxpayers.

It should be underlined that in light of Article 15(1) of the VAT Act,[8] taxpayers are legal persons, organisational units without legal personality and natural persons who conduct business activity independently, regardless of the purpose or result of such activity. Pursuant to Article 15(2) of the aforementioned Act, economic activity includes any activity of producers, traders or service providers, including natural resource extraction entities and farmers, as well as the activity of liberal professionals. Economic activity includes, in particular, activities involving the use of goods or intangible assets on a continuous basis for gainful purposes.

These provisions reflect Article 9(1) of the VAT Directive, according to which a taxable person is any person who conducts independently in any place any economic activity, whatever the purpose or results of that activity, and economic activity includes any activity of producers, traders or suppliers of services, including mining, agricultural activities and activities of professions or those recognised as such. In particular, the use, on a continuing basis, of tangible or intangible property in order to obtain income therefrom shall be regarded as economic activity.

According to the provisions of the Constitution of the Republic of Poland and the Act On The Municipal Government[9] municipality is the basic unit of local government, with legal personality and financial independence. The basic role of the municipality is to conduct tasks of a public nature, which it performs on its own behalf and at its own responsibility; however, a more complex issue is the tax status of municipalities in the light of the VAT Act.[10] The national provisions, similarly to the VAT Directive, treat public authorities in a special way[11]. In the light of Article 15(6) of the VAT Act, public authorities shall not be deemed to be taxpayers within the scope of the tasks imposed by separate provisions of law, for the performance of which they have been established, with the exclusion of activities performed on the basis of concluded civil-law contracts. The above provision mirrors Article 13 of the VAT Directive.

The provisions of the VAT Act do not contain a definition of public authorities, so in this respect it is necessary to refer to the jurisprudence of administrative courts and

---

8 Value Added Tax Act of 11 March 2004 (Journal of Laws 2022.931; hereinafter: VAT Act).

9 The Act of 8 March 1990 on The Municipal Government (Journal of Laws 2023.40).

10 T. Bełdyga, *Gmina jako podatnik VAT – aspekty podmiotowe* [in:] *VAT w gminach*, eds. *idem et al.*, LEX/el. 2014.

11 K. Różycki, *Podatnicy podatku od towarów i usług – organy władzy publicznej*, LEX/el. 2021.

the Constitutional Tribunal.[12] In the jurisprudence of the Constitutional Tribunal,[13] administrative courts[14] and the doctrine,[15] local government units should be qualified as organs of public authority regardless of whether they perform their own tasks or those of government administration.

Thus, when analysing the above provisions, it should be concluded that the municipality, when performing its own tasks or tasks within the scope of government administration, should not be considered a VAT taxpayer. In this context, it should be noted that, as indicated by the applicant, in the light of Article 403(2) in conjunction with Article 400a(1), (21) and (22) of the Environmental Protection Act,[16] financing environmental protection in the field of air protection projects and support for the use of local renewable energy sources and the introduction of more environmentally friendly energy carriers is the municipality's own task. The position of the municipality, which, as the applicant, indicated that it was fulfilling its own statutory tasks in the subject matter, is therefore correct in this respect; the project was conducted in the interest of the entire population by ensuring clean air and improving health conditions.[17]

Notwithstanding, first of all, it is necessary to share the view expressed by the Court in the judgment under review that the municipality, when implementing projects concerning the installation of RES, is not conducting economic activity. As indicated in the doctrine, it should be assumed that, in principle, economic activity is only that which is performed professionally (in a professional manner), whereas performing certain activities incidentally, outside the sphere of conducted economic activity, does not make it possible to consider a given entity as a VAT taxpayer with regard to these activities.[18]

In this context, it should be noted that the implementation of this type of project by the municipality is only incidental. As a general rule, local authorities do not implement projects for the installation of RES on a regular basis, as evidenced, for example, by the fact that the municipality of O. did not intend to employ specialised personnel to perform this type of service. The Court therefore rightly pointed out that the municipality's implementation of projects for installing RES is not of a permanent nature. It should be also taken into consideration that another criterion for assessing an activity as an economic activity involving the use of one's property is its profit-making nature. Taking into account the above, as indicated in the background of the case, the owners of the property only participate in the costs of its implementation and their contribution covers only part of the eligible expenditure. It is therefore impossible to consider that the projects implemented by the municipalities are of a profit-making nature.

---

12 *Ibid*.

13 See judgment of the TK of 4 December 2001, SK 18/00.

14 Judgment of the Supreme Administrative Court of 25 November 2011, I FSK 145/11.

15 A. Derkacz, *Podmiotowość podatkowa jednostki samorządu terytorialnego na gruncie ustawy o VAT*, "Municipal Finance" 2009, no. 3, p. 43.

16 Act of 27 April 2001, Environmental Protection Law (Journal of Laws 2022.2556, as amended).

17 Individual interpretation by the Director of the KIS dated 7 August 2019, 0112 KDIL4.4012. 277.2019.2.MB.

18 A. Bartosiewicz, *Article 15* [in:] *VAT. Komentarz*, 16th edition, Warszawa 2022.

Taking into account the above, the Court has rightly held that municipalities implementing projects for the installation of RES should not treat the activities performed as part of these projects as subject to VAT. It should be underlined that the municipalities, when implementing projects concerning the installation of RES, do not conduct economic activity; the implementation of this this type of project is only incidental. Additionally, in the author's opinion, the position of the municipality, which indicated that it was fulfilling its own statutory tasks is correct in this respect. The project was implemented in the interest of the entire population by ensuring clean air and improving health conditions.

At the same time, it should be noted that this judgment means that municipalities will not be entitled to deduct VAT from invoices documenting purchases of goods and services used for the purposes of such projects and programmes. Undoubtedly, however, this judgment should contribute to the unification of the line of jurisprudence and thus simplify the implementation of similar projects in the future. The judgment thus undoubtedly represents a certain breakthrough in previous practice, and it is hoped that it will contribute to the development of the installation of RES.

Literature

Bartosiewicz A., *Article 15* [in:] *VAT. Komentarz*, 16th edition, Warszawa 2022.

Bełdyga T., *Gmina jako podatnik VAT – aspekty podmiotowe* [in:] *VAT w gminach*, eds. *idem et al.*, LEX/el. 2014.

Derkacz A., *Podmiotowość podatkowa jednostki samorządu terytorialnego na gruncie ustawy o VAT*, "Municipal Finance" 2009, no. 3.

Różycki K., *Podatnicy podatku od towarów i usług – organy władzy publicznej*, LEX/el. 2021.

Wesołowska A., *Gminne inwestycje w OZE i usuwanie azbestu bez VAT. Omówienie wyroków TS z dnia 30 marca 2023 r., C-612/21 (Gmina O.) i C-616/21 (Gmina L.)*, LEX/el. 2023.

Summary

Łukasz Kielin

Implementation of Environmentally Friendly Investments by Municipalities and VAT Status

The article deals with the judgment of the CJEU in case C-612/21 which answered an important question. Namely, under what circumstances can a public body be considered a taxable person for VAT. This case concerns a Polish municipality which organized the installation of renewable energy systems (RES) on its territory for its residents who own immovable property and who expressed a desire to be equipped with RES. The municipality was reimbursed with a subsidy of 75% of the subsidisable costs from the competent provincial authority. The CJEU ruled that in this specific case, the public body would not be carrying out economic activity and, therefore, should not be considered a taxable person for VAT.

Keywords: business activity, municipality, renewable energy sources, VAT.

Streszczenie

Łukasz Kielin

Realizacja proekologicznych inwestycji przez gminy a status podatnika VAT

Tematem glosy jest wyrok Trybunału Sprawiedliwości Unii Europejskiej z dnia 30 marca 2023 r. (C-612/21), w którym TSUE odpowiedział na ważne pytanie – tj. w jakich okolicznościach podmiot publiczny może zostać uznany za podatnika VAT? Powyższa sprawa dotyczyła polskiej gminy, która realizowała projekt instalacji systemów energii odnawialnej na swoim terytorium dla mieszkańców, którzy posiadają nieruchomości oraz wyrazili chęć wyposażenia ich w systemy energii odnawialnej. Zwrot kosztów przez gminę polegał na dotacji od właściwego organu wojewódzkiego w wysokości 75% kosztów podlegających dofinansowaniu. W glosowanym wyroku TSUE orzekł, że w konkretnym przypadku podmiot publiczny nie prowadziłby działalności gospodarczej, a zatem nie powinien być uznany za podatnika VAT.

Słowa kluczowe: działalność gospodarcza, gmina, OZE, VAT.

Varia

Tomasz Sowiński
University of Gdańsk, Poland
tomasz.sowinski@prawo.ug.edu.pl
ORCID: 0000-0002-4137-1209

The 6th International Baltic Conference on Financial Law, Gdańsk–Karlskrona–Malmö–Lund–Gdynia, April 19–22, 2023 (Report)

The 6th International Baltic Conference on Financial Law: Financial Law and the Challenges of the 21st Century was held on the Gdańsk–Karlskrona–Malmö–Lund–Gdynia ferry route on April 19–22, 2023.

The organizers of the conference were the Faculty of Law and Administration of the University of Gdańsk and the Faculty of Law of the University of Bialystok and the Center for Local Government Law and Local Finance Law of the University of Gdańsk.

The proposed subjects of the conference were issues of financial law and public finance, local government financial law, tax law, insurance law, financial market law, and international financial law.

The leading theme of the 6th International Baltic Conference on Financial Law was sustainable finance. This is one of the most pressing subjects of academic research conducted by scholars of the doctrine of financial law. This issue also has a growing impact on the functioning of the financial market and decisions taken in the area of fiscal policy. As a factor accelerating the development of the concept of sustainable finance in the twenty-first century, one should consider phenomena, processes, and events that have a crisis dimension, such as the global financial crisis of 2008, the pandemic, and the war in Ukraine.

It is worth emphasizing that it is the financial sector and public finance that play key roles in solving socioeconomic problems and building the innovative, low-carbon economy of the future. In this view, finance becomes an instrument for achieving the goals set out by the United Nations in *Transforming our world: The 2030 Agenda for Sustainable Development*.

Our conference this year featured an important debate on the role of finance and financial law in achieving the Sustainable Development Goals.

The works produced under the Financial Law and the Challenges of the 21st Century research project were subjected to academic reflection in the context of their topicality, continuity, and effectiveness.

Conclusions *de lege lata* and *de lege ferenda* were presented thus enabling the institutions examined to continue to effectively fulfill their social roles.[1]

We are grateful to our partners, patrons, and sponsors, without whom the organization of the conference would not have been possible.

The organizers would like to extend a special thanks the Honorary Patron of the 6th International Baltic Conference on Financial Law – Mr. Artur Kosicki, Marshal of Podlaskie Voivodeship, and its Strategic Partner – Podlaskie Voivodeship.

We would also like to thank the rectors of our universities and the deans of our faculties for their patronage, kindness, and assistance. Cooperation among the Faculty of Law and Administration of the University of Gdańsk, the Faculty of Law of the University of Białystok, and the Center for Local Government Law and Local Finance of the University of Gdańsk was effective, and the fruitful beginnings of this cooperation holds great promise for the future.

In the publication from the 4th Local Government Financial Law Conference in 2021,[2] we began including a report on the conference, which we now want to continue. The aforementioned publication covered all local government conferences to make up for the backlog from previous years. Similarly in this report, we mention briefly the effects of six research projects conducted as part of the Financial Law and the Challenges of the 21st Century project in the 2010–2023 period.

The Center for Local Government Law and Local Finance Law of the University of Gdańsk is a unit of the Faculty of Law and Administration of the University of Gdańsk that conducts activities aimed at social integration and meeting the needs of non-academic communities. The Center implements its program objectives related to self-government law, especially local finance law and tasks realized in conjunction with the Chair of Financial Law of the Faculty of Law and Administration at the University of Gdańsk throughout the field of public finances and finance law.

The main objective of the Center is to realize of its own projects or projects developed in cooperation with other academic and non-academic partners, public and private institutions, non-governmental organizations, and others whose aims are coherent with the aims of the Center. The Center cooperates with other Polish and foreign academic and teaching institutions to offer specialist courses and lectures on self-government law and local finance law. It participates in the organization of scientific and research meetings promoting academic research activities and consulting services.

One of the Center's important pursuits is initiating and supporting publishing that integrates the academic community. The Center has already organized several international academic conferences and seminars and has issued a number of publications, most of which are of an international character. The Center also publishes an academic

[1] https://prawo.ug.edu.pl/wydzial/struktura-wydzialu/centrum-prawa-samorzadowego-i-prawa-finansow-lokalnych-ug [accessed: 2023.06.02].

[2] T. Sowiński, *Report on editions I–IV of Research Projects "Self-Government21"* [in:] *Challenges for local government units resulting from the amendment of the acts: on public finance and on maintaining cleanliness and order in communes*, eds. J. Gliniecka, Sz. Obuchowski, T. Sowiński, Warsaw 2021.

quarterly focused on financial law entitled *Financial Law Review*, which appears electronically and in English.

The Center also conducts research projects such as as Financial Law and the Challenges of the 21st Century and Self-Government21, which is a specialized form of the former research project that focuses on the finances of local self-governments. The Center cooperates with numerous units of local self-government, non-governmental organizations, organizations of local self-governments, and many other institutions.

The main partner and the initiator of the Center is the Chair of Financial Law of the Faculty of Law and Administration at the University of Gdańsk. Every activity at the Center is realized primarily in cooperation with the Chair of Financial Law and with the participation of its research staff. The Chair of Financial Law introduced the idea of the Financial Law and the Challenges of the 21st Century research project and organized the first conference. The Center took over this idea and organized subsequent research projects under this title, enriching it by creating a variation of it that is devoted to local self-government finances under the Self-Government21 project.[3]

The Center is constantly seeking to establish cooperation with other institutions: first with the Faculty of Law and Administration at Cardinal Stefan Wyszyński University in Warsaw; followed by that with the Chair of Financial Law and the Faculty of Law at Masaryk University, Brno, Czech Republic; the Department of Financial Law of the Faculty of Law of the Paul Joseph Šafárik University in Košice, Slovakia;[4] and the Faculty of Law at Bialystok University.

From 2012 to date, together with the Chair of Financial Law of the Faculty of Law and Administration at the University of Gdańsk and in particular cases also with some or all of the partners mentioned above, and with numerous NGOs, the Center has realized six research projects that resulted in five international conferences and international seminars that supplemented or extended the issues selected as the focus of the conferences:

- 1st International Baltic Conference on Financial Law: Financial Law and the Challenges of the 21st Century, Gdańsk–Nynäshamn–Stockholm, October 8–11, 2010;
- 2nd International Baltic Conference on Financial Law: Financial Law and the Challenges of the 21st Century, Gdańsk–Nynäshamn–Stockholm–Gdańsk, April 19–22, 2013;
- 3rd International Baltic Conference on Financial Law: Financial Law and the Challenges of the 21st Century, Gdynia–Karlskrona–Gdynia, April 24–27, 2015;
- Международный научный семинар по налоговому праву: "Принципы противодействия уклонению от уплаты налогов в Польши и России" (Interna-

[3] T. Sowiński, *Preface* [in:] *The Challenges of Local Government Financing in the Light of European Union Regional Policy (Conference Proceedings)*, eds. P. Mrkývka, J. Gliniecka, E. Tomášková, E. Juchniewicz, T. Sowiński, M. Radvan, Acta Universitatis Brunensis, Iuridica, Editio Scientia, vol. 636, Brno 2018, pp. 16–17.

[4] T. Sowiński, M. Radvan, *Preface* [in:] *The financial law towards challenges of the XXI century*, eds. M. Radvan, J. Gliniecka, T. Sowiński, P. Mrkývka, Publications of the Masaryk University, theoretical series, edition Scientia, file no. 580, Brno 2017, pp. 13–14.

tional Academic Seminar on Tax Law: The Principles of Countering Tax Evasion in Poland and Russia), Gdańsk, April 27, 2015;
- International Seminary of the Financial Law of Local Government: "Local Government Financing and its Tasks and European Charter of Local Self-Government", Gdańsk, April 25, 2016;
- 4th International Conference on Financial Law: Financial Law and the Challenges of the 21st Century, Gdynia–Karlskrona–Copenhagen–Gdańsk, April 21–24, 2017;
- 5th International Baltic Conference on Financial Law: Financial Law and the Challenges of the 21st Century, Gdynia–Karlskrona–Öland–Gdańsk, May 10–13, 2019;
- 6th International Baltic Conference on Financial Law: Financial Law and the Challenges of the 21st Century, Gdańsk–Karlskrona–Malmö–Lund–Gdynia, April 19–22, 2023.

The Center and the Department of Financial Law of the Faculty of Law and Administration at the University of Gdańsk have published several volumes related to the International Baltic Conferences on Financial Law. Several hundred researchers from dozens of research centers from all over Poland and the Czech Republic, Slovakia, Lithuania, Latvia, Croatia, Russia, Kazakhstan, and Italy are featured in these volumes.

In 2023, the 6th International Baltic Conference on Financial Law: Financial Law and the Challenges of the 21st Century as held on the Gdańsk–Karlskrona–Malmö–Lund–Gdynia ferry route, but the most important gatherings were held in two places: the Faculty of Law and Administration of the University of Gdańsk, where the conference began with a solemn plenary session and thematic panels, and the University of Lund, where subsequent plenary sessions were held and the conference concluded.

During the last plenary session, the moderators of the preceding sessions and thematic panels presented their reflections on their sessions. The remainder of this report was prepared based on their reflections.

The final plenary session, referred to as the moderators' session, of the 6th International Baltic Conference on Financial Law was held at the University of Lund. It was a synthetic summary and presentation of conclusions from the work of the sessions and thematic panels of the entire conference. It was led by Professor Dr. hab. Witold Modzelewski.

The first report from Session I was presented by Professor Dr. hab. Jan Gluchowski, who noted that five papers were presented at the plenary session he moderated. The most general of them (by Sebastian Skuza and Robert Lizak) concerned the American Inflation Reduction Act of 2022 as an element of that country's economic strategy. The speakers also presented the importance of this legal act on a global scale. Hana Marková compared the possibilities and limitations of state aid regulations in the Czech and the Slovak republics. She justified the analysis of solutions in this area and indicated the scope and size of this assistance. A group of five authors from Slovakia presented the results of research on the taxation of engineering structures as part of the real estate tax. Particular attention was paid by this group to the size of budget revenues from this tax. Tomasz Sowiński presented the results of long-term research on the model of sustainable pension finances. In addition to theoretical conclusions,

Sowiński referred to global practices in this area. Michał Mariański's presentation on the regulation of transactions on the financial market was the most detailed in this session, and he presented a comparative analysis as one of the elements of sustainable finance. In general, the subject matter of the presentations concerned important issues of financial law and public finance.[5]

The report from the first thematic panel – Public Finances part 1 – was presented by Dr. hab. Przemysław Panfil, who stated that during the first panel devoted to public finance, most of the attention was focused on issues directly related to the problems of the state budget economy. Differences between the terms "financial security of the state" and "security of the financial interest of the state," the impact of funds invested in BGK on the transparency of public finances, and the importance of fiscal stability for economic growth were analyzed. A discussion was also held on the financial system of local government units, especially in the context of their sources of income. Slightly separate issues that arose were the automation of financial processes in public procurement and the threats generated by green banking.[6]

Panel two, Public Finances part 2, was moderated by Dr. hab. Witold Srokosz, Professor of the University of Wrocław, who stated that Dr. hab. Przemyslaw Panfil explained the mechanism of circumventing fiscal rules using entities that are not included in the public finance sector, which results in general government debt in Poland being much higher than the public debt reported officially by the Polish government. Roman Vybíral, Ph.D., highlighted the conflict between ESG and the standard public regulation of financial institutions. He posed a question about the regulation of financial institutions: to be green or to be safe? Anna Wójtowicz-Dawid, Ph.D., stressed the importance of public pressure to be eco-friendly in the application of Polish law on public procurement. Dominika Wróblewska, M.A., presented a broad, general interpretation of the Minister of Finance and court rulings. Szymon Moś, Ph.D., suggested that the concept of efficiency when applying the Law on Health Care Services should be understood in the same way as when applying the Law on Public Finance.[7]

Panel three, Tax Law – Selected Issues, was moderated by Dr. hab. Sebastian Skuza, Professor of the University of Warsaw. He presented its content, the papers delivered by its participants, stating that Professor Witold Modzelewski raised the issue of tax law instruments limiting the decline in the fiscal efficiency of the tax system in crisis periods. Modzelewski presented the challenges in this area during the current turbulence in the macroeconomic environment. Importantly, he reported on the effectiveness of the collection of social security contributions and the uniqueness in the proceeds from the corporate income tax in 2022. Professor Michal Radvan presented the principle of laissez faire in tax law during a crisis. The subject of the presentation was in line with the current turbulent economic environment, and he explained how the "let it work" principle operates in such an environment.

---

5 Elaboration based on the report by Professor Dr. hab. Jan Głuchowski.

6 Elaboration based on the report by Dr. hab. Przemysław Panfil, University of Gdańsk.

7 Elaboration based on the report by Dr. hab. Witold Srokosz, Professor of the University of Wrocław.

In her presentation, Dr. Anna Drywa drew attention to the issue of data acquisition by tax authorities and raised the issue of the need to collect data in the context of privacy protection.

Dr. Soňa Simić raised the very sensitive, complicated subject of the taxation of digital services, and in addition to presenting the concept of taxation, she also discussed the issue of providing digital services as part of the freedom to conduct business[8].

Doc. Judr. ING. Michal Radvan, Ph.D., moderated panel four – Financial Law in The European Union and drew attention to session four of the conference that focused on financial law in the European Union. Magdalena Fedorowicz and Anna Zalcewicz introduced the challenges for the EU financial market in relation to the implementation of the concept of sustainable finance and summarized that control and supervision should be modified in accordance with the principle of sustainable finance. Michal Janovec and Damian Cyman focused on institutional financial consumer protection in Czechia and Poland. In their analyses of the differences, strengths, weaknesses, and challenges, they concluded that while the Czech regulatory framework is stronger, Poland has more innovative measures, such as mystery shopping and a centralized complaints database. Adrián Popovič presented the evaluation criteria of EU resources, and in addition to traditional standards, he highlighted the criterion of the impact of environmental protection. Luiza Budner-Iwanicka discussed the autonomy of local government financial management and the possibilities of its legal restriction by supervisory and control bodies, mainly in the Czech Republic and Poland and emphasized the role of RIOs in Poland. Tomasz Knepka focused on the relevance of the judgment of the Constitutional Court of the Federal Republic of Germany of 5 May 2020, for the financial market integration process of the European Union, as this judgment sets the standards of the courts' control of ECB decisions. All the papers presented were highly positive, provoked discussion, and contributed to the academic quality of the conference.[9]

Dr. hab. Anna Zalcewicz, Professor of the Warsaw University of Technology, moderated panel 5 – Sustainable Finances. The following papers were delivered by the panel participants: Witold Srokosz – Crypto-asset Market Regulation and Sustainable Development Goals; Damian Cyman – Financial Education of Financial Market Customers as a Necessary Elements Sustainable Finance; Paweł Lenio – Taxation of Crypto-Assets and Sustainable Development Goals; Tereza Svobodová – Tax Installation Plan – Legal Instrument of Financial Sustainability in a Crisis; Sally Sanad Šreflová and co-speaker – Green Deal in the Context of Sustainable Finance. The theme of the panel was sustainable finance. In their presentations, the speakers adopted one of the two meanings of sustainable finance; either a state of balance and stability throughout the financial system (papers 2 and 4) or environmental, social, and management issues in the context of finance (the remaining papers). Therefore, the issues presented focused either on the need for comprehensive approaches to environmental protection and social

[8] Elaboration based on the report by Dr. hab. Sebastian Skuza, Professor of the University of Warsaw.
[9] Elaboration based on the report by Doc. Judr. ING. Michal Radvan, Ph.D.

policy within the financial system (e.g., green taxation to contribute to sustainable development; the threat posed by cryptoassets to the environment), or elements of fiscal stability (a tax installation plan and its fiscal neutrality) and sustainable finance by ensuring that consumers in financial markets have appropriate levels of knowledge. According to Professor Zalcewicz, all the papers presented were of a high substantive level.[10]

Panel 6 – Financial Law of Local Governments was moderated by Dr. hab. Elżbieta Feret, Professor of the University of Rzeszów, and five speakers from various academic centers in Poland and one from Hungary delivered papers. Summarizing the content of the presentations of this panel, all the papers addressed the functioning of financial law at the local government level in selected areas and drew attention to still inconsistent local government legal regulations of both ordinary and extraordinary natures, which were particularly notable during and after the pandemic. It was reported that both in Poland and Hungary systemic legal instruments for local government units have not been developed to secure comprehensively their operation during unforeseen events. Hence, the speakers, as *de lege ferenda* postulates, pointed out the need to develop such legal mechanisms that would allow financially securing the activities of local government units and bypassing their dependence on the state that significantly limits the independent performance of public tasks, especially under exceptional circumstances. The first presentation by Bogumił Pahl was devoted to determining the impact of the level of air pollution on the collection of local fees. The paper was a comparative legal case study referring to the city of Zakopane. Based on previously and currently applicable provisions from the Act on Local Taxes and Fees, Pahl defined the imperfections of the currently optional local fee along with its legal and factual shortcomings. Importantly, based on legal regulations in force in Slovakia and the Czech Republic, Pahl justified the need to change them in favor of Polish municipalities by introducing a tourist tax.

Remaining in this area of consideration of adopting new, more favorable legal solutions for local government units, Ádám Pal also drew attention to the need to increase financial resources for local government budgets based on Hungarian legal regulations. In his presentation entitled Tax Autonomy of Hungarian Municipalities: Crisis Measures and Future Prospects, Pal unequivocally advocated increasing the list of tax receipts at the local government level, which, in his opinion, would allow for greater financial independence of the local government from government funds, which is so important not only during the regular implementation of tasks, but also when there are extraordinary circumstances such as a pandemic. As part of the postulate he put forward, Pal considered it necessary to collect a local tax from small and medium-sized enterprises.

Wojciech Gonet, based on an analysis of statutory sources of obtaining funds by communes in Poland, pointed out the misfortune of communes located far from War-

[10] Elaboration based on the report by Dr. hab. Anna Zalcewicz, Professor of the Warsaw University of Technology.

saw. Gonet based his considerations on defining the principles of financing medical services, which are increasingly often implemented by the private sector, despite the fact that they are within the purview of communes' own tasks. Therefore, Gonet asked why local government units could not conduct health care activities on the basis of commercialization instead of the need to constantly depend on the transfer of state funds, which, as it turned out during the pandemic, did not facilitate the proper implementation of tasks by local governments. Consequently, Gonet posed the question of whether local government units could not go beyond the area of their activity to match the financial efficiency of the capital.

The next speaker, Rafał Dowgier, referring to the pandemic in Poland, asked whether tax authorities of municipalities were equipped for emergency situations. In his presentation, Dowgier drew attention to the obviously inadequate Article 167 of the Constitution of the Republic of Poland, which was especially notable during the pandemic, when communes were completely dependent on the legislator, as evidenced by the regulation of Article 168 of the Basic Law. At the same time, Dowgier pointed out that due to this legislative dependence, during the pandemic, the financial situation of local government units also deteriorated as a result of the chaotic introduction of legal changes providing for various types of tax preferences. Hence, he suggested the regulations were needed that would allow for systemically regulating the financial situation of local government units in the event of natural disasters.

Magdalena Budziarek presented a list of legal regulations related to environmental protection that needed to be changed to ensure the proper development of local government in Poland.

Attention should be paid to the legal and financial consequences resulting from legal regulations that limit the possibilities of local government units spending funds to ensure development in the field of environmental protection.

Four papers were presented at the University of Lund during the 2nd Plenary Session moderated by Professor Dr. hab. Mariusz Popławski.

The first paper, delivered by Professor Anna Jurkowska-Zeidler, concerned the issue of sustainable development and the role of central banks. In her presentation, Professor Jurkowska-Zeidler drew attention to the following issues. Green central banking is still a relatively new concept. However, over the past few years, a global consensus has emerged among regulators, supervisors, and banks on the need to address the financial risks arising from the ongoing climate and environmental crises. The ability of central banks to take effective action on climate policy will largely depend on future developments in terms of price stability: the transition to a zero-carbon economy can lead to various types of inflationary shocks. What is certain is that banks will play a leading role in the energy and climate transition, whether they like it or not. The vast majority of central banks believe that they should play a key role in promoting green banking and sustainable finance by changing the regulatory framework, encouraging green financial services and incorporating climate change into their monetary and financial policies.

In the second presentation, Professor Miroslava Štrkolec and Dr. Ladislav Hrabčák presented the paper entitled Regulation of the Crypto-asset Market. Analysis showed that the cryptocurrency market still lacks comprehensive regulation. This was also evidenced by the analysis of the current situation in Slovakia. The presenters also argued that there are only rudimentary regulations in the legal systems in question that can generate serious practical problems. The presentation included an analysis of legal regulations drafted in Slovakia regarding the cryptocurrency market and pointed out problematic issues that might arise in the future. Suggestions were also made for their improvement.

In the next presentation, also presented jointly by two scholars, Professor Sebastian Skuza and Dr. Robert Lizak, the issue of facilitating payments in Polish law against the background of the law of the G-7 countries, OECD, and the USA was discussed. During the presentation, Professor Skuza and Dr. Lizak maintained that corruption in all its forms is one of the greatest challenges in achieving sustainable development. Sources of financing sustainable economic growth objectives can be supplemented with capital from private investors. One form of corruption is facilitation payments, which consist in giving benefits of small value to a person performing a public function to entice them to act or refrain from acting facilitating the settlement of matters without undue delay. Prima facie, it might seem that the lack of legality of facilitating payments is actually a foregone conclusion. For example, under the US FCPA, facilitating payments are allowed. Therefore, this publication presents the purpose and origins of the adoption of the FCPA and the essence of the facilitating payments regulated therein. Then, the legal norms in the remaining six countries of the G-7 group and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions were discussed. An attempt was also made to assess the legality of facilitating payments under Polish law and *de lege ferenda* conclusions were presented, and the focus of the presentation was identified as a potential research field.

The culmination of this panel was Jozef Sábo's presentation by entitled Decision: The Making of the Court of Justice of the European Union and the Challenges of the Twenty-first Century. Several issues concern the Court of Justice of the European Union (ECJ) that could cause practical problems. This entity hears cases pending before national courts under the preliminary rulings system. This entails the submission of questions to the ECJ by national courts regarding the interpretation of EU law. This Court also decides on the correct interpretation of EU law. It should be noted that when interpreting EU law, the ECJ ensures that it is applied in the same way in all EU countries. An important element that could also be controversial in practice is the settling of legal disputes between national governments and EU institutions.[11]

Professor Witold Modzelewski closed the last session of the 6th International Baltic Conference on Financial Law: Financial Law and the Challenges of the 21st Century, and the organizers of the conference, Professor Jurkowska-Zeidler and Professor Popławski praised the great cooperation of both faculties and academic centers and the Center

[11] Elaboration based on the report by Professor Dr. hab. Mariusz Popławski.

for Local Government Law and Local Finance Law of the University of Gdańsk in organizing the conference, thanked all participants, moderators, speakers, patrons, and everyone who supported and contributed to the organization and running of the conference, and invited everyone to the 7th International Baltic Conference on Financial Law to be held in 2025 .

I was there drinking Swedish mineral water. I have told you all I saw and heard and all that the moderators said happened. See you on the Baltic Sea in 2025.

Michał Biliński
Jagiellonian University, Poland
michal.bilinski@uj.edu.pl
ORCID: 0000-0002-4660-8850

Magdalena Jaś-Nowopolska
Justus Liebig University Giessen, Germany
Magdalena.Jas-Nowopolska@recht.uni-giessen.de
ORCID: 0000-0002-0278-8335

The International Scholarly Debate "Economy, Finance and Sustainable Development", Gdańsk, June 19, 2023 (Report)

On June 19, 2023, an international scholarly debate was held at the Faculty of Law and Administration of the University of Gdańsk. It was devoted to the topic of the importance of the sustainable development principle in the areas of public finance and economic activity.

The debate was attended by representatives of leading research centers from Poland and Germany, among which the following should be mentioned: the University of Gdańsk, the University of Giessen, the University of Adam Mickiewicz in Poznań, the Jagiellonian University in Kraków, the University of Silesia in Katowice, and the University of Warsaw.

It should also be noted that the debate was one of the scholarly activities conducted as part of an international research grant from the Polish-German Foundation for Science, of which the University of Gdańsk is the leader. The chairman of the organizing committee of the debate was Dr. Hanna Wolska. Additionally, the debate was also attended by project managers from partner institutions, i.e., Dr. Magdalena Jaś-Nowopolska (University of Giessen), Dr. Anna Trela (Adam Mickiewicz University in Poznań), Dr. hab. Michał Biliński (Jagiellonian University in Kraków), Dr. hab. Ewa Przeszło, Professor of the University of Silesia and Dr. Agnieszka Piwowarczyk (University of Silesia in Katowice), Dr. Aleksander Jakubowski (University of Warsaw), and Dr. Joanna Ablewicz (C.H. Beck Publishing House).

The conference began with an official welcome of the participants by the dean of the Faculty of Law and Administration of the University of Gdańsk, Dr. hab. Wojciech Zalewski, Professor of the University of Gdańsk, and the project manager from the University of Gdańsk, Dr. Hanna Wolska.

Two introductory lectures were given in the first part of the debate.

Professor Thilo Marauhn presented a short historical introduction to the concept of sustainable development and also referred to its meaning and the areas in which it was rooted. In the main part of the lecture, it was pointed out that previous attempts to synchronize the spheres of economy and environmental protection have not been fully successful. In this state of affairs, Professor Marauhn proposed three alternative models that could enable the more effective use of sustainability values. As part of the

considerations presented, they referred to the concepts of hierarchization, collision, and harmonization.

In the second lecture, Professor Dr. hab. Andrzej Powałowski (who credited Dr. hab. Przeszło, Professor of the University of Gdańsk, as co-author of the presentation) referred in particular to the importance that should be attached to the principle of the social market economy to explain the essence of sustainable development. According to Professor Powałowski, sustainable development is associated with the need to ensure a balance between the interests of entrepreneurs and the interests of other social groups. The assumptions of sustainable development should, in consequence, lead to the coexistence of a market economy and the social aspect, as well as balancing the interests of entrepreneurs on the one hand and the interests of other social groups on the other.

Immediately after the presentation of the introductory lectures, the first debate panel was held. It was devoted to three key issues related to the inclusion of the principle of sustainable development in the area of economic activity. Each substantive part of the panel was presented from two perspectives related to the Polish and German legal orders.

Professor Bettina Schöndorf-Haubold and Dr. Trela referred to the issue of clean energy.

Professor Schöndorf-Haubold concentrated on the situation of renewable energy sources in the Federal Republic of Germany. She described the current legal status and the climate goals that must be achieved. In her speech, she also referred to the decision of the German Federal Constitutional Court (*Bundesverfassungsgericht*) of March 2021, as a result of which changes were made to the Federal Climate Protection Act (*Bundes-Klimaschutzgesetz*) by adjusting reduction targets that should lead to climate neutrality.

Dr. Trela said that clean energy should be understood in a programmatic (systemic) way and should not be limited to energy generation sources only. Clean energy is a program that should include the decarbonization of the EU energy system, inter alia, through prioritized energy efficiency and the development of the renewable energy sector. She also added that the implementation of the clean and accessible energy target is set out in Article 194 of the Treaty on the Functioning of the European Union.

Professor Elena Dubovitskaya, Dr. Wolska and Dr. Ablewicz drew attention to the very current problem of including sustainable development in corporate law.

Professor Dubovitskaya emphasized the role that sustainable development standards should play in modern society in the sphere of corporate governance. She also referred to the issue of virtual communication and the differences that can be seen in the implementation of sustainable development goals in relation to public and private companies.

Dr. Wolska noted that in Polish corporate law, the normative value of the postulate of sustainable economic development should be perceived in two dimensions, i.e. at the level of the good practice clause, which requires making appropriate assessments in the light of non-legal norms, and at the level of generally applicable provisions.

Dr. Ablewicz drew attention to the activities undertaken by banking enterprises in the area of sustainable development and presented a number of initiatives and methods by which banks contribute to and implement the postulates of sustainable development.

At the end of the panel, Eva-Maria Thierjung and Dr. Jakubowski commented on the subject of including sustainable development in spatial planning.

Ms. Thierung, answering the question regarding the inclusion of sustainable development in planning law and emphasized the close connection between the structure of the German Republic as a federal state and degrees of spatial planning. Starting from this point, she showed that in German planning law the principle of sustainable development is taken into account at every level of planning from the federal through to the state and municipal levels, and it is often based on laws that reflect the hierarchical structure of planning levels.

Dr. Jakubowski also pointed out that in order to ensure sustainable development, spatial planning instruments should be placed at every level of public authorities, i.e., national, regional/land, local (municipal) and even in auxiliary units. At the same time, however, he emphasized that the commune should be the primary place for spatial planning.

The panel ended with a discussion.

After a break, the debate was joined by speakers who presented their comments on the role of the principle of sustainable development in the financial sector.

Dr. Carsten Schirrmacher emphasized that in the financial sector, economic activity is usually supported by private investors in the context of corporate investments. In order to initiate and support necessary sustainable transformation of production, the German legislator tries to, inter alia, encourage investors to provide their funds to companies operating in a sustainable way. Whereas a consistent regulatory approach, which is to support this aim, must combine different, sometimes opposing interests.

Dr. Damian Cyman drew attention to a number of regulations and standards introduced in Poland that are aimed at promoting sustainable development in the financial sector. One of the key documents was the Action Plan for Sustainable Finance, which assumes the introduction of environmental, social, and risk management criteria to the investment process. In his presentation, he also referred to the solutions of the Regulation of 27 November 2019, 2019/2088 and to the regulations on the protection of consumer rights.

Dr. hab. Biliński presented the controversies surrounding the principles of financing and the scale of economic activity of national parks. In particular, attention was drawn here to the danger of commercializing these institutions, which, according to the Nature Conservation Act, should primarily pursue objectives of a non-commercial nature while protecting the ecological balance in their areas.

Dr. Jaś-Nowopolska pointed out that sustainable development has gained importance in German public procurement law. In Article 97 sec. 3 of the Act against Unfair Competition (GWB), the legislator provided qualitative and innovative aspects, as well as social and environmental aspects that are considered when awarding contracts.

These criteria may be taken into account at different stages of the procurement procedure. Attention was also drawn to the examples of specific provisions requiring the inclusion of sustainable development aspects in public procurement.

Dr. Piwowarczyk, in turn, referred to the issue of public procurement law and the role that sustainable development should play in procurement procedures. She indicated, inter alia, that the functions of these procedures include not only meeting the needs of contracting parties for supplies, services, and construction works but also the implementation of goals of social or economic importance. The socio-economic functions of procurement are implemented, in particular, by means of sustainable public procurement, which consist of making purchases and buying products and services, taking into account the social and economic effects of purchasing decisions.

After the presentation of comments by all the participants of the debate, a discussion was held.

The debate ended with presentation from the Directors of Sustainable Development Centers located at the University of Gdańsk and the University of Giessen. Dr. Alexandra Jungert and Dr. Krzysztof Szczepaniak presented the main goals, areas of activity, and challenges facing their units in the coming years.

Special mention should be made of the lecture by Professor Dorota Pyć, Director of the Maritime Economy Research Center at the University of Gdańsk. Comments presented by Professor Pyć about the activities of the Center, scientific initiatives it has undertaken, and the role of sustainable development in science and education significantly enriched the substantive scope of the debate.

The debate was moderated by Dr. Wolska and Dr. hab. Biliński.

The conference ended with a short summary presented by Dr. Wolska, in which, apart from referring to the most important theses, all participants (over 60 people participated in the debate) were invited to continue the discussion on a specially created internet platform. The launch of this platform is the second (after the debate held on June 19, 2023) of the activities of this funded scientific project. The third activity, summarizing the work undertaken by the research team will be a monograph published by C.H. Beck Publishing House.

Reviewers of "Gdańsk Legal Studies" in 2023

Recenzenci publikacji w „Gdańskich Studiach Prawniczych" w 2023 r.

dr hab. Ryszard Balicki, Uniwersytet Wrocławski, Polska (University of Wrocław, Poland)
dr hab. Michał Biliński, Uniwersytet Jagielloński, Polska (Jagiellonian University, Poland)
dr hab. Tomasz Bojar-Fijałkowski, Uniwersytet Kazimierza Wielkiego w Bydgoszczy, Polska (Kazimierz Wielki University in Bydgoszcz, Poland)
dr hab. Stanisław Bożyk, Uniwersytet w Białymstoku, Polska (University of Białystok, Poland)
dr hab. Szymon Byczko, Uniwersytet Łódzki, Polska (University of Łódź, Poland)
dr hab. Tomasz Dubowski, Uniwersytet w Białymstoku, Polska (University of Białystok, Poland)
dr hab. Marcin Dziurda, Uniwersytet Warszawski, Polska (University of Warsaw, Poland)
dr hab. Kinga Flaga-Gieruszyńska, Uniwersytet Szczeciński, Polska (University of Szczecin, Poland)
dr hab. Monika Florczak-Wątor, Uniwersytet Jagielloński, Polska (Jagiellonian University, Poland)
dr hab. Dariusz Fuchs, Uniwersytet Kardynała Stefana Wyszyńskiego, Polska (Cardinal Stefan Wyszyński University, Poland)
dr hab., LL.M. Marcin Glicz, Uniwersytet Pomorski w Słupsku, Polska (Pomeranian University in Słupsk, Poland)
dr hab. Sabina Grabowska, Uniwersytet Rzeszowski, Polska (University of Rzeszów, Poland)
dr hab. Grzegorz Kuca, Uniwersytet Jagielloński, Polska (Jagiellonian University, Poland)
dr Jan Kudrna, Uniwersytet Karola w Pradze, Czechy (Charles University in Prague, Czech Republic)
dr hab. Anna Haładyj, Katolicki Uniwersytet Lubelski Jana Pawła II, Polska (John Paul II Catholic University of Lublin, Poland)
dr. hab. Anna Hrycaj, Uczelnia Łazarskiego, Polska (Lazarski University, Poland)
dr hab. Andrzej Jarocha, Uniwersytet im. Adama Mickiewicza w Poznaniu, Polska (Adam Mickiewicz University in Poznań, Poland)
dr hab. Dorota Lis-Staranowicz, Uniwersytet Warmińsko-Mazurski w Olsztynie, Polska (University of Warmia and Mazury in Olsztyn, Poland)
dr Julia Kapelańska-Pręgowska, Uniwersytet Mikołaja Kopernika w Toruniu, Polska (Nicolaus Copernicus University in Toruń, Poland)
prof. dr hab. Dagmara Kornobis-Romanowska, Uniwersytet Wrocławski, Polska (University of Wrocław, Poland)
dr hab. Monika Król, Uniwersytet Łódzki, Polska (University of Łódź, Poland)
prof. Petr Mrkývka, Uniwersytet Masaryka w Brnie, Czechy (Masaryk University in Brno, Czech Republic)

dr hab. Marcin Orlicki, Uniwersytet im. Adama Mickiewicza w Poznaniu, Polska (Adam Mickiewicz University in Poznań, Poland)
dr hab. Edyta Rutkowska-Tomaszewska, Uniwersytet Wrocławski, Polska (University of Wrocław, Poland)
dr Paweł Sadowski, Uniwersytet Marii Curie-Skłodowskiej, Polska (Maria Curie-Skłodowska University, Poland)
dr hab. Joanna Studzińska, Akademia Leona Koźmińskiego, Polska (Kozminski University, Poland)
dr hab. Paweł Wajda, Uniwersytet Warszawski, Polska (University of Warsaw, Poland)
dr hab. Marta Woźniak, Uniwersytet Opolski, Polska (University of Opole, Poland)
dr hab. Iwona Wrońska, Uniwersytet w Białymstoku, Polska (University of Białystok, Poland)
dr Katarzyna Žák Krzyžanková, Uniwersytet Karola w Pradze, Czechy (Charles University in Prague, Czech Republic)