ROCZNIKI NAUK PRAWNYCH
Volume XXVII, No. 4 – 2017
ENGLISH ONLINE VERSION
DOI: http://dx.doi.org/10.18290/rnp.2017.27.4-3en

BEATA KUCIA-GUŚCIORA

THE ROLE OF THE MINISTER COMPETENT FOR PUBLIC FINANCES IN DETERMINING THE SCOPE OF NATIONAL PUBLIC DEBT
SELECTED ISSUES

1. PRELIMINARY REMARKS

This paper seeks to assess the role of the minister competent for matters of public finances with respect to public debt.[1] An academic approach to this issue is desirable for several reasons. Firstly, the subject of public debt and its management is relevant for the modern treatment of public finances. Secondly, this issue is commonly associated with the condition of public finances, hence various kinds of scientific research are looking at it from different angles. Thirdly, normative analysis confirms that the minister competent for public finances enjoys a special status in this regard, which stems from the special powers and duties to act comprehensively both globally and specifically when it comes to the legislation and application of

Dr Hab. BEATA KUCIA-GUŚCIORA is an assistant professor at the Department of Finance and Financial Law, Institute of Law, Faculty of Law, Canon Law and Administration of the John Paul II Catholic University of Lublin (KUL); address: Al. Racławickie 14, 20-950 Lublin, Poland; e-mail: beakuc@kul.lublin.pl

The presented study will employ the term "the minister competent for public finances," which expressly makes reference to the scope of competences vested currently in the Minister of Development and Finance by the regulation of the President of the Council of Ministers of 30 September 2016 on the detailed scope of activity of the Minister of Development and Finance, Journal of Laws of 2016, item 1595.

[1] For more on the state of research in public debt, see Z. OFIARSKI, "Dług publiczny w Polsce," in *Nauka finansów publicznych i prawa finansowego w Polsce. Dorobek i kierunki rozwoju. Księga jubileuszowa Profesor Alicji Pomorskiej*, ed. J. Głuchowski, C. Kosikowski, and J. Szołno-Koguc, (Lublin: Wydawnictwo UMCS, 2008), 253ff.

law, as well as diverse activities in the fields of programming, creation, execution and coordination. This study will present issues necessary to determine the role of the minister competent for public finances in the circumscription of the extent of the national debt since this role, seen against all minister's competences, can be regarded as general competences because they have a relevance for the nature of national debt. It turns out that the normative interpretation of public debt is not based on an express definition. More than that, this notion is not a category which is uniform in terms of either its subject or substance. Given these premises, we see the general competences of the minister competent for public finances which are based on the statutory entitlement to fine tune the subjective and the substantive scope of public debt, and further specify the methodology to compute it.

2. A NORMATIVE APPROACH TO PUBLIC DEBT

In Poland, we can speak of a normative interpretation of the public debt[2] only in the context of the solutions enshrined in the Polish Constitution of 1997 regarding debt limit,[3] and then of its application in financial legislation in the subsequent laws on public finances enacted in 1998,[4] 2005,[5] and the current one dating

[2] Until then, both in basic acts and in ordinary legislation, other terms were either used (e.g. State debt, debt and State loan) or no such expression was used at all. See art. 8 of the act of 17 March 1921 (The Constitution of the Republic of Poland), Journal of Laws No. 44, item 267 as amended; art. 31, art. 46 of the Constitution Act of 23 April 1935, Journal of Laws No. 30, item 227; act of 25 September 1922 on the controlling of state debts, Journal of Laws No. 89, item 805; act of 2 January 1936 on parliamentary control of state debts, Journal of Laws No. 2, item 3. No such regulations are present in the Constitutional Act of 19 February 1947 on the organisation and scope of activity of the supreme authorities of the Republic of Poland, Journal of Laws No. 18, item 71 as amended and in the Constitution of the Polish People's Republic of Poland of 22 July 1952, Journal of Laws No. 33, item 232 as amended. The financial law legislation did not use this term, either. See act of 1 July 1958 on budgetary law, Journal of Laws of 1958, No. 45, item 221 as amended; act of 27 November 1970 (Budgetary Law), Journal of Laws of 1970, No. 29, item 244; act of 3 December 1984 (Budgetary Law), Journal of Laws of 1984, No. 56, item 283 as amended; act of 5 January 1991 (Budgetary Law), Journal of Laws of 1991, No. 4, item 18 as amended. See Z. Ofiarski, "Państwowy dług publiczny," in *Prawo finansowe sektora finansów publicznych*, vol. 2 of *System Prawa Finansowego,* ed. E. Ruśkowski (Warsaw: Wydawnictwo Wolters Kluwer, 2010), 139ff.

[3] Art. 216 para. 5, art. 221 and art. 226 of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1991, No. 78, item 483 as amended [hereafter cited as the Constitution].

[4] Art. 9 of the act of 26 November 1998 on public finances, Journal of Laws of 2003, No. 15, item 148 as amended [hereafter PF 1998].

[5] Art. 10 of the act of 30 June 2005 on public finances, Journal of Laws No. 249, item 2104 as amended [hereafter PF 2005].

back to 2009.[6] It should be noted that the Constitution of the Republic of Poland makes use of two terms: "national public debt" and "public debt" (art. 216 and 221), a fact which is regarded by the doctrine of financial law as problematic.[7] Apart from these terms, the Constitution uses the expression "the State debt" (art. 226). In contrast, as regards the law on public finances specifying the term "national public debt," with respect to the powers granted to the minister competent for public finances, the law nonetheless employs the notion "debt of the State Treasury" (see, for example, art. 77, 78, and art. 78 a–h, and art. 78a–h), and legal category that is related to them: the borrowing needs of the state budget (art. 76 and 77 PF). By way of comment, we need to remark that in academic terms, especially in economics, the non-legal (non-normative) interpretation of debt encompasses even more diverse notions such as: government debt, national debt, State debt,[8] whereas their detailed qualification leads to further differentiation.[9]

The current law on public finances, in contrast to the formulations contained in the earlier laws of 1998 and 2005, does not employ an express definition which would directly determine the *definiendum* and *definiens* of the notion of national public debt.[10] Historically speaking, this reference permits the conclusion that the current regulation creates a contextual definition by substantively indicating titles qualified as national public debt (see art. 72 PF)[11] and the method of its computation (art. 73 PF).

---

[6] Art. 72 of the act of 27 August 2009 on public finances, Journal of Laws of 2016, item 1870 as amended [hereafter PF].

[7] Such doubts regarding PF 1998 were reported by A ZALCEWICZ, "Państwowy dług publiczny na tle obowiązujących przepisów prawnych," *Przegląd Ustawodawstwa Gospodarczego* 6 (2000): 8–13. Similarly, P. Panfil is critical about attributing the same meaning to different notions, deeming that to be a serious methodological error. See P. PANFIL, *Prawne i finansowe uwarunkowania długu Skarbu Państwa* (Warsaw: Wydawnictwo Wolters Kluwer, 2011), 33ff.

[8] See M. BITNER and E. CHOJNA-DUCH, "Dług publiczny i deficyt sektora finansów publicznych," in *Prawo finansowe*, ed. E. Chojna-Duch and H. Litwińczuk (Warsaw: Wydawnictwo Oficyna Prawa Polskiego, 2009): 119ff.; E. LOTKO and U. ZAWADZKA-PĄK, "Problemy terminologiczne i definicyjne deficytu i długu w polskim i unijnym prawie finansów publicznych," *Prawo Budżetowe Państwa i Samorządu* 2 (2016): 51–67, accessed 10 July 2017, http://apcz.umk.pl/czasopisma/index.php/PBPS/article/view File/PBPS.2016.009/8995.

[9] See A. WIERNIK, "Problemy definicji długu publicznego," in *Zadłużenie Polski*, ed. G. Gołębiowski and Z. Szpringer, published in *Studia BAS* 4 (2011): 9ff.; PANFIL, *Prawne i finansowe*, 33; MARCHEWKA-BARTKOWIAK, *Zarządzanie długiem Skarbu Państwa. Implikacje dla strefy euro* (Warsaw: Wydawnictwo Difin, 2011), 33ff.

[10] Such a definition model was used in art. 9 PF 1998, going like this: "National public debt is to be interpreted as the nominal indebtedness of entities of the public finance sector, determined after the financial flows between entities belonging to this sector have been eliminated." A similar approach was used in art. 10 PF 2005.

[11] For a critical assessment of this viewpoint, see C. KOSIKOWSKI, *Nowa ustawa o finansach publicznych. Komentarz* (Warsaw: Wydawnictwo Lexis Nexis, 2010), 216.

In the context of the issues at hand, it would be valid to take a retrospective view of public debt in terms of its subject and substance.[12] Such an approach will enable a precise determination of the role of the Minister of Development and Finance.

3. THE INFLUENCE OF THE MINISTER COMPETENT FOR PUBLIC FINANCES ON THE SUBJECTIVE SCOPE OF PUBLIC DEBT

In subjective terms, the law on public finances provides that national public debt belongs to the area of "liabilities of the public finance sector (art. 72 PF) and "liabilities of entities of the public finance sector" (art. 73 PF). This dualistic approach is controversial from a legal point of view because it is difficult to pinpoint the debtor in the enumerated liabilities. The term "liability," after all, determines parties to a contractual relationship: the creditor and debtor. As researchers dealing with financial law suggest, the phrasing "liabilities of the public finance sector" is not precise because the sector of public finance does not have legal personality, so as such it cannot act as a liable subject.[13] Accordingly, we should assume that entities within the public finance sector are parties to contractual relationships, with the proviso that some entities, for example budgetary entities, operate as *stationes fisci* since they do not possess legal personality – they incur liabilities on behalf of the State Treasury.[14] Moreover, the State Treasury – as a legal person – has not been classified as belonging to the sector of public finance,[15] although the debt of the Treasury constitutes a category falling within the realm of national public debt.

[12] Legal literature indicates that the enumeration provided in art. 72 PF has both a subjective and objective character. This view is supported, for example, by P. Pomorski, "Komentarz do art. 72," in *Ustawa o finansach publicznych. Komentarz*, ed. P. Smoleń (Warsaw: Wydawnictwo C.H. Beck, 2014), 511.

[13] See M. Tyniewicki, „Komentarz do art. 72," in *Nowa ustawa o finansach publicznych wraz z ustawą wprowadzającą. Komentarz praktyczny*, ed. E. Ruśkowski and J.M. Salachna (Gdańsk: Wydawnictwo Ośrodek Doradztwa i Doskonalenia Kadr, 2011), 253ff.; J. Glumińska-Pawlic, "Państwowy dług publiczny a rozwój gospodarki lokalnej," in *Ekonomiczne i prawne uwarunkowania i bariery redukcji deficytu i długu publicznego*, ed. J. Szołno-Koguc and A. Pomorska (Warsaw: Wydawnictwo Wolters Kluwer, 2011), 428.

[14] See Panfil, *Prawne i finansowe*, 29ff and the literature cited therein. M. Przychodzki, "Glosa do wyroku TK z dnia 7 maja 2001 r., K. 19/00," *Radca Prawny* 3 (2002): 97ff.

[15] This issue is extensively commented in the literature. See Pomorski, "Komentarz do art. 72," 512; A. Borodo, *Polskie prawo finansowe. Zarys ogólny*, 2nd ed. (Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa „Dom Organizatora", 2005), 167ff.; M. Tyniewicki, "Komentarz do art. 72," 254ff.; Wiernik, "Problemy definicji długu," 9ff.

In view of the above, we should consider that public debt is not a subjectively homogeneous category.[16] It encompasses all public finance entities (art. 9 FP). Given the units listed in the catalogue, it should be argued that the notion of national public debt has a very broad range in terms of possible subjects. This applies to organs of the State, at the levels of central or local government, heterogeneous entities with diverse legal, financial statuses – both in terms of their connection with the State budget and the kind of public tasks they pursue – as well as units enumerated by name in the act, such as: Polish Academy of Sciences (PAN), National Healthcare Fund (NFZ), Social Insurance Institution (ZUS).[17] What is more, with respect to the redaction of the law, its examination does not lead to an unambiguous conclusion that this listing is enumerative,[18] which can lead to a situation where the catalogue of entitled entities, that is those which incur debts contributing to public debt.[19] Other than that, we need to notice that the subjective scope also includes

---

[16] The term "national," as used in the law on public finances, cannot be conclusively used to determine the subjective scope of debt only with respect to those entities of the sector which have the status of governmental institutions. Jurisprudence proposes that the nomenclature – which is not reflected in the current law on public finances – be retained as making reference to the subdivided sector of public finances: the central government, self-government and social security. In this context, it is impossible to regard national public debt as one incurred merely by entities regarded to belong to the governmental subsector. See P. Panfil, "Dług publiczny," in *Leksykon prawa finansowego. 100 podstawowych pojęć*, ed. A. Drwiłło and D. Maśniak (Warsaw: Wydawnictwo C.H. Beck, 2009), 81. In the course of legislative work on the law on public finances of 2005, A. Wiernik postulated that the term "state debt" be abandoned as redundant and irrelevant because its scope encompasses the indebtedness of not only the State but also local governments. See A. Wiernik, *Opinia o rządowym projekcie ustawy o finansach publicznych* (Sejm paper No. 1844, 4th Sejm), 4.

[17] In the literature of the subject, the normative interpretation of the sector of public finances is deemed defective in many ways. Therefore, the numerous doubts emerging in the doctrine in this respect come as no surprise. They will not be addressed separately by this study due to its limited scope. Nevertheless, it is worth stressing that although entities of the sector are captured in the statutory catalogue, their legal classification presents a number of interpretative difficulties. For more on this, see C. Kosikowski, *Sektor finansów publicznych w Polsce* (Warsaw: Dom Wydawniczy ABC, Wolters Kluwer Polska, 2006), 34ff; A. Mierzwa, "Komentarz do art. 9," in *Ustawa o finansach publicznych. Komentarz*, 152ff.; K. Sawicka, *Komentarz do art. 9*, in M. Karlikowska et al., *Ustawa o finansach publicznych. Komentarz* (Wrocław: Wydawnictwo Presscom, 2010), 37.

[18] Especially the wording used in art. 9 point 14 PF. In this regard, the legal doctrine presents two distinct approaches. Some authors believe that the catalogue of entities is closed (see, for example, P. Lewkowicz, "Komentarz do art. 9," in *Nowa ustawa o finansach publicznych*, 79), while others claim that art. 9 point 14 has no enumerative listing, so the catalogue is open-ended – see Mierzwa, "Komentarz do art. 9," 154. For this reason, we could be in favour of the opinion that in practice that a precise determination whether or not a particular entity can be thought of as belonging to the sector of public finances; in support of this, see K. Nizioł, *Państwowy dług publiczny. Aspekty normatywne* (Szczecin: Wydawnictwo Uniwersytetu Szczecińskiego, 2013), 77.

[19] The doctrine has some doubts of legal nature concerning the list of entities of the sector of public finances. For a broader view, see T. Dębowska-Romanowska, "Artykuł 9 ustawy o finansach

units of local government.[20] It is pointed out in the literature that despite the fact that the debts of units of local self-government constitute an integral part of the debt incurred by the public finance sector, their contribution is relatively small. Additionally, its interpretations vary greatly.[21] Nonetheless, it cannot be doubted that general rules on the administration of public debt and the control of its level as well as the relevant powers of the minister competent for public finances also encompass "self-government debt."

As mentioned above, the debt of the State Treasury forms a separate category, which is utilized by the law on public finances on many occasions (see, for example, art. 73–75, art, 77–79, art. 97 PF), the latter failing to define it or indicate the indebted entities of the sector.[22] It seems that this normative state has more profound underpinnings: it is an aftermath of the lack of a comprehensive definition of state treasury.[23] In the context of financial law, this situation breeds numerous doubts,

---

publicznych – a art. 33 oraz 40 par. 1 i 3 KC," in *Finanse Publiczne i Prawo Finansowe. Realia i perspektywy zmian. Księga jubileuszowa dedykowana Profesorowi Eugeniuszowi Ruśkowskiemu*, ed. L. Etel and M. Tyniewicki (Białystok: Wydawnictwo Temida 2, 2012), 175–90.

[20] E. Kornberger-Sokołowska, *Finanse jednostek samorządu terytorialnego* (Warsaw: Wydawnictwo LexisNexis, 2012), 194; Glumińska-Pawlic, "Państwowy dług publiczny a rozwój gospodarki lokalnej," 430; A. Młynarczyk, "Zadłużenie jednostek samorządu terytorialnego a państwowy dług publiczny," *Finanse Komunalne* 1–2 (2012): 45; K. Sawicka, "Dług publiczny jednostki samorządu terytorialnego," in *Budżet jednostki samorządu terytorialnego*, ed. Jadwiga Glumińska-Pawlic and Krystyna Sawicka (Zielona Góra: Wydawnictwo Zachodnie Centrum Organizacji, 2002), 125ff.

[21] Z. Ofiarski, "Dług publiczny jednostek samorządu terytorialnego," *Finanse Komunalne* 1-2 (2010): 25ff; M. Poniatowicz, "Dobry dług versus zły dług, czyli o specyfice zadłużenia sektora samorządowego," in *Ekonomiczne i prawne uwarunkowania*, 494; J.M. Salachna, "Nowe formy prawne ograniczenia deficytu oraz zadłużenia samorządu terytorialnego – próba oceny," in *Ekonomiczne i prawne uwarunkowania*, 521; G. Gołębiowski, "*Dług jednostek samorządu terytorialnego*," in *Polityka finansowa Polski wobec aktualnych i przyszłych wyzwań*, ed. J. Kulawik and E. Mazurkiewicz, (Warsaw: Wydawnictwo Wyższej Szkoły Ekonomicznej, 2005), 2:57.

[22] A legal definition of state treasury debt was provided both by art. 9 para. 2 PF 1998 and art. 10 para. 2 PF 2005: "State Treasury debt shall be the nominal debt of the State Treasury." This interpretation was met with criticism, see, for example, C. Kosikowski "Ustawa o finansach publicznych," *Państwo i Prawo* 3 (1999): 11; E. Ruśkowski, "Komentarz do art. 10," in *Finanse publiczne. Komentarz praktyczny*, ed. E. Ruśkowski and J.M. Salachna (Gdańsk: Ośrodek Doradztwa i Doskonalenia Kadr, 2007): 87; L. Lipiec, *Komentarz do ustawy z dnia 30 czerwca 2005 r. o finansach publicznych*, LEX/el. 2008.

[23] We need to note that although art. 218 of the Constitution provides for the obligation to determine the organisation and administration of the estate of the State Treasury by means of a separate law, this disposition has not yet been applied comprehensively. The Constitution itself does not define what the State Treasury is. If we attempt to define it, we need to consider the output of other branches of law. From the perspective of its subjectivity, the State Treasury functions in the spheres of both *dominium* and *imperium*. Under civil law, the State Treasury is a juridical person appearing in civil law relationships as a subject of rights and obligations which concern the assets of the State not belonging to other

which are not dispelled by the law on public finances.[24] In addition, paradoxically, this law identifies State Treasury with state budget.[25] A normative application of the notion of State Treasury debt as exemplified by the law on public finances leads to the conclusion that this interpretation is not uniform. Firstly, this law uses this notion to determine the entity incurring liabilities on behalf of the State (see art. 80 PF), which has a privileged status in relation to the sector of public finances (see art. 93 PF). Secondly, the State Treasury is seen as a debtor owing to the owner of treasury securities, expected to deliver a particular obligation, either pecuniary or not. What matters in this context is the normative interpretation of the State Treasury's liability

---

state juridical persons – see art. 33 and 34 of the law of 23 April 1964 (Civil Code), Journal of Laws of 2017, item 459 as amended [hereafter CC]. By virtue of specific laws, the State Treasury can have specific estate entitlements which restrict ownership rights of other state juridical entities. See Z. Świderski, "Komentarz do art. 34," in *Kodeks cywilny. Część ogólna. Komentarz*, ed. P. Księżak and M. Pyziak-Szafnicka (Warsaw: Wydawnictwo Wolters Kluwer, 2014), LEX/el. Consequently, also pursuant to the Code of Civil Procedure (art. 67 para. 2 of the act of 17 November 1964 (Code of Civil Procedure), Journal of Laws of 2014, item 101 as amended) the State Treasury is a party to proceedings – see the judgement of the Supreme Court dated September 27, 2002, file ref. no. IV CKN 1302/00; the judgement of the Supreme Court dated February 22, 2001, file ref. no. III CKN 295/00, published on www.sn.pl (accessed July 10, 2017), and the judgement of the Supreme Court dated May 11, 1999, file ref. no. I CKN 1148/97, published in OSNC 1999, No. 12, item 205; the resolution of the Supreme Court dated September 23, 2010, file ref. no. III CZP 62/10, LEX No. 602464. Under public law, for example administrative law, governing authority (*imperium*) is reserved to the State Treasury, see M. Mączyński, "Wybrane zagadnienia ustrojowe Skarbu Państwa," *Przegląd Sejmowy* 6 (2003): 25. It should also be pointed out that act of 8 August 1996 on the rules of exercising the powers of the State Treasury (Journal of Laws of 2012, item 1224) does not unequivocally determine the notion of State Treasury despite specifying entities representing the State Treasury and competences related to this representation. As a result it turns out that this institution has the character of a compilation and a great deal of ambiguity. The provisions of financial law do not precisely specify the status of State Treasury. See C. Kosikowski, "W poszukiwaniu nowej koncepcji Skarbu Państwa," *Państwo i Prawo* 12 (1992): 3–14.

[24] The determination of the subjective scope of State Treasury debt is not made any easier by the fact that the current version of the law does away with the division into the governmental, self-governmental and insurance subsectors. To facilitate a precise determination of the subjective scope, the doctrine of law and economics makes reference to the no longer existing division into the said subsectors, concluding that the debt of the State Treasury is actually the indebtedness of the governmental subsector; see Ofiarski, "Państwowy dług publiczny," 148; Panfil, *Prawne i finansowe*, 40.

[25] This is evidenced, among others, by the following provisions of the law on public finances: art. 76 – addressing the borrowing needs of the state budget; art. 118 para. 4, where the formulation "liabilities of the state budget" is used; or art. 224 para. 1 addressing "loans from the state budget." In each of the above-mentioned cases, we do not speak of a financial plan, represented by the budget, but rather of an entity incurring liabilities or providing loans, that is the State Treasury. The literature dealing with financial law has thoroughly examined these issues; see Nizioł, *Państwowy dług publiczny*, 65; Panfil, *Prawne i finansowe*, 33ff.

against all of its assets based on issued treasury securities.[26] Thirdly, the law on public finances frequently makes reference to administration of the State Treasury (see art. 74 para. 2, art. 75, 77, 78, 78a, and art. 79 PF). The said law also addresses briefly the question of the State Treasury issuing sureties and guarantees (see, for example, art. 75 PF), which potentially constitute public debt.[27] In all aspects associated with the debt of the State Treasury the minister competent for public finances plays a significant role.

From the perspective of the law currently in force, it seems that the debt of the State Treasury forms an integral part of national public debt.[28] To prove this, it would be instructive to invoke the original wording of the law on public finances of 2009, containing the statutory delegation of the minister competent for public finances to issue a regulation specifying the detailed method of classifying debt titles qualified as national public debt, including the debt of the State Treasury.[29] The statutory delegation of the current version of the law on public finances makes collective reference to national public debt (art. 72 para. 2 PF).[30]

In our examination of the subjective scope of public debt, we need to note that its specification has also been a point addressed by EU legislation. Unfortunately, its treatment under the EU legislation is not uniform. EU terminology uses two definitions of general government debt: the statistical[31] and the legal definition, used

[26] For more on the subject of responsibility, see Nizioł, *Państwowy dług publiczny*, 68.

[27] K. Marchewka-Bartkowiak, *Gwarancje i poręczenia państwowe jako źródło ryzyka fiskalnego – analiza doświadczeń międzynarodowych i polskich* (Warsaw: Wydawnictwo Narodowego Banku Polskiego, 2006), 9; Idem, "Gwarancje i poręczenia Skarbu Państwa – niewykorzystane możliwości?" *Infos BAS* 9 (2007): 2.

[28] Essentially, such a conclusion can be justified at least because if the sector of public finances includes bodies of public authority and governmental administration along with their subordinated state (budgetary) entities, law enforcement agencies, courts, tribunals, we speak of the State Treasury's liabilities. This view is supported in Kosikowski, "Ustawa o finansach," 3–19.

[29] See the non-binding regulation of the Minister of Finance of 23 December 2010 on the detailed method of classifying debt titles qualified as part of public national debt, including the debt of the State Treasury, Journal of Laws of 2010, No. 252, item 1692.

[30] See also the binding regulation of the Minister of Finance of 28 December 2011 on the detailed method of classifying debt titles qualified as part of public national debt, Journal of Laws No. 298, item 1767 [hereafter cited as MF 2011].

[31] Chapter 2 of the Council Regulation 2223/96 (EC) of 25 June 1996 on the European system of national and regional accounts in the Community, Official Journal L 310, 30.11.1996, p. 1 as amended and Chapter 20 of the regulation No. 549/2013 of the European Parliament European and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union, Official Journal L 174, 26.06.2013, p. 1. See also *Statystyka sektora instytucji rządowych i samorządowych* (Warsaw: Główny Urząd Statystyczny, 2010), accessed November 18, 2016, http://www.stat.gov.pl/cps/rde/xbcr/gus/rn_statystyka_sektora.pdf.

in connection with the excessive deficit procedure.[32] It is justly underscored in the literature of the subject that for governmental institutions of the central level, the EU subjective classification of debt does not include the traditional terminology of State Treasury debt.[33]

Finally, we should realise that in order to specify the subjective scope of public debt we could use the executive provisions issued on the basis of the law on public finances concerning the reporting of entities of the public finance sector with respect to financial operations.[34] It is noteworthy that the said implementing act was issued by the minister competent for public finances. This act was addressed to entities of the public financial sector obliged to draft and submit reports on the entirety of financial operations, especially with respect to receivables and liabilities, including national debt, sureties and guarantees. On their behalf, reports are drafted and conveyed by: administrators of budgetary means of all degrees, administrators of state dedicated funds, heads of local self-governments, heads of units subordinated to self-government bodies, including heads of self-governing budgetary units, the president of ZUS, the president of Agricultural Social Insurance Fund (KRUS), and managers of other entities having legal personality.[35] Ultimately, collective reports are conveyed to the president of the Central Statistical Office, who hands them over to the Minister of Finance within deadlines specified in the regulation.[36] In the light of the above considerations, it can be seen that the exercise of tasks reserved for the minister competent for public finances and related to public debt is connected with a comprehensive range of measures used to administer the sector of public

[32] Art. 126 of the Treaty on the Functioning of the European Union, Journal of Laws of 2004, No. 90, item 864 as amended; see also Council Regulation (EC) No. 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, Official Journal L 145, 10.6.2009, p.1 as amended.

[33] See Marchewka-Bartkowiak, "Zarządzanie długiem Skarbu Państwa," 35. At the same time, this author argues that the administration of public finances should keep the budgetary functions, that is planning and execution of the budget, separate from the administration of the assets and liabilities interpreted as treasury functions. For these reasons the debt of the entity represented by the State Treasury is isolated as a separate category.

[34] Regulation of the Minister of Finance of 4 March 2010 on reports of public finance units regarding financial operations, Journal of Laws of 2014, item 1773 [hereafter cited as MF 2014].

[35] See §6 of the regulation of the Minister of Finance on reports of public finance units regarding financial operations. It should be added that the said reports are also submitted by NFZ, public clinics, organisational PAN units, public universities, state culture institutions, etc. See the appendices nos. 6, 7 and 8 to the regulation of the Minister of Finance on reports of public finance units regarding financial operations.

[36] See §8 of the regulation of the Minister of Finance on reports of public finance units regarding financial operations.

finances, not limited merely to the classic interpretation of State Treasury or state budget entities.

4. THE ROLE OF THE MINISTER COMPETENT FOR PUBLIC FINANCES IN DETERMINING THE SUBJECTIVE SCOPE OF PUBLIC DEBT AND THE METHOD OF ITS CALCULATION

The normative solution adopted in the current law on public finances with respect to the objective scope of public debt is to indicate debt titles represented by the liabilities of the public finance sector. Public debt has four sources: issued securities for financial receivables, credits and loans incurred, deposits received, and liabilities payable under separate laws and final judicial decisions or final administrative decisions, regarded as indisputable by a competent public finance unit which is a debtor (art. 72 para. 1 PF). The doctrine and case law agree in their interpretation of this listing as being enumerative,[37] and also that the first three of the mentioned titles are unconditional in their character, whereas the last one is conditional upon its enforceability.[38] It is worth noting that the said debt titles are not defined by the law on public finances itself but rather in Polish legislation on various areas of law (banking or civil law).[39]

It should be observed that for the sake of public finances the specification of the classification of debt titles provided by the said law was entrusted by way of statutory delegation to the minister competent for public finances (art. 72 para. 2 PF).[40] In

[37] See the judgement of the Provincial Administrative Court in Wrocław dated May 13, 2010, file ref. no. III SA/Wr 24/10, published on www.nsa.gov.pl [accessed November 18, 2016]; the judgement of the Provincial Administrative Court in Wrocław dated of May 13, 2010, file ref. no. III SA/Wr 23/10, LEX No. 675037; W. Miemiec, "Kategoria kredytu i pożyczki jako tytułów zaliczanych do państwowego długu publicznego w ustawie o finansach publicznych i w rozporządzeniu wydanym na jej podstawie," in *Ekonomiczne i prawne uwarunkowania*, 188; Panfil, *Prawne i finansowe*, 40; Pomorski, "Komentarz do art. 72," 514.

[38] M. Mazurkiewicz, "Problem zgodności z Konstytucją art.72 ust. 1 i 2 u.f.p. w zw. z § 3 jej rozporządzenia wykonawczego – zagadnienia dyskusyjne," *Finanse Komunalne* 4 (2011): 7.

[39] Due to its nature, the presented study does not elaborate on issues connected with the essential legal side of these instruments, alluding to it only in the context of the MF's competences. This strategy is also due to the fact that these issues have been frequently investigated, also with regard to financial law. See, among others, Panfil, *Prawne i finansowe*, 167–262; Niziol, *Państwowy dług publiczny*, 179–239; J. Ciak, *Źródła finansowania deficytu budżetu państwa w Polsce* (Warsaw: CeDeWu, 2012), 57–156.

[40] By virtue of his statutory authorisation, the Minister of Finance first issued the above-mentioned regulation on 23 December 2010 concerning the detailed method of classifying debt titles qualified as part of public national debt, including the debt of the State Treasury. Then, this act was superseded

this context, it would be instructive to consider several issues which will be useful for the assessment of the status of this minister.

Within his authorisation, the minister competent for public finances specified the method of classifying debt titles qualified as national public debt by indicating the kinds of liabilities classified as debt titles in the context of their subjects, maturity periods and creditors. This specification of the content of the implementing act was based on the statutory quadruple division[41] of debt titles. The specification of the debt titles indicated by statute takes into account the criterion of due date (short- and long-term debts), the criterion of the creditor's place of residence (domestic or foreign debt), and it is done by enumerating which categories of contracts can be included in a particular debt category. The latter method was adopted with regard to loans and credits.[42]

The role of the minister competent for public finances, involving the specification of notions determined by statute, has been subjected to a great deal of criticism, not only from the doctrine but also bodies of governmental authority and self-governments. The main objections concern: the minister's abuse of his statutory authorisation through the extension of the notional scope of the definition of loan and credit adopted under banking law and civil law, putting these two legal categories on equal footing despite juridical differences between these liabilities, inclusion of other agreements into this category, especially those concluded as part of public-private partnership, and the removal of the statutory condition of enforceability with respect to "other agreements." This strategy was seen as clearly being at odds with the basic law.[43] However, this position was rejected by the then Minister of Finance,

by the currently binding regulation of the Minister of Finance of 28 December 2011 on the detailed method of classifying debt titles qualified as part of national public debt.

[41] Namely the division into securities, credits and loans, deposits received and payable liabilities, see art. 72 para. 1 PF and §3 of the MF regulation of 2011 on the detailed method of classifying debt titles qualified as national public debt.

[42] In §3 point 2 of the MF regulation of 2011 on the detailed method of classifying debt titles qualified as national public debt, the Minister of Finance indicated that the category of credits and loans includes also public-private partnership agreements, which affect the level of public debt, securities whose negotiability is limited, sales contracts whose price is payable in instalments, lease agreements contracted with a producer or a financing entity whereby the risk and benefits of ownership are transferred to the user of a thing, and unnamed contracts payable within a period longer than one year and related to the financing of services, delivery, construction work, and producing economic effects which are similar to those of loan or credit agreements, taking into account a division into a) short-term contracts – with the original payment period not longer than one year or subject to payment on request, or b) long-term contracts – with the original payment period longer than one year.

[43] See the positions presented in Miemiec, "Kategoria kredytu i pożyczki," 192; Mazurkiewicz, "Problem zgodności z Konstytucją," 11; R. Ślusarczyk, *Rosnące zadłużenie gmin a partnerstwo*

who not only did not change the contested regulation of 2010 but issued a regulation with nearly identical wording governing this question in 2011.[44] It should be added that the unchanged standpoint of the minister competent for public finances should be regarded as consistent. This conception of specifying debt titles was also featured in the regulation concerning reports of public finance units regarding financial operations.[45]

By way of summary, it can be said that the delegation formulated in the law on public finances and granting the minister competent for public finances competences to issue implementing acts to determine the detailed method of classifying debt titles qualified as national public debt "including the kinds of liabilities qualified as debt titles," has come to be regarded as a blank authorisation which lacks sufficient specification.[46] It can be then assumed that this situation has provided some leeway for the Minister's discretionary measures. In subjective terms, this situation presents serious doubts concerning the constitutionality of the adopted solution since the Constitution enshrines the principle of statutory determination of the method of computing national public debt (art. 216 para. 5 of the Constitution). Undoubtedly, one element which is indispensable for the fulfilment of this constitutional obligation is the determination of debt titles.[47] In this area, then, the Minister specified them, which is to be regarded as an extension of the material scope of the debt specified in the law itself.[48] Practical consequences of the operation of the minister

publiczno-prywatne, LEX, ABC No. 182427; M. Bitner and M. Kulesza, "Nowa definicja długu publicznego? Problemy związane z interpretacją przepisów rozporządzenia Ministra Finansów z 23.12.2010 r. w sprawie szczegółowego sposobu klasyfikacji tytułów dłużnych zaliczanych do państwowego długu publicznego w tym do długu Skarbu Państwa," *Samorząd Terytorialny* 7–8 (2011): 27ff.; T. Wołowiec and D. Reśko, "Nowe reguły zadłużania jednostek samorządu terytorialnego – konsekwencje prawne i ekonomiczne," *Finanse Komunalne* 11 (2012): 42.

[44] See the document of the Minister of Finance dated March 14, 2011, file ref. no. DP 14/657/47/MKT/2011/1161, accessed July 10, 2017, http://www.ppp.gov.pl/Poradnik_inwestora/Documents/Dlug_interpretacjaMF_14032011.pdf.

[45] See Instruction on report writing, Appendix No. 9 to the regulation of the Minister of Finance on reports of public finance units regarding financial operations.

[46] In their argumentation, M. Bitner and M. Kulesza point out that "the systematics resulting from the provision of art. 72 para. 1 PF is the following: the overriding notion is "debt title," while the notion subordinate to "debt title" is "debt title qualified as national public debt," whereas the notions subordinate to "debt title qualified as national public debt" should be the ones defined in the regulation. The qualification of debt titles as national public debt is one thing, but the determination of kinds of liabilities qualified as debt titles is another." This view is supported in Bitner and Kulesza, "Nowa definicja długu," 29.

[47] For a detailed analysis and argumentation with references to the Constitutional Tribunal's case law, see Bitner and Kulesza, "Nowa definicja długu," 28ff.

[48] Also, we need to note that an explanatory note issued by the Minister of Finance implies that he was guided by the Council Regulation No. 2223/96 (EC) of 25 June 1886 on the European system of

competent for public finances, notwithstanding doubts concerning the constitutionality of the above-mentioned solutions, have been noted by self-government units because the redefinition of the notion of "credits and loans" has produced serious changes in their financial status. These liabilities, regardless of their enforceability, started to increase the level of indebtedness of, among others, municipalities (*gminas*) or cities with district (*powiat*) rights, thus worsening their financial situation.[49]

When general issues related to national public debt are considered, the method of its calculation needs to be addressed. In accordance with the Polish Constitution, the method of calculating national public debt is defined by statute (see art. 216 para. 5 of the Constitution). The law on public finances employs the rule that national public debt is calculated as the nominal value of liabilities of the sector of public finances after the liabilities of entities of this sector have been eliminated (see art. 73 para. 1 PF),[50] simultaneously specifying what nominal value is and what the nominal value of indexed and capitalized liabilities is. It should be added that these provisions find their application in the calculation of the amounts of unmatured liabilities and guarantees not qualified as national public debt, and the calculation of the debt of the State Treasury and amounts of unmatured liabilities resulting from sureties and guarantees not qualified as State Treasury debt (see art. 73 para. 4 PF).

In the light of this study, what seems important is the use of statutory delegation in the law on public finances granting the minister competent for public finances the authorisation to specify the method of calculating the value of liabilities qualified as national public debt, State Treasury debt, the value of liabilities resulting from sureties and guarantees. We cannot but address the relationship between the said

---

national and regional accounts in the Community, Official Journal L 310, 26.06.1996, p. 1 [hereafter Regulation ESA 95]. It should be noted that pursuant to art. 1 para. 3 of Regulation ESA 95, it does not oblige any Member State to apply ESA when preparing accounts for its own use. This aspect was highlighted by the Provincial Administrative Court in Wrocław, which concluded that making reference to Regulation ESA 95 had not automatically become a fixture in the legal order of the Polish Republic in its whole scope of regulation, just like other Council regulations (EC) – see the judgement of the Provincial Administrative Court in Wrocław dated May 13, 2010, file ref. no. III SA/Wr 23/10. We can therefore argue that it is the Minister of Finance who introduced the EU methodology in this respect using the said implementing act. See the note of the Minister of Finance dated March 14, 2011, file ref. no. DP 14/657/47/MKT/2011/1161. W. Miemiec unambiguously appraises the role of the Minister of Finance as a contravention of the principle of exclusivity of the law in respect of the determination of public debt with regard to the application of "a new, extended definition of loans and credits." See Miemiec, "Kategoria kredytu i pożyczki," 193; similarly in Wołowiec and Reśko, "Nowe reguły zadłużenia," 38.

[49] Such conclusions based on research are presented by R. Ślusarczyk in *Rosnące zadłużenie gmin a partnerstwo publiczno-prywatne*, LEX, ABC No. 182427.

[50] The said provision was paralleled by art. 68 PF of 2005, and earlier by art. 9 PF of 1998.

constitutional requirement of statutory determination of the method of computing public debt and its implementation in the provisions of the law on public finances, which makes reference to an implementing act with respect to particular aspects, the method formulated merely in general terms. It is valid to ask, then, whether the applied normative solution meets constitutional standards. The doctrine indicates that the statutory norms concerning the nominal value are not methodologically correct because it is defined using an identical phrasing.[51] In fact, the lack of a general definition of nominal value was set off by an indication of debt titles to which it should be applied. At the same time, the law predicts that the precise manner of determining liabilities will be provided by a regulation issued by the minister competent for public finances. Therefore, we can say that the appropriate manner of computing national public debt will be indicated by way of an implementing regulation.[52] Further, we need to note that statutory delegation prescribes that the classification of debt titles qualified as national public debt be taken into consideration, and it is precisely specified in the implementing act. Given the foregoing, we can conclude that the detailed method of computing national public debt was determined by the minister competent for public finances in the regulation. In this regard, we can have some doubts as to the constitutionality of the presented solution. Simultaneously, the above argumentation permits a conclusion that by issuing an implementing act with specification the minister competent for public finances in effect determines the detailed methodology of computing national public debt. Given the absence of precise rules in this respect, the granting of the competence to the minister can justify a conclusion that he has been given a great deal of discretionary margin. As a consequence, jurists are postulating that this range of issues should be captured within the framework of a statute – this would guarantee more certainty and stability of regulation.[53] These suggestions should be taken into consideration since they may have serious legal impact: firstly, for the determination of the national public debt in relation to GDP, and secondly, on the influence of these figures on the implementation of prudential and improvement procedures (art. 86–88 PF).

---

[51] Z. Ofiarski, "Komentarz do art. 73," in Karlikowska et al., *Ustawa o finansach publicznych. Komentarz*, 206.

[52] General statutory formulations are elaborated in the regulation. For example, "the value of issued securities shall be computed using the nominal value construed as:..." [emphasis by B.K.-G.], etc.

[53] See Nizioł, *Państwowy dług publiczny*, 364.

5. CONCLUDING REMARKS

The investigation we have conducted leads to the conclusion that with regard to the definition of national public debt, the minister competent for public finances has been granted certain competences to enable him to specify the debt both in subjective terms, its material scope, and the methodology of its computation. It should also be said that the constitutional obligation of statutory determination of the manner of computing national public debt is not realised only through the adopted methodology or the principle of consolidation as determined by statute. The calculation of national public debt depends both on the determination of indebted entities and the specification of debt titles. As demonstrated in this study, the legal framework of statutory delegations, even if claims of their unconstitutionality are disregarded, inevitably implies that the granting of a very comprehensive range of prerogatives to the minister competent for public finances is a platform for his discretionary activities. This claim is supported by the way the said competences are realised by the minister described above, which is reflected mainly by such blanket competences granted to the minister, not having sufficient certainty, which in turn has led to the extension of the material scope of the debt stipulated in the law, affecting the financial situation of entities of the public finance sector, especially that of local government units. Moreover, the use of statutory delegation in the law on public finances providing the minister competent for public finances with the authorisation to specify the manner of computing the value of liabilities qualified as national public debt, State Treasury debt, liabilities resulting from sureties and guarantees – in the absence of a *de facto* general definition of nominal value – has led to a situation in which the definition of a proper method of computing national public debt is realised only via an implementing regulation issued by this minister. Concluding *de lege ferenda*, the need for flexible instruments available to the minister competent for public finances and necessary to determine the scope of national public debt cannot be overstated. It seems, however, that – in compliance with constitutional standards – these issues should be addressed more comprehensively by a legislative act, which would guarantee more security and stability of regulation. These suggestions should be taken into consideration since they may have serious legal consequences for the methodology of determining the national public debt in relation to GDP, and for potential implementation of prudential procedures and self-improvement measures, which as a result demands thorough changes in the financial economy of the State with regard to both the legislative and executive sphere.

BIBLIOGRAPHY

Sources of law

Act of March 17, 1921 (The Constitution of the Republic of Poland), Journal of Laws No. 44, item 267 as amended.

Constitutional act of 23 April 1935, Journal of Laws No. 30, item 227.

Constitutional act of 19 February 1947 on the organisation and scope of activity of the supreme authorities of the Republic of Poland, Journal of Laws No. 18, item 71 as amended.

Constitution of the People's Republic of Poland of 22 July 1952, Journal of Laws No. 33, item 232 as amended.

Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

Treaty on the Functioning of the European Union, Journal of Laws of 2004, No. 90, item 864 as amended.

Act of 25 September 1922 on the controlling of State debts, Journal of Laws No. 89, item 805.

Act of 2 January 1936 on the exercise of parliamentary control of State debts, Journal of Laws No. 2, item 3.

Act of 1 July 1958 on budgetary law, Journal of Laws No. 45, item 221 as amended.

Act of 17 November 1964 (Code of Civil Procedure), Journal of Laws of 2014, item 101 as amended.

Act of 27 November 1970 (Budgetary Law), Journal of Laws No. 29, item 244.

Act of 3 December 1984 (Budgetary Law), Journal of Laws No. 56, item 283 as amended.

Act of 5 January 1991 (Budgetary Law), Journal of Laws No. 4, item 18 as amended.

Act of 8 August 1996 on the rules of exercising the powers of the State Treasury, Journal of Laws of 2012, No. 11, item 1224.

Act of 26 November 1998 on public finances, Journal of Laws of 2003, No. 15, item 148 as amended.

Act of 30 June 2005 on public finances, Journal of Laws No. 249, item 2104 as amended.

Act of 27 August 2009 on public finances, Journal of Laws of 2016, item 1870 as amended.

Council Regulation 2223/96 (EC) of 25 June 1996 on the European system of national and regional accounts in the Community, Official Journal L 310, 30.11.1996, p.1 as amended.

Regulation (EU) No. 549/2013 of the European Parliament European and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union, Official Journal L 174, 26.06.2013, p. 1.

Council Regulation (EC) No. 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community, Official Journal L 145, 10.6.2009, p.1 as amended.

Regulation of the Minister of Finance of 4 March 2010 on reports of public finance units regarding financial operations, Journal of Laws of 2014, item 1773.

Regulation of the Minister of Finance of 23 December 2010 on the detailed method of classifying debt titles qualified as part of public national debt, including the debt of the State Treasury, Journal of Laws of 2010, No. 252, item 1692.

Regulation of the Minister of Finance of 28 December 2011 on the detailed method of classifying debt titles qualified as part of public national debt, Journal of Laws No. 298, item 1767.

Case law

Judgement of the Supreme Court dated March 23, 2010, file ref. no. III CZP 62/10, LEX No. 602464.

Judgement of the Supreme dated March 22, 2001, file ref. no. III CKN 295/00, published on www.sn.pl, accessed July 10, 2017.

Judgement of the Supreme dated September 27, 2002, file ref. no. IV CKN 1302/00, published on www.sn.pl, accessed July 10, 2017.

Judgement of the Supreme Court dated May 11, 1999, file ref. no. I CKN 1148/97, published in OSNC of 1999, No. 12, item 205.
Judgement of the Provincial Administrative Court in Wrocław dated May 13, 2010, file ref. no. III SA/Wr 24/10, published in CBOSA.
Judgement of the Provincial Administrative Court in Wrocław dated of May 13, 2010, file ref. no. III SA/Wr 23/10, LEX No. 675037.

Literature

Bitner, Michał, and Elżbieta Chojna-Duch. "Dług publiczny i deficyt sektora finansów publicznych." In *Prawo finansowe*, edited by Elżbieta Chojna-Duch and Hanna Litwińczuk. Warsaw: Wydawnictwo Oficyna Prawa Polskiego, 2009, 117–52.
Bitner, Michał, and Michał Kulesza. "Nowa definicja długu publicznego? Problemy związane z interpretacją przepisów rozporządzenia Ministra Finansów z 23.12.2010 r. w sprawie szczegółowego sposobu klasyfikacji tytułów dłużnych zaliczanych do państwowego długu publicznego w tym do długu Skarbu Państwa." *Samorząd Terytorialny* 7–8 (2011): 15–30.
Borodo, Andrzej. *Polskie prawo finansowe*. *Zarys ogólny*, 2nd ed. Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa "Dom Organizatora", 2005.
Ciak, Jolanta. *Źródła finansowania deficytu budżetu państwa w Polsce*. Warsaw: CeDeWu, 2011.
Dębowska-Romanowska, Teresa. "Artykuł 9 ustawy o finansach publicznych – a art. 33 oraz 40 par. 1 i 3 KC." In *Finanse Publiczne i Prawo Finansowe*. *Realia i perspektywy zmian*. *Księga jubileuszowa dedykowana Profesorowi Eugeniuszowi Ruśkowskiemu*, edited by Leonard Etel and Marcin Tyniewicki. Białystok: Wydawnictwo Temida 2, 2012, 175–90.
Glumińska-Pawlic, Jadwiga. "Państwowy dług publiczny a rozwój gospodarki lokalnej." In *Ekonomiczne i prawne uwarunkowania i bariery redukcji deficytu i długu publicznego*, edited by Jolanta Szołno–Koguc and Alicja Pomorska. Warsaw: Wydawnictwo Wolters Kluwer, 2011, 427–43.
Gołębiowski, Grzegorz. "Dług jednostek samorządu terytorialnego." In *Polityka finansowa Polski wobec aktualnych i przyszłych wyzwań*, edited by Jacek Kulawik and Eugeniusz Mazurkiewicz. Vol 2. Warsaw: Wydawnictwo Wyższej Szkoły Ekonomicznej, 2005, 57–66.
Kornberger-Sokołowska, Elżbieta. *Finanse jednostek samorządu terytorialnego*. Warsaw: Wydawnictwo LexisNexis, 2012.
Kosikowski, Cezary. *Nowa ustawa o finansach publicznych*. *Komentarz*. Warsaw: Wydawnictwo LexisNexis, 2010.
Kosikowski, Cezary. *Sektor finansów publicznych w Polsce*. Warsaw: Dom Wydawniczy ABC, Wolters Kluwer Polska, 2006.
Kosikowski, Cezary. "Ustawa o finansach publicznych." *Państwo i Prawo* 3 (1999): 3–19.
Kosikowski, Cezary. "W poszukiwaniu nowej koncepcji Skarbu Państwa." *Państwo i Prawo* 12 (1992): 3–14.
Lewkowicz, Paweł. "Komentarz do art. 9." In *Nowa ustawa o finansach publicznych wraz z ustawą wprowadzającą*. *Komentarz praktyczny*, edited by Eugeniusz Ruśkowski and Joanna Małgorzata Salachna. Gdańsk: Wydawnictwo Ośrodek Doradztwa i Doskonalenia Kadr, 2011, 72–94.
Lipiec, Ludmiła. *Komentarz do ustawy z dnia 30 czerwca 2005 r. o finansach publicznych*, LEX/el. 2008.
Lotko, Ewa, and Urszula Kinga Zawadzka-Pąk. "Problemy terminologiczne i definicyjne deficytu i długu w polskim i unijnym prawie finansów publicznych." *Prawo Budżetowe Państwa i Samorządu* 2 (2016): 51–67. Accessed July 10, 2017. http://apcz.umk.pl/czasopisma/index.php/PBPS/article/viewFile/PBPS.2016.009/8995.
Marchewka-Bartkowiak, Kamilla. *Gwarancje i poręczenia państwowe jako źródło ryzyka fiskalnego – analiza doświadczeń międzynarodowych i polskich*. Warsaw: Wydawnictwo Narodowego Banku Polskiego, 2006.

Marchewka-Bartkowiak, Kamilla. "Gwarancje i poręczenia Skarbu Państwa – niewykorzystane możliwości?" *Infos BAS* 9 (2007): 1–4.

Marchewka-Bartkowiak, Kamilla. *Zarządzanie długiem Skarbu Państwa. Implikacje dla strefy euro*. Warsaw: Wydawnictwo Difin, 2011.

Mazurkiewicz, Marek. "Problem zgodności z Konstytucją art.72 ust. 1 i 2 u.f.p. w zw. z § 3 jej rozporządzenia wykonawczego – zagadnienia dyskusyjne." *Finanse Komunalne* 4 (2011): 5–13.

Mączyński, Maciej. "Wybrane zagadnienia ustrojowe Skarbu Państwa." *Przegląd Sejmowy* 6 (2003): 19–34.

Miemiec, Wiesława. "Kategoria kredytu i pożyczki jako tytułów zaliczanych do państwowego długu publicznego w ustawie o finansach publicznych i w rozporządzeniu wydanym na jej podstawie." In *Ekonomiczne i prawne uwarunkowania i bariery redukcji deficytu i długu publicznego*, edited by Jolanta Szołno-Koguc and Alicja Pomorska. Warsaw: Wydawnictwo Wolters Kluwer, 2011, 183–96.

Mierzwa, Andrzej. „Komentarz do art. 9." In *Nowa ustawa o finansach publicznych. Komentarz*, edited by Paweł Smoleń. Warszawa: Wydawnictwo C.H. Beck, 2014, 158–201.

Młynarczyk, Alicja. "Zadłużenie jednostek samorządu terytorialnego a państwowy dług publiczny." *Finanse Komunalne* 1–2 (2012): 44–51.

Nizioł, Krystyna. *Państwowy dług publiczny. Aspekty normatywne.* Szczecin: Wydawnictwo Uniwersytetu Szczecińskiego, 2013.

Ofiarski, Zbigniew. "Zadłużenie jednostek samorządu terytorialnego a państwowy dług publiczny." *Finanse Komunalne* 1–2 (2010): 25–33.

Ofiarski, Zbigniew. "Dług publiczny w Polsce." In *Nauka finansów publicznych i prawa finansowego w Polsce. Dorobek i kierunki rozwoju. Księga jubileuszowa Profesor Alicji Pomorskiej*, edited by Jan Głuchowski, Cezary Kosikowski, and Jolanta Szołno-Koguc. Lublin: Wydawnictwo UMCS, 2008, 253–64.

Ofiarski, Zbigniew. "Komentarz do art. 73." In *Ustawa o finansach publicznych. Komentarz* by Maria Karlikowska, Wiesława Miemiec, Zbigniew Ofiarski, and Krystyna Sawicka. Wrocław: Wydawnictwo Presscom, 2010, 204–8.

Ofiarski, Zbigniew. "Państwowy dług publiczny." In *Prawo finansowe sektora finansów publicznych*. Vol. 2 of System Prawa Finansowego, edited by Eugeniusz Ruśkowski. Warsaw: Wydawnictwo Wolters Kluwer, 2010, 139–77.

Panfil, Przemysław. "Dług publiczny." In *Leksykon prawa finansowego. 100 podstawowych pojęć*, edited by Andrzej Drwiłło and Dorota Maśniak, 79–85. Warsaw: Wydawnictwo C.H. Beck, 2009.

Panfil, Przemysław. *Prawne i finansowe uwarunkowania długu Skarbu Państwa*. Warsaw: Wydawnictwo Wolters Kluwer, 2011.

Pomorski, Piotr. "Komentarz do art. 72." In *Ustawa o finansach publicznych. Komentarz*, edited by Paweł Smoleń. Warsaw: Wydawnictwo C.H. Beck, 2014, 508–20.

Poniatowicz, Marzanna. *Dobry dług versus zły dług, czyli o specyfice zadłużenia sektora samorządowego*. In *Ekonomiczne i prawne uwarunkowania i bariery redukcji deficytu i długu publicznego*, edited by Jolanta Szołno-Koguc and Alicja Pomorska. Warsaw: Wydawnictwo Wolters Kluwer, 2011, 488–99.

Przychodzki, Marcin. "Glosa do wyroku TK z dnia 7 maja 2001 r., K. 19/00." *Radca Prawny* 3 (2002): 97–104.

Ruśkowski, Eugeniusz. "Komentarz do art. 10." In *Finanse publiczne. Komentarz praktyczny*, edited by Eugeniusz Ruśkowski and Joanna Małgorzata Salachna. Gdańsk: Ośrodek Doradztwa i Doskonalenia Kadr, 2007, 87–88.

Salachna, Joanna Małgorzata. "Nowe formy prawne ograniczenia deficytu oraz zadłużenia samorządu terytorialnego – próba oceny." In *Ekonomiczne i prawne uwarunkowania i bariery redukcji deficytu i długu publicznego*, edited by Jolanta Szołno-Koguc and Alicja Pomorska. Warsaw: Wydawnictwo Wolters Kluwer, 2011, 521–30.
Sawicka, Krystyna. "Dług jednostek samorządu terytorialnego." In *Budżet jednostki samorządu terytorialnego*, edited by Jadwiga Glumińska-Pawlic and Krystyna Sawicka. Zielona Góra: Wydawnictwo Zachodnie Centrum Organizacji 2002: 125–92.
Sawicka, Krystyna. "Komentarz do art. 9." In *Ustawa o finansach publicznych. Komentarz* by Maria Karlikowska, Wiesława Miemiec, Zbigniew Ofiarski, and Krystyna Sawicka. Wrocław: Wydawnictwo Presscom, 2010, 36–46.
Ślusarczyk, Radosław. *Rosnące zadłużenie gmin a partnerstwo publiczno-prywatne*, LEX, ABC No. 182427.
Świderski, Zbigniew. "Komentarz do art. 34." In *Kodeks cywilny. Część ogólna. Komentarz*, edited by Paweł Księżak and Małgorzata Pyziak-Szafnicka. Warsaw: Wydawnictwo Wolters Kluwer, 2014, LEX/el.
Tyniewicki, Marcin. "Komentarz do art. 72." In *Nowa ustawa o finansach publicznych wraz z ustawą wprowadzającą. Komentarz praktyczny*, edited by Eugeniusz Ruśkowski and Joanna Małgorzata Salachna. Gdańsk: Wydawnictwo Ośrodek Doradztwa i Doskonalenia Kadr, 2011, 251–60.
Wiernik, Andrzej. *Opinia o rządowym projekcie ustawy o finansach publicznych* (Sejm paper No. 1844, 4th Sejm), 4.
Wiernik, Andrzej. "Problemy definicji długu publicznego." In *Zadłużenie Polski*, edited by Grzegorz Gołębiowski and Zofia Szpringer, *Studia BAS* 4 (2011): 9–24.
Wołowiec, Tomasz, and Dariusz Reśko. "Nowe reguły zadłużania jednostek samorządu terytorialnego – konsekwencje prawne i ekonomiczne." *Finanse Komunalne* 11 (2012): 37–43.
Zalcewicz, Anna. "Państwowy dług publiczny na tle obowiązujących przepisów prawnych." *Przegląd Ustawodawstwa Gospodarczego* 6 (2000): 8–13.

Other materials

Note of the Minister of Finance dated March 14, 2011, file ref. no. DP 14/657/47/MKT/2011/1161. Accessed July 10, 2017. http://www.ppp.gov.pl/Poradnik_inwestora/Documents/Dlug_interpretacjaMF_14032011.pdf.
Statystyka sektora instytucji rządowych i samorządowych. Warsaw: Główny Urząd Statystyczny, 2010. Accessed November 18, 2016. http://www.stat.gov.pl/cps/rde/xbcr/gus/rn_statystyka_sektora.pdf.

THE ROLE OF THE MINISTER COMPETENT FOR PUBLIC FINANCES IN DETERMINING THE SCOPE OF NATIONAL PUBLIC DEBT. SELECTED ISSUES

Summary

The article discusses the role of the minister competent for public finances in determining the scope of public debt. The Author demonstrates that with regard to the determination of public debt the minister competent for public finances has been authorised to determine its subjective and objective scope as well as calculation methodology. The article analyses the legal framework of the public finance act and the delegation of legislative powers to the minister in the light of claims of unconstitutionality made with respect to the practical application of financial law. The Author claims the minister's very comprehensive prerogatives enable him to take discretionary measures. This argument

is confirmed by the way of the subjective competences described in the study are implemented which is reflected by such blanket competences granted to the minister. They do not have sufficient certainty, which in turn has led to the extension of the material scope of debt stipulated in the law, affecting the financial situation of entities of public finance sector, especially that of local government units.

Key words: the minister competent for public finances; public debt; State Treasury debt; public finance sector.

Translated by Tomasz Pałkowski

The preparation of the English version of *Roczniki Nauk Prawnych* (*Annals of Juridical Sciences*) no. 4 and its publication in electronic databases was financed under contract no. 753/P–DUN/2017 from the resources of the Minister of Science and Higher Education for the popularization of science.