

UNIVERZITA KARLOVA V PRAZE  
PRÁVNICKÁ FAKULTA  
KATEDRA FINANČNÍHO PRÁVA A FINANČNÍ VĚDY  
CENTRUM INFORMACJI I ORGANIZACJI  
BADAN FINANSÓW PUBLICZNYCH I PRAWA PODATKOWEGO  
KRAJÓW EUROPY ŚRODKOWEJ I WSCHODNIEJ

**Aktuální otázky financí a finančního práva  
z hlediska fiskální a monetární podpory  
hospodářského růstu v zemích  
střední a východní Evropy po roce 2010**

Soubor odborných statí z IX. mezinárodní vědecké konference

---

**Current issues of finance and financial law  
from the viewpoint of fiscal and monetary promotion  
of economic growth in the countries  
of Central and Eastern Europe after 2010**

Collection of Papers from the IX<sup>th</sup> International Scientific Conference

---

**Актуальные проблемы финансов  
и финансового права  
с точки зрения фискального и монетарного  
поощрения хозяйственного роста в странах  
средней и восточной Европы после 2010 года**  
Комплекс специальных статей из IX международной научной  
конференции

Konference se konala pod záštitou děkana Právnické fakulty  
Univerzity Karlovy v Praze prof. JUDr. Aleše Gerlocha, DrSc.  
ve dnech 12.–14. 9. 2010 v Praze.

Radim Boháč (ed.)

**leges**

*Vzor citace:*

Boháč, R. (ed.): Aktuální otázky financí a finančního práva z hlediska fiskální a monetární podpory hospodářského růstu v zemích střední a východní Evropy po roce 2010. Soubor odborných statí z IX. mezinárodní vědecké konference. Praha: Leges, 2010, 896 s.

Poděkování:

Editor vyjadřuje poděkování za spolupráci při redakci Miroslavě Zajíčkové, Romanu Vybíralovi a Martinu Hobzovi.

Vydalo nakladatelství Leges, s. r. o., Lublaňská 4/61, Praha 2,  
v roce 2010 jako svou 58. publikaci.

Edice Teoretik

Vydání první

Návrh obálky Michaela Vydrová

Jazyková redakce Martin Vančura

Tisk PBTisk, s. r. o., Příbram

[www.leges.cz](http://www.leges.cz)

© Radim Boháč et alii, 2010

ISBN 978-80-87212-57-8

# Obsah

<i>Lilia Abramchik</i>	
Налоговое производство . . . . .	15
<i>Elżbieta Agnieszka Ambrożej</i>	
The amendments in Polish tax law and their impact on the income of the society . . . . .	26
<i>Silvie Anderlová, Petra Jánošíková</i>	
Vyměřovací a vytýkácí řízení z pohledu nového daňového řádu . . . . .	51
<i>Vladimír Babčák</i>	
Daňové právo ako nástroj a forma podpory podnikateľského prostredia . . . . .	65
<i>Milan Bakeš</i>	
Aktuální otázky finančního práva ve světle hospodářské a finanční krize . . . . .	80
<i>Nada Blahová</i>	
Analýza navrhovaných změn v dohledu nadnárodních finančních skupin . . . . .	89
<i>Lilia Bobkova</i>	
Роль Российской Федерации как субъекта финансового права в условиях экономического развития стран Центральной и Восточной Европы . . . . .	102
<i>Radim Boháč</i>	
Harmonizace vyměřovacích základů daní z příjmů, pojistného na sociální zabezpečení a pojistného na veřejné zdravotní pojištění z hlediska podpory hospodářského růstu v České republice . . . . .	112
<i>Rafał Bucholski</i>	
Taxation with the real property tax of the land managed by organizational units of the State Forestry Enterprise occupied for electric power lines – case study . . . . .	124
<i>Karolína Červená, Ján Čipkár</i>	
Sociokultúrne determinanty podpory hospodárskeho rastu v Slovenskej republike. . . . .	136

<i>Anastasia Dolgova</i>	
Роль парафискальных сборов в российской финансовой системе . . . . .	148
<i>Mária Duračinská</i>	
Otázky zavedenia spoločného jednotného daňového základu firiem v Európskej únii z pohľadu dane z príjmu právnických osôb v SR . . . . .	160
<i>Andrey Evdokimov</i>	
Актуальные проблемы мер принуждения в российском бюджетном праве . . . . .	177
<i>Izabela Felczak, Jarosław Poturnicki</i>	
Analysing the consequences of Poland's accession to the Eurozone .	193
<i>Irina Vasilievna Glazunova</i>	
Legal problems of state and local self-government authorities under tax administration . . . . .	203
<i>Andrzej Huchla</i>	
Tax facilitations for business taxpayers in Poland. . . . .	213
<i>Tomáš Hulkó</i>	
Finančno-právne realie Európskych zoskupení územnej spolupráce	217
<i>Natalia Chebykina</i>	
Execution of anti-crisis measures in construction branch by State . .	226
<i>Elena Vadimovna Chernikova</i>	
Правовые проблемы в регулировании банковской деятельности .	231
<i>Adam Piotr Chocieĵ</i>	
The government debt in the legislation of the European Union and the Polish law . . . . .	240
<i>Valentina Nikolaevna Ivanova</i>	
Application of a model of juridical construction of the tax as basic reception of legal techniques for formation of laws on taxes . . . . .	249
<i>Dominika Jocz</i>	
Deposit guarantee system in terms of the European Union law. . . . .	255
<i>Anna Jurkowska-Zeidler</i>	
The new legal framework for crisis management in the EU internal financial market . . . . .	264

<i>Marie Karfíková, Zdeněk Karfik</i>	
Některé aktuální problémy veřejných financí . . . . .	277
<i>Standislav Klazar, Alena Maaytová</i>	
Odhad vlivu struktury veřejných výdajů na ekonomický růst – přehled teorií a empirická analýza . . . . .	290
<i>Michael Kohajda</i>	
Zneužití práva v aktuálním českém daňovém právu a judikatuře . . .	300
<i>Marta Kolasa</i>	
Court of Auditors – issues relating to financial audit of the European Union expenditure . . . . .	312
<i>Alexander Nikolaevich Kostyukov</i>	
Constitutional regulation of state and economy interaction . . . . .	323
<i>Petr Kotáb</i>	
K některým zejména daňovým aspektům zahájení činnosti centrálního depozitáře . . . . .	332
<i>Andrey Krasnyukov</i>	
Двойное налогообложение и экономический рост в государствах Центральной и Восточной Европы . . . . .	347
<i>Libor Kyncl</i>	
Aktuální otázky regulace elektronických a virtuálních peněz jako stimulů hospodářského růstu . . . . .	356
<i>Grzegorz Liszewski</i>	
A system of public law fees imposed by Poland's self-government entities related to environmental protection . . . . .	367
<i>Natalia Lunina</i>	
Плата за негативное воздействие на окружающую среду как финансово-правовая мера обеспечения экологической функции Российского государства . . . . .	385
<i>Jerzy Małeckí</i>	
Iura publica anteferenda privatis . . . . .	401
<i>Krystyna Piotrowska-Marczak</i>	
The legal and economic aspects of public financial management . . . . .	411

<i>Hana Marková</i>	
Stát, veřejný rozpočet a zásady jeho tvorby a realizace v období překonávání důsledků hospodářské krize . . . . .	418
<i>Vladislav Mičátek</i>	
Jednotná európska mena a jednotná európska menová politika – právní konštrukcia z aspektu trvaloudržitateľného hospodárskeho rastu. . . . .	430
<i>Petr Mrkývka</i>	
Předmětové pojetí finanční správy . . . . .	448
<i>Vladimir Nazarov</i>	
The effects on financial stability caused by the imposition of a special tax on banks. . . . .	458
<i>Jan Neckář</i>	
Stabilita norem finančního práva . . . . .	463
<i>Zbigniew Ofiarski, Małgorzata Ofiarska</i>	
Communal Utilities Association as an organizational unit of the sector of public finance in Poland . . . . .	470
<i>Przemysław Panfil</i>	
The risk of state bankruptcy in Central and Eastern Europe . . . . .	488
<i>Zdenka Papoušková</i>	
Právní aspekty daňové reformy v České republice – její podstata a definice. . . . .	499
<i>Ivana Pařízková</i>	
Aktuální otázky financování územních samosprávných celků a municipálního finančního systému . . . . .	511
<i>Alexey G. Paul</i>	
Russian budget law and promotion of economic growth . . . . .	519
<i>Piotr Pietrasz, Wojciech Sawczuk</i>	
Judicial control of individual tax law interpretation vs. judicial control of tax decision in the context of correlated procedures . . . . .	525
<i>Karol Pilecki</i>	
Polish accession to the ERM II and Euro area – the process and benefits . . . . .	536

<i>Rafał Piókarz</i>	
Monetary policy innovations as a response to the money market disturbances in Poland . . . . .	548
<i>Sławomir Presnarowicz</i>	
Systém odvolání v daňovém řízení v České republice a Polsku . . . . .	560
<i>Michal Radvan</i>	
Zdanění pozemků ad valorem. . . . .	571
<i>Maria Rogatneva</i>	
Актуальные проблемы сроков в налоговом процессе России. . . . .	586
<i>Oleg Romanenko</i>	
Антикризисные меры российского правительства в сфере финансового, бюджетного и налогового регулирования в 2008–2010 гг. . . . .	596
<i>Tomáš Rozehnal, David Jeroušek</i>	
Nový daňový řád – efektivní správa daní. . . . .	607
<i>Eugeniusz Ruškowski, Urszula K. Zawadzka-Pąk</i>	
Activity-based budget in the light of theoretical principles and practical experiences of selected countries . . . . .	622
<i>Anna Evgeněvna Samsonova</i>	
Имущественные отношения как предмет правового регулирования финансового права: современное состояние и перспективы развития. . . . .	634
<i>Irina Saprykina</i>	
Принципы Европейского Суда по правам человека и налоговое право Российской Федерации . . . . .	647
<i>Marina V. Karaseva (Sentsova)</i>	
Налоговое право России: новые аспекты правопонимания и развития. . . . .	658
<i>Aksana N. Shupitskaya</i>	
Обязанность платить налоги как одна из важнейших институциональных обязанностей в республике Беларусь . . . . .	672
<i>Justyna Siemieniako</i>	
Perspectives of introduction an institution of a contract to the tax procedure in Poland . . . . .	684

<i>Jana Skálová, Marcela Žárová</i>	
Problémy nedokončené harmonizace přeshraničních fúzí jako bariéry pro volný pohyb kapitálu . . . . .	695
<i>Sebastian Skuza</i>	
Principles of classifying loans at risk and establishing provisions for credit risk in selected European countries. . . . .	713
<i>Piotr Śmierski</i>	
Rational and economical management of public funds in time of crisis on the example of fiscal administration. . . . .	729
<i>Natalia Solovyeva</i>	
Tax reliefs: pro's and con's. . . . .	740
<i>Przemysław Stolarski</i>	
Decreasing tax revenue to the state budget – Is it an outcome of the economic crisis or rather a consequence of inappropriate changes to the Polish fiscal system? . . . . .	748
<i>Dana Šramková</i>	
Aktuální otázky cel a celního práva po roce 2010. . . . .	764
<i>Krzysztof Teszner</i>	
Co-operation of tax governmental bodies and tax local bodies in applying the tax allowances and tax exemptions procedure. . . . .	772
<i>Marcin Tyniewicki</i>	
The assessment of legal regulations of the European Union limiting public debt. . . . .	787
<i>Pavčina Vondráčková, Petr Novotný</i>	
Podpora hospodářského růstu a reforma veřejných financí ve světle finančního práva . . . . .	798
<i>Katarzyna Wójtowicz</i>	
The experience with the numerical fiscal rules in the EU countries .	813
<i>Elżbieta Wróblewska</i>	
The perspective of tax offices and tax chambers organizational development in Poland. . . . .	829
<i>Anton Yakushev</i>	
The influence of tax law codification on economic growth. . . . .	840



*Miroslava Zajíčková*

Stručný nástin systému zdanění příjmů fyzických osob  
a základu daně ve Velké Británii ..... 846

*Dariusz Zalewski*

Objection as a new institution of tax law ..... 860

*Valeria Zamulko*

Роль Европейского суда по правам человека в формировании  
принципа баланса интересов налогоплательщика и государства  
в налоговом праве Российской Федерации» ..... 868

*Robert Zieliński*

The fiscal efficiency of simplified forms of taxation on incomes  
generated by natural persons in Poland ..... 877

# THE ASSESSMENT OF LEGAL REGULATIONS OF THE EUROPEAN UNION LIMITING PUBLIC DEBT

*Marcin Tyniewicki, Ph.D.*

*Abstract:* Limitation or at least the maintaining of public debt on fixed level due to its negative effects, are processes – as it seems – demanded and obvious. Thus, they are beyond all doubts in the sphere of political declarations as well as in legal sphere, which means passing appropriate legal provisions. However, problems appear at the stage of actual activities leading to implementation of those declarations and provisions. The prospect of public expenditure cuts and in consequence – unpopularity of decisions in this matter, keeps politicians from taking real steps leading to limitation of public debt or causing a desire to change of rigorous provisions quite effectively. The problem is the most present and crucial in the context of financial difficulties both members states of the European Union (e.g. Greece, Portugal, Spain) and other countries. This paper will be an attempt to assess the EU legal provisions observance, established to prevent the appearance of excessive public debt.

*Keywords:* budget deficit, public debt, excessive deficit procedure, reference values, convergence criteria, the Stability and Growth Pact.

## Introduction

Limitation or at least the maintaining of public debt on fixed level due to its negative effects, are processes – as it seems – demanded and obvious. Thus, they are beyond all doubts in sphere of political declarations as well as in legal sphere, which means passing appropriate legal provisions. However, problems appear at the stage of actual activities leading to implementation of those declarations and provisions. The prospect of public expenditure cuts and in consequence – unpopularity of decisions in this matter, keeps politicians from taking real steps leading to limitation of public debt or causing a desire to change of rigorous provisions quite effectively. The problem is the most

present and crucial in the context of financial difficulties both members states of the European Union (e.g. Greece, Portugal, Spain) and other countries.

This paper will be an attempt to assess the EU legal provisions observance, established to prevent the appearance of excessive public debt.

## 1. Scope of coordination of fiscal policy in the European Union

Economic policy is one of the most crucial scopes of interests of the European Union (EU).<sup>1</sup> For this reason economic policies conducted by individual member states need to be coordinated on fixed extent, which is deferent depending on type of policies, being components of whole of EU economic policy. For example, monetary policy in reference to member states of Economic and Monetary Union (EMU) has been coordinated on the highest level, as it executed in form of single policy.<sup>2</sup> It means that it is implemented on supranational level and guided by EU institution – the European Central Bank (ECB). As a result instruments of monetary policy applied by ECB, e.g. fixing interest rates, are binding for all member states of EMU. So practically, central banks of these states are deprived of a possibility to conduct their own individual monetary policy, and they only able to take activities jointly and within of ECB as well as Eurosystem. Such centralized coordination is not applicable to fiscal policy of member states. As a matter of fact the EU tries to approach their activities in this area, but not in full extent, i.e. not in all spheres of this policy there are imposed on states uniform rules, but only in those which have been recognized as important for EU economic policy. That way of coordination means that fiscal policy of EU members is subject to so-called close coordination.<sup>3</sup> Passing the Maastricht Treaty in 1992, establishing EMU based on common euro currency and single monetary policy, member states agreed to respect the principles on price stability, sound public finance,

---

1 See title VIII of the Treaty on the Functioning of the European Union (OJ EU of 30.03.2010, C 83, p. 47), hereinafter referred to as TFEU.

2 European Commission, Directorate-General for Economic and Financial Affairs, Coordination of economic policies in the EU: a presentation of key features of the main procedures, „Euro Papers” 2002, No. 45, p. 4; M. Tyniewicki, *Polityka budżetowa*, [in:] E. Sulima (ed.), *Obszary integracji Unii Europejskiej*, Białystok 2006, p. 101 and next.

3 Ibidem.

monetary conditions and a sustainable balance of payments.<sup>4</sup> These principles constitute grounds for so-called convergence criteria of which fulfillment are required to join the euro zone. Sound public finance is understood in the light of budget deficit and public debt limitation, so as not to exceed the reference values, i.e. 3 % and 60 % of GDP respectively (fiscal criteria of convergence).<sup>5</sup> The purpose of these restrictions was to maintain fiscal discipline ensuring the stability of euro currency. At the same time, there have been decided to constitute legal instruments that would secure its observance as well as to force to take appropriate remedial actions in case of exceeding the limits laid down. These instruments derive from so-called excessive deficit procedure specified in art. 126 par. 1–14 TFEU. It is complemented by Council Regulation (EC) No. 479/2009,<sup>6</sup> which regulates e.g. terminological issues (including the definition and scope of public debt), submitting duties of statistical reports on current level of deficit and debt, evaluation and credibility of these reports by the Commission (Eurostat).

Simultaneously, in 1997, i.e. before the beginning of the third stage of EMU, there was established the Stability and Growth Pact,<sup>7</sup> which subject was to strengthen the excessive deficit procedure. In fact, the Pact specifies and particularizes of the procedure in sphere of submitting of convergence and stability programs, deadline for implementation of next stages of the procedure, amounts of penalties.

---

4 Art. 119 TFEU (ex art. 4 of the Treaty establishing the European Community).

5 Art. 126 par. 2 and protocol 12 TFEU.

6 Council Regulation (EC) No. 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (Codified version) (OJ EU of 10.06.2009, L 145, p. 1).

7 The Stability and Growth Pact has been established by the resolution of European Council of 17 June 1999 on Stability and Growth Pact. It comprises of 2 regulations: Council Regulation (EC) No. 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ EU of 2.08.1997, L 209, p. 1 with amendments) and Council Regulation (EC) No. 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ EU of 2.08.1997, L 209, p. 6 with amendments).

## 2. The observance of the budget discipline in range of public debt by EU Member States in 1997–2011

Prior to joining the third stage of EMU, which formally began on 1 January 1999, fifteen member states were assessed taking into consideration fulfillment of convergence criteria. Focusing only on the amount of public debt, the data for 1997–1998 show that the ratio not exceeding 60 % of GDP was met only by 4 countries in the first year (France, Luxembourg, Finland and the United Kingdom), and in the next year – Denmark and Portugal as well. In consequence, there were appeared the doubts about wisdom of creating the euro zone, while majority of members did not meet established conditions.<sup>8</sup>

However, finally the European Council in May 1998 took decision on qualification for the third stage of EMU 11 states, including also those, which did not meet the public debt criterion. During its assessment, there was adopted not only the strict adherence to the limit of 60 %, but also the trend to reduce public expenditure and the prospect of reducing the debt to GDP ratio to the limit indicated. Consequently, from the beginning the euro area also consisted of those countries that showed the highest public debt, oscillating or even exceeding 100 % of GDP, i.e. Italy and Belgium with the exception of Greece, which was accessed in 2001. Within next years, before the EU enlargement in 2004, an increasing part of states began to meet the debt criterion (e.g. in from 2001 – 11 out of 15 states, in 2002 – 10 out of 15 states, in 2003 – 9 out of 15). After accession of new members in 2004 and 2009, depending on different periods, from 15 to 16 out of 27 states fulfilled this criterion (graph 2).<sup>9</sup> However, the European Commission for the period 2010–2011 foresees that the situation is going to get worse, although this trend has been noticeable since 2008. The decrease of the number of states, in which the debt will not exceed 60 % (there will be 13 states) is not only considered, but also the average increase of debt of EU and in the euro area (graph 5). While in 2009 the average value of the debt of all member states amounted to 73.6 % of GDP, in 2010–2011 this indicator is already going to oscillate at 79.6 % and 83.8 % respectively. For the euro area data are even more negative, because they amount respectively 2009 – 78.7 %, 2010 – 84.7 % and 2011 – 88.5 %. It means that the growing of commitments in countries that for a long time

8 Baka, W. *Bankowość centralna. Funkcje, metody, organizacja*, Warsaw 2001, p. 284 and next.

9 On the basis of Eurostat data, <http://epp.eurostat.ec.europa.eu/>

show the worst results in this matter, will be continued, what seems to be a very worrying trend. Faster increasing of public debt in the EU is mainly due to high fiscal deficits of the member states, what is proved by the fact that only three of them in 2009 fulfilled the second criterion of convergence – a deficit not larger than 3 % of GDP. In many countries, the limit was exceeded twice or three times (graph 1) and there were no states with budget surplus.

### **3. Public debt in procedure of an excessive deficit – nature of legal regulations**

In compliance with art. 126 par. 3 TFEU taking actions by the Commission and the Council under the excessive deficit procedure is a consequence of establishing an infringement of one or two fiscal convergence criteria. This is a basic circumstance, as a result of which the Council may take decision on the existence of excessive deficit. However, the only fact of exceeding the limits of 3 % and 60 % of GDP is not always decisive. In reference to public debt, there may be exceeded without negative consequences, provided that “the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace”. As you can see, this condition is imprecise, allowing for a fairly broad interpretation. It has not been specified in Regulation No. 1467/97, as opposed to exceeding the limit of the budget deficit. In the last case, the circumstances which exclude further proceedings shall be such as exceptionality and temporality of exceeding, and the mentioned Regulation in art. 2 par. 1 specifies, how these terms should be understood. It should be noted that the provisions of this act as well as art. 126 TFEU, during assessment of the merits of the decision on the existence of an excessive deficit, attach greater importance to the budget deficit appearing than the public debt at a fixed level. Used terminology in here – “excessive deficit procedure” is also meaningful.

There may be presented examples of several countries to which was taken decision on the existence of excessive deficit, and afterwards it was abrogated, despite the fact that level of debt continued to exceed 60 % of GDP: France.<sup>10</sup>

---

<sup>10</sup> Council Decision No. 2003/487/EC of 3 June 2003 on the existence of an excessive deficit in France (OJ EU of 3.07.2003, L 165, p. 29); decision abrogating above-mentioned decision – No. 2007/154/EC of 30 September 2007 (OJ EU of 8.03.2007, L 68, p. 3).

Germany,<sup>11</sup> Greece,<sup>12</sup> Italy,<sup>13</sup> Portugal.<sup>14</sup> Quite significant example is Belgium as well, where the level of debt since the establishment of EMU varied from 113 % in 1999 to 96.7 % of GDP in 2009, but the procedure of excessive deficit was initiated for the first time in this year, due to exceeding the 3 % reference value of budget deficit, reaching in October 2009, the level of 5.9 %.<sup>15</sup> Currently the procedure has been taken towards 20 member states of the EU, including Poland.<sup>16</sup>

In consequence, the level of deficit, not public debt, has become the main and primary fiscal criterion by which member states has treated the fiscal policy in short-term perspective.<sup>17</sup>

Another crucial issue is also the initiation of the procedure of excessive deficit. The provisions of art. 126 TFEU do not give basis for automatic decision-making and specific measures – such as the decision on the existence of excessive deficit and its derogation, addressing recommendations to the member state, fines imposing – are applied by the Council after a qualified majority voting. As a matter of fact, the voting takes place without the participation of the state of which these measures apply, but it's necessary to have in mind a psychological aspect associated with a situation, when large and influential countries, in which there is exist a danger of excessive deficit appearing, may put political pressure on other countries during the voting. Contrary to many opinions, a situation in which the excessive deficit procedure was not initiated against Germany in 2002 and France in 2003 as a result of their pressures, did not take place. Appropriate proceedings were taken under the

---

11 Council Decision No. 2003/89/EC of 21 January 2003 on the existence of an excessive deficit in Germany (OJ EU of 11.02.2003, L 34, p. 16); decision abrogating above-mentioned decision – No. 2007/49/EC of 5 July 2007 (OJ EU of 13.07.2007, L 183, p. 23).

12 Council Decision No. 2004/97/EC of 5 July 2004 on the existence of an excessive deficit in Greece (OJ EU of 30.12.2004, L 389, p. 25); decision abrogating above-mentioned decision – No. 2007/465/EC of 5 July 2007 (OJ EU of 6 July 2007, L 176, p. 21).

13 Council Decision No. 2005/694/EC of 28 July 2005 on the existence of an excessive deficit in Italy (OJ EU of 11.10.2005, L 266, p. 57); decision abrogating above-mentioned decision – No. 2008/560/EC of 3 June 2008 (OJ EU of 10.07.2008, L 181, p. 39).

14 Council Decision No. 2005/730/EC of 20 September 2005 on the existence of an excessive deficit in Portugal (OJ EU of 20.10.2005, L 274, p. 91); decision abrogating above-mentioned decision – No. 2008/561/EC of 3 June 2008 (OJ EU of 10.07.2008, L 181, p. 41).

15 Council Decision No. 2010/283/EU of 19 January 2010 on the existence of an excessive deficit in Belgium (OJ EU of 21.05.2010, L 125, p. 34).

16 [http://ec.europa.eu/economy\\_finance/sgp/deficit/countries/index\\_en.htm](http://ec.europa.eu/economy_finance/sgp/deficit/countries/index_en.htm)

17 Rostowski, E. Pakt Stabilności i Wzrostu – niezbędny i nie do wyęgzekwowania, [in:] *Funkcjonowanie Unii Gospodarczej i Walutowej, Zeszyty BRE Bank – Case 2004*, No 75, p. 37 and next.

relevant Council decisions, namely decisions No. 2003/89/EC and 2003/487/EC.<sup>18</sup> However, in the course of the procedure, due to required majority was not achieved, the Council did not adopt decision on the on the recommendation of the Commission to take the appropriate measures in order to reduce deficits of those states, under art. 104 par. 8 and 9 of the Treaty establishing the European Community (currently art. 126 par. 8 and 9 of TFEU). The Council also adopted the proposals, containing decisions to suspend the excessive deficit procedure in reference to Germany and France, and modifying the recommendations previously adopted by the Council pursuant to art. 104 par 7 TEC (currently art. 126 par. 7 TFEU). This case became a background of a dispute which arose between Commission and Council and which was finally settled by the European Court of Justice. The Court stated that the action of the Commission on the failure of the Council to adopt the formal instruments contained in the Commission's recommendations pursuant to art. 104 par. 8 and 9 TEC, is inadmissible. He also annulled adopted Council's proposals, containing decisions to suspend the excessive deficit procedure in reference to Germany and France, and modifying the recommendations previously adopted in compliance with art. 104 par. 7 TEC.<sup>19</sup>

Having in regard the nature of instruments applicable to the member state in connection with the threat of appearing deficit or debt exceeding the reference values, the principle of gradation is applied, i.e. from the most slight to the most painful. After adoption of the decision on the existence of excessive deficit, the Council within remedial actions (art. 126 par. 7–9 TFEU):

- 1) without undue delay, submits recommendations to the member states concerned, expecting within six months to take effective actions, and fix a deadline for correcting the excessive deficit, at this stage these recommendations are not be made public;
- 2) issues a revised recommendation, if the member state has taken effective actions, but after issue the previous recommendations, unexpected adverse economic events with major unfavourable consequences for government finances has occurred;
- 3) may immediately make public the recommendations addressed earlier if it finds that the member state has failed to take effective actions within the fixed period;

---

<sup>18</sup> See footnotes no. 10 and 11.

<sup>19</sup> Judgment of the Court of Justice of European Communities of 13 July 2004 in Case C-27/04: Commission of the European Communities v Council of the European Union.



- 4) may decide to give notice to the member state to take, within a specified time limit, measures for the deficit reduction, which is judged necessary by the Council in order to remedy the situation, if a member state persists in failing to put into practice the recommendations of the Council; in accordance with art. 5 of Regulation No. 14679 the Council requests that the member state achieves a minimum annual improvement of at least 0.5% of GDP.

In consequence of lack of adhering to the requests of the Council referred to in point 4, it may decide to introduce the measures with sanction nature (art. 126 par. 11 TFEU), i.e.:

- 1) to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,
- 2) to invite the European Investment Bank to reconsider its lending policy towards the member state concerned;
- 3) to require the member state concerned to make a non-interest-bearing deposit of up to 0.5% of GDP until the excessive deficit has, in the view of the Council, been corrected;
- 4) to convert a deposit into a fine if two years after the decision to require the participating member state concerned to make a deposit, the excessive deficit has, in the view of the Council, not been corrected.

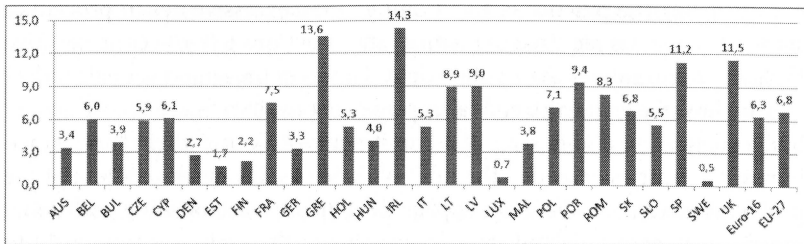
With regard to the measures listed above, it is necessary to point at some remarks. Firstly, as you can see, the Council possesses the freedom to apply of measures; there is no automatic rule of law, which has already been mentioned. Secondly, the most painful sanctions have not been imposed on any member states, i.e. make a non-interest-bearing deposit and fine, although the deficit and debt have, exceeding the fixed limits, persisted for several years in a row. Thirdly, the sanction measures are not applied to EU countries that have not accessed to the EMU. They are recognized as member states with a derogation, which means that some provisions of the Treaty are not applicable to them, including art. 126 par. 9 and 11 TFEU (see art. 139 par. 2 TFEU). So-called a “repressive part” of the Stability and Growth Pact contained in Regulation No. 1467/97, does not apply as well. Thus, states outside the EMU can be subject to the excessive deficit procedure, but the application of sanctions is excluded.

Bearing in mind the considerations made above the excessive deficit procedure as well as the Stability and Growth Pact, need to be reformed towards greater effectiveness in respecting the rule that budget deficit and public debt

should not exceed the set levels, particularly in reference to the second economic factor. The practice of functioning of the excessive deficit procedure shows that more is required of member states' actions to reduce the negative budgetary imbalances than public debt. However presented statistical data clearly show the growing trend takes place not only in reference to volume of budget deficit but also to scale of commitments of EU member states', which in many countries exceeded the limit of 60% of GDP. In the context of the problems of Greece, there are appear demands for establishing additional sanctions on over-indebted states, consisting in the exclusion from right to financials resources of EU funds or deprivation right to vote in the Council. Probably, the problem is not located in the catalogue of sanctions, because the sanctions under the present system consisting of non-interest-bearing deposit and financial fine are quite severe. As it seems, the problem arises from their implementation failure. In my opinion, it is appropriate to extend the repressive part of the Stability and Growth Pact to member states, which do not belong to the euro zone. The application of sanctions in this case should not be considered only in the context of monetary policy and the euro currency protection, but mainly in the context of caring for public finance and budgetary policy of the EU. This point of view should not be considered as an attempt to incapacitate the member states in scope of their national fiscal policies, but the activity and efficiency of EU institutions in observance of reference values of budget deficit and public debt should be strengthened.

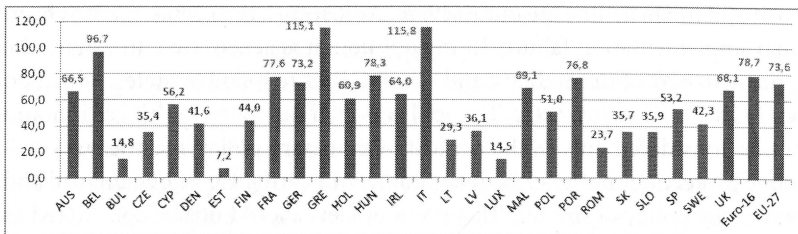
Marcin Tyniewicki, Ph.D.  
Department of Public Finance and Financial Law  
The Faculty of Law, University in Bialystok  
Ul. Mickiewicza 1  
15-213 Bialystok  
tyniewicki@uwb.edu.pl

Graph 1. Budget deficit in relation to GDP in EU-27 in 2009 r. (in %)



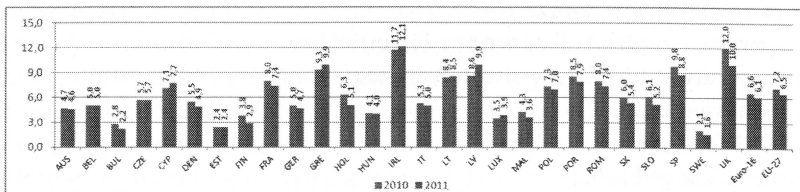
Source: Eurostat, <http://epp.eurostat.ec.europa.eu/>

Graph 2. Public debt in relation to GDP in EU-27 in 2009 (in %)



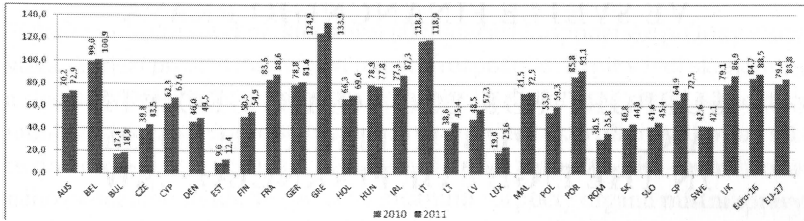
Source: Eurostat, <http://epp.eurostat.ec.europa.eu/>

Graph 3. Budget deficit forecast in relation to GDP in EU-27 for 2010–2011 (in %)



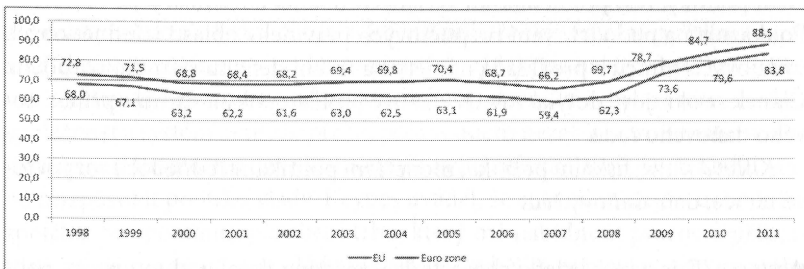
Source: European Commission, European Economic Forecast – Spring 2010, “European Economy” 2/2010, p. 200.

Graph 4. Public debt forecast in relation to GDP in EU-27 for 2010–2011 r. (in %)



Source: European Commission, European Economic Forecast – Spring 2010, “European Economy” 2/2010, p. 202.

Graph 5. Average level of public debt in relation to GDP in EU-27 and Euro zone in 1998–2011 r. (in %)



Source: Eurostat data and European Commission forecast contained in European Economic Forecast – Spring 2010, “European Economy” 2/2010, p. 202.