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À PROPOS DE NOUS

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ABOUT US

The **International Journal of Open Governments / Revue Internationale des Gouvernements ouverts (RIGO)** is an academic journal created and edited by Irène Bouhadana and William Gilles at IMODEV, the Institut du monde et du développement pour la bonne gouvernance publique.

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IMODEV is an international, independent, non-profit scientific organization created in 2009 that promotes good public governance in the context of the information and digital society. This network brings together experts and researchers from around the world who, through their work and actions, contribute to a better knowledge and understanding of the digital society at the local, national or international level by analyzing, on the one hand, the actions of public authorities in the context of the regulation of the data society and the digital economy and, on the other hand, the ways in which digital public policies are implemented within public administrations and open governments.

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OPENNESS AND TRANSPARENCY OF PUBLIC FINANCE IN POLAND AFTER THE INTRODUCTION OF PERFORMANCE BUDGETING

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The importance and functions of the principle of openness and transparency in public finances are well known. Openness and transparency in public finance is considered one of the foundations of a democratic state ruled by law. Clarity of information shapes the society that is conscious of its powers and participates in monitoring of public resource management. The society wants to know the costs of authorities' functioning, and be aware of the tasks and social objectives that are implemented.

Citizens should have access to information about and provide feedback on government revenues, allocations, and expenditures. Openness and transparency of public finances is a tool for evaluating the exercise of public authority¹. It can increase effectiveness and efficiency as well as work for reducing corruption.

Fiscal authorities are still, however, willing to circumvent these principles. There is a conflict of interest between voters and their representatives. Public authorities making choices in allocation of goods and redistributing income have in mind, first and foremost, to secure their victory in the next election. This means realization of their own interests or the interests of a narrow group of political audience, rather than the interests of all voters². If there are no financial restrictions in regard to contract loans, the governments have a tendency to run a budget deficit because tax rises and spending cuts always remain unpopular. But ignoring the debt problem leads to rising debt to GDP ratios.

One of the ways of limiting the tendency of governments to violate principles of openness and transparency, is the introduction of institutional arrangements.

The laws that apply to public sector agencies require:

1. transparency of the budget procedure;
2. transparency of voting (vote disclosure) when deciding on public funds management;
3. data publishing;
4. access to documents.

¹ See C. Kosikowski, *Public Finances. Commentary*, Warsaw, LexisNexis, 2003, p. 61, [polish].

² See J. M. Buchanan, *Public Finance in Democratic Process*, Warszawa, PWN, 1997, p. 130-133, [polish edition].

All these aspects of openness are guaranteed in the Polish Constitution. On the constitutional level, there are many provisions ensuring implementation of openness and transparency. Article 216, Section 1 of the Polish Constitution provides that financial resources for public purposes shall be collected and disposed of in a manner specified by statute.

The Parliament adopts the state budget for the fiscal year in the form of a budget act. The condition precedent for the coming into force of statutes and regulations shall be the promulgation thereof. Sittings of the Parliament shall be open to the public. In the interest of the State, the Parliament may resolve to hold a debate in secret. The principle of openness of public finances is also derived from Article 61 of the Polish Constitution, which states that a citizen has the right to obtain information on the activities of public authorities and persons performing public functions. The right to obtain information includes access to documents and entry to sittings of collective organs of public authority coming from the general election, with the possibility of audio or video recording. Exception concerns protection of the freedoms and rights of other persons and entities as well as protection of public order, security or important economic interests of the State.

Access to public information is guaranteed to individuals in most democratic European countries. However, only in some countries, this right is guaranteed as a constitutional right to public information. In Poland, such a law was introduced into the constitution of April 2, 1997 and is intended to ensure the transparency of public authority, to facilitate the control of its exercise, to prevent abuse³.

The Polish Constitutional Court indicated that the right to information is a subjective right. It means the obligation of public authorities to provide citizens with specific information about the institution's activities. Therefore, this obligation consists not so much in the availability of specific information for the recipient, but at least in principle means the need for active action by the information provider, which consists in providing the interested person on their request with a certain range of information⁴.

Article 61 of the Polish Constitution on the one hand determines the rights of citizens, on the other hand, the obligations of public authorities. The right to obtain information applies not only to the activities of public authorities and persons performing public functions, but also to the activities of economic and professional self-government bodies and other persons and organizational units to the extent that they perform tasks of public authority and manage municipal property or State Treasury assets. The obligation to provide information refers to the entirety of activities of public

³ See I. Lipowicz, in: J. Boć (dir.), *Constitutions of the Republic of Poland: and the commentary to the Constitution of the Republic of Poland of 1997*, Wrocław, Kolonia Limited, 1998, p. 114, [polish].

⁴ See Judgments of the Constitutional Tribunal: Ref. No. K 38/01 (16.09.2002) OTK ZU 2002 No. 5A, item 59; Ref. No. K 17/05 (20.03.2006) OTK ZU 2006 No 3A, item 30; Ref. No. K 26/08 (15.10.2009) OTK Zu 2009 No 9A, item 135.

authorities and includes any information generated, processed or held by public authorities or other entities performing public tasks⁵. Another scope of the obligation to provide information concerns economic and professional self-government bodies. They should provide information to the extent that these bodies exercise public authority and manage state or municipal property⁶.

The Tribunal did not rule out the possibility of interference in the sphere of private life of persons performing public functions. These persons, due to the right of citizens to obtain information about the activities of public authorities, must take into account the obligation to disclose at least some aspects of their private life⁷. In practice, the sphere of public activity of persons holding public functions and their sphere of private life may not always be clearly and strictly demarcated⁸.

§1 – PROVISIONS ON OPENNESS AND TRANSPARENCY IN THE PUBLIC FINANCE ACT

More detailed regulation concerning the principle of openness and transparency is contained in the Public Finance Act. It is a kind of legislative guidance for public agencies about their obligations under the principle of openness. Some of them are quite general, some very detailed.

According to Article 33 of The Public Finance Act - public funds management is public. Exceptions concern classified information under separate provisions.

Openness and transparency is required at each stage of the budget process: budget preparation, approval, execution, and reporting, accounting and audit. It means that the budgetary debate and the debate on the report on execution of the state budget in the Parliament is open.

The Public Finance Act also imposes an obligation to publish:

- the number of subsidies granted from the state budget;
- the amount of subsidies granted by the state funds;
- collective data on public finance;
- information on the execution of the state budget for monthly periods.

The obligation to inform about the number of subsidies granted from the state budget or the budget of the territorial self-government refers to the global amount. There is no obligation to divide subsidies due to their type or type of beneficiaries.

The same obligation rests with the state funds. However, state agencies and state legal entities providing subsidies are not obliged to inform about the amounts of subsidies granted.

In regard to openness understood as free access of the citizen to information about the authorities' fiscal activities, transparency

⁵ See W. Sokolewicz, «Article 61», in: L. Garlicki, *Constitution of the Republic of Poland: and the commentary*, tome. 4, Warsaw, Sejm publishing house, 2005, p. 15, [polish].

⁶ *Ibidem*, p. 31.

⁷ See Judgments of the Constitutional Tribunal: Ref. No. K 38/01.

⁸ See Judgments of the Constitutional Tribunal: Ref. No. K 17/05.

must be distinguished as clarity, simplicity of information. It is not only about access to information. The point is that this information should be easily analyzed by non-experts. The information contained in budgets should be presented in simplified form to make it citizen-friendly.

For this purpose, citizens should know which entities are involved in public finance processes, what their scope of competence is and what tasks they perform. Procedures and rules for their operation should be clearly defined. Reports and audits of these entities should be publicly available and presented in a simplified and more understandable way.

A very important role in this area is played by the shaping of civil society. The involvement of non-governmental organizations is also necessary. They should explain the most important aspects and issues concerning the state finances. NGO should emphasize the danger that lack of a civil society that does not control public authority is for a democratic state of law.

According to Article 9 of the Public Finance Act, the public finance sector covers:

- 1) public authorities, including government administration bodies, state control and law protection bodies as well as courts and tribunals;
- 2) local government entities, their bodies and unions;
 - 2a) metropolitan unions;
- 3) budgetary entities;
- 4) local government budgetary plants;
- 5) government agencies;
- 6) institutions of the budget economy;
- 7) specific purpose funds;
- 8) Social Insurance Institution (ZUS), Agricultural Social Insurance Fund (KRUS) and funds managed by them;
- 9) the National Union of Health Funds;
- 10) independent public healthcare establishments;
- 11) public universities;
- 12) the Polish Academy of Sciences and organizational units set up by it;
- 13) cultural institutions run by central or local governments;
- 14) state or local government legal persons established under separate legislation in order to perform public tasks, except enterprises, banks and commercial law companies.

In Poland, entities operating in the public finance sector can function only in the forms specified in the Public Finance Act: a) budgetary entities, b) local government budgetary plants, c) government agencies, d) institutions of the budget economy, e) specific purpose funds, f) state or local government legal persons.

Government agencies, specific purpose funds and state or local government legal persons are created on the basis of special acts. The creation of each of them requires issuance of a separate act. A special type of unit is funds that are a separate bank account, which are at the disposal of the competent minister.

Budgetary entities are the oldest form in which public sector entities operate. They do not have a legal personality and cover their expenses directly from the budget; the collected revenues are transferred to the account of state budget's income or the local government budget. They perform tasks that must be carried out regardless of the amount of expenses. A detailed specification of income and expenditure allows for recording and strict control of budget implementation in accordance with the agreed estimate. This is important for the transparency of public finances. The disadvantage of such budgeting is lack of savings and efficiency of the financial management. Budgetary entities are obliged to return all unused funds to the budget, which discourages the search for more rational and effective spending methods.

Other entities are equipped with their own income. This provides more flexible and effective ways to finance the tasks that they carry out. Such entities are appointed in order to perform tasks that may be executed partly for a fee. They can receive subsidies from the state budget or the budget of local government units. At the end of the year, they account for a surplus with the indicated budget. The disadvantage of the extra-budgetary economy is failure to bear the economic risk and responsibility for the financial result, which results in the consequences of the wrong decision being borne by state or local self-government units.

Entities that belong to this sector are subject to a special financial regime specified in the Act. It defines the same principles of planning, collecting and spending public funds, as well as managing and controlling them. All entities bear the same responsibility for violating public finance discipline.

Public entities are obliged to make public information on:

- tasks and services performed by the entity and the amount of public funds spent on their execution;
- terms and conditions of providing services to eligible entities;
- rules of payment for services rendered;

Public entities are obliged to make available a list of non-public entities that have received subsidies, co-financing of tasks or loans from public funds and non-public entities whose amounts due to the public entities was remitted. They are also obliged to make available annual reports on finances and activities of organizational units belonging to the public finance sector.

The Finance Minister publishes a report on execution of the Budget Act adopted by the Council of Ministers, aggregated data on financial operations of the public finance sector, in particular incomes, revenues and expenditures, liabilities and receivables, guarantees and sureties, the amount of the deficit or surplus. The Minister of Finance make public also the amount of public debt, treasury debt and their relation to the GDP. Many other duties in this regard rest on the Central Statistical Office of Poland and the Polish Social Insurance Institution.

Organizational units belonging to the public finance sector are required to provide annual reports on their finances and operations.

The tax administration chamber director is obliged to publish a list of legal and natural persons as well as organizational units without legal personality who have remitted their tax arrears, late interest or prolongation duty in the amount exceeding PLN 5.000,00. Together with an indication of the amount remitted, he indicates remission reasons. The abovementioned obligations belong to the competent authorities that issue decisions on remission of non-tax payments due to the state budget, budgets of local government and specific purpose funds. These authorities provide quarterly information on remissions granted to the public on its website in the Public Information Bulletin.

The principle of openness interacts with financial restrictions. These restrictions increase fiscal discipline and predictability of activities of the public authorities.

One of the most important provision regarding openness and transparency is a constitutional restriction which prohibits to contract loans or provide guarantees which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product. Another constitutional regulation forbids covering the budget deficit by incurring liabilities in the state's central bank (Article 220, Section 2 of the Polish Constitution).

Other measures restricting public spending are regulated in the Public Finance Act. Special debt rules apply if public debt surpasses 55% or 60 % of GDP. In the first case, the government cannot increase the budget deficit and is obliged to reduce expenditures. In the second case, if public debt is above 60% of GDP, the government must submit to a Parliament recovery program aimed at reducing this ratio. The Public Finance Act also includes other specific fiscal rules to reduce the deficit.

The procedure for adopting the budget ensures implementation of the principle of openness. The basic regulations in this scope are contained in the Constitution. According to Article 219, Section 2 of the Polish Constitution, the principles of and procedure for preparation of a draft state budget, the level of its detail and the requirements that should be met by the draft state budget, as well as the principles of and procedure for implementation of the budget, shall be specified by statute. The Council of Ministers has exclusive competence to introduce legislation concerning a budget, an interim budget, amendments to the budget, a statute on contracting of public debt, as well as a statute granting financial guarantees by the State (Article 221 of the Polish Constitution). Failure to comply with this obligation constitutes a violation of the Constitution. This is a characteristic feature of the budget act. No other public unit can take such an initiative. This exclusive competence of the Council of Ministers is due to the fact that this body is accountable for matters relating to the state's financial

management and implementation of the budget act. The Parliament is responsible for conducting policy in this area.

The Sejm shall consider the draft budget in the course of three readings. The first reading takes place in the plenary session of the Sejm. The Prime Minister or the Minister of Finance presents a draft budget bill. If the draft is not rejected at this stage, it goes to the Sejm Committees. Almost all committees work on it in the area that they are advised to do so. The coordinator of work is the Public Finance Committee. In particular committees, a detailed analysis of the relevant parts of the budget takes place. Government members provide explanations if necessary. The Public Finance Committee draws up a report on the course of work in the Commissions and applies for the adoption of a draft budget with or without amendments. It cannot apply for the rejection of the draft budget. After completion of work at the Public Finance Committee, the draft budget is directed to the second reading. At the second reading, the Commission presents a report. Members of the Sejm may apply for further amendments.

If the amendments have been submitted, the project goes back to the Commission, which prepares an additional report.

The Council of Ministers may introduce self-amendments by the end of the second reading. Until then, it may also withdraw the draft budget (Article 119, Section 2 and 4 of the Polish Constitution). At the third reading, the Commission presents a report, after which a vote on the draft budget starts. The increase in expenditure or reduction in revenues from those planned by the Council of Ministers may not lead to the adoption by the Sejm of a budget deficit exceeding the level provided for in the draft budget (Article 220, Section 1 of the Polish Constitution).

The Sejm shall adopt a draft budget by a simple majority of votes. Then the budget statute is passed to the Senate (the second chamber of the Polish Parliament). The Senate may, within 20 days following receipt of the Budget, adopt amendments thereto (Article 223 of the Polish Constitution). Afterwards, the act returns to the Sejm. A resolution of the Senate proposing an amendment shall be considered adopted if the Sejm does not reject it by an absolute majority of votes, in the presence of at least half of the statutory number of deputies. In practice, the Sejm accepts only part of the Senate's amendments. From the Sejm, the budget act is passed to the President.

The President shall sign the budget act submitted to him within 7 days of receipt thereof and order its promulgation in the Journal of Laws of the Republic of Poland. If the President of the Republic has made reference to the Constitutional Tribunal for an adjudication upon the conformity to the Constitution of the Budget or interim budget before signing it, the Tribunal shall adjudicate such a matter no later than within a period of 2 months from the day of submitting such a reference to the Tribunal (Article 224 of the Polish Constitution). If, after 4 months from the day of submission of a draft budget to the Sejm, it has not been adopted or presented to the President of the Republic for signature, the

President of the Republic may, within the following 14 days, order shortening of the Sejm's term of office (Article 225 of the Polish Constitution).

The most difficulties occur in implementing the principle of transparency regarding information contained in the budget.

In Poland, the traditional budget doesn't show main goals and targets of the government in a clear structure. It does not shape a transparent accountability framework. A detailed breakdown by budget classification makes it difficult to link the budget with tasks carried out by the state.

Some state expenses for a specific purpose are in different positions. It makes it difficult to obtain information on how much the state spends altogether on realizing this goal, especially when this goal is implemented by several institutions. There is no information as to the extent to which the goal has been achieved. The primary task of the traditional budget is to respond to the question of how much money individual ministries and offices should spend on a given type of activities.

The traditional budget system is based on a classification (parts, sections, chapters and paragraphs) that represents income and expenditure according to subjective, objective and generic criteria. These segments comprise the main level of organizational units responsible for implementing the budget such as ministries, heads of central offices, chancelleries, courts, tribunals, agencies, commissions, inspections, voivodeships (Article 2, Section 8 of the Public Finance Act). Some parts are of a subjective nature as subsidies for local government units and budgetary reserves.

The sections present the budget from a functional side. They are distinguished on the basis of a criterion for areas of public activity or based on a unit performing a public task such as: electricity and gas production and supply, trade, transport and communication, science, higher education, healthcare. The chapters denote sub-activities, for example, supply of heat, water and electricity, maintenance of mandatory stocks of liquid fuels, export promotion, domestic passenger rail transport, national public roads, research projects, didactic activity, research and development activities. Paragraphs group income according to their sources and expenses according to their purpose.

This budget classification is widely used in all units of the public finance sector, including the budgets of local government units.

§2 – THE PERFORMANCE-BASED BUDGET IN POLAND

Since 2008 a new budget system has been introduced in Poland, which is performance-based. However, some local governments have implemented performance-based budgeting since 1994. Poland decided to implement performance-based budgeting and multi-year budgeting in order to improve the transparency of public finance management, strengthen efficiency, effectiveness and accountability.

The OECD has distinguished three different models and approaches to performance budgeting based on the proposed uses of formal performance information⁹.

Presentation budget: “performance information is presented in budgeting documents or other government documents. This information can be performance targets or performance results.”¹⁰

However, this information is not intended to play any role in making decisions regarding the allocation. In this category, the information is only supplementary. It creates a platform for dialogue between citizens and public authorities regarding the directions of expenses and their amount. “There is no link between PI and funding.”¹¹

Performance-informed budgeting: “resources are related either to proposed future performance or to performance results in an indirect manner. Indirect linkage implies that PI – along with other information – is being systematically used to inform budget decisions.”¹² Also in this case, the information is not directly affected by the amount of funds that are transferred for the implementation of individual budgetary tasks. “Performance information is used to inform budget decisions along with other information pertaining to macro restrictions on fiscal policy and political and policy priorities.”¹³ The amount of expenditures earmarked for a given purpose in the budget ultimately depends on the political decision of the government and the legislator.

Performance budgeting: “direct linkage involves the allocation of resources directly and explicitly to units of performance, generally outputs. Appropriations can thus be based on a formula/contract with specific performance or activity indicators. Funding is directly based on results achieved.”¹⁴

In Poland, the performance-based budget exists alongside the traditional budget. Since 2013, the performance-based budget is legally binding. It is included in the justification to the budget act. According to Article 142 p. 10 and 11 of the Public Finance Act, the performance-based budget contains a list of tasks and priority objectives for a given budget year and a consolidated expenditure plan for the financial year and two subsequent years, together with the objectives and measures for the degree of achievement of the assumed objectives. The performance-based budget covers all expenditures of the state budgetary units, state funds, executive agencies, state-owned legal persons and other institutions operating on an extrabudgetary basis.

It shows citizens that budget execution is not only spending to specific limits but also the degree of implementation of public tasks. Poland has two parallel budgets and both are legally binding.

⁹ See Performance Budgeting in OECD Countries – ISBN 978-92-64-03403-7 – © OECD 2007, p. 21.

¹⁰ *Ibidem.*

¹¹ *Ibidem.*

¹² *Ibidem.*

¹³ *Ibidem.*

¹⁴ *Ibidem.*

The performance-based budget has a clear structure, which is based on four hierarchical levels. The main units of performance classification, grouping expenses in one area of the state's activity, are public functions. In the budget justification of 2018, 21 functions were indicated. Twenty functions refer to the creation of state policy. Function 21 has a complementary character. It is common for tasks carried out within the entire budget or a given unit performing individual tasks that cannot be assigned to any of the tasks separated under other functions. For each function, tasks synthetically grouping subtasks and actions to achieve goals were specified.

Performance information regarding the level of the state's functions is presented in the MYFP¹⁵. More detailed information about tasks and sub-tasks within the functions is presented in the budget act justification. Indicators and targets for task are defined by budget holders.

Although defining and measuring goals allows for a better understanding and control of public activities by the citizens, good identification of tasks and related activities, and subsequently costs, is a difficult and labor-intensive process. The goal must be realistic, taking into account the resources available and time needed. It is even more difficult to define the right measures. The measures and the time set should allow for assessment of progress.

The areas that are most suited for performance budgeting with indicators and targets have been selected. In other areas where the benefits of performance budgeting are less apparent, the requirements regarding indicators and targets for the task have been relaxed. The use of activity indicators has been limited and the use of output and outcome indicators has been increased.

One of the major challenges is the IT system. Taking into account that the performance-based budget exists alongside the traditional budget, lack of an appropriate IT system for reporting and accounting is a weak point. There are no automated bridges between these parallel budgets. Separate work must be done for two different systems. Some budget holders have developed their own internal IT programs that allow parallel accounting and avoid double work. The Ministry of Finance invested in reforming IT systems but it is a very difficult and costly process.

The Supreme Audit Office in Poland - the chief organ of state audit - has indicated that a positive feature of performance-based budget is that it increases transparency but it does not improve allocative efficiency.

§3 – THE QUESTION STILL REMAINS - CAN PERFORMANCE-BASED BUDGET REPLACE THE TRADITIONAL BUDGET IN POLAND?

¹⁵ The Multi-Year Financial Plan is drawn up for four years using the rolling method. It covers income and expenditure, revenues and expenses, deficit, general fiscal policy.

Performance-based budgeting has a formal status as of 2013, but the traditional budget is still more important in financial planning. It should be noted that the Polish Constitution states that the budget act is a financial plan. This is a plan of revenues and expenditures of the State for the fiscal year. The Polish Constitution provides preponderance (priority) of financial planning over the performance system. It is more reasonable to adjust expenditures and tasks of the State to its revenues. It is the actual, economic and legal possibilities to collect income that determine the size of expenditures and tasks. The global amount of planned income determines the upper limit of spending in a given year¹⁶. It is always dangerous for society to seek new sources of public income for a scheduled task. “Expropriation” of citizens on public tasks cannot depend on ad hoc state undertakings¹⁷. The budget as a financial plan is the opposite of performance plans¹⁸. Currently, it is not possible to switch to the performance-based budget system only. However, Poland continues with a parallel system, especially for areas where activity can be measured and where it adds value to budget implementation.

Although the performance-based budget is potentially more transparent and understandable for citizens, the degree of complexity and laboriousness of its preparation means that it does not always fulfill its role. The budget holders responsible for a given task are not reluctant to introduce any measures, as this results in control over their activities. It should be also borne in mind that domestic and foreign experiences do not confirm full effectiveness of the performance-based budget. Even in the USA - the cradle of performance-based budgets and modern management - the performance-based budget has not been fully implemented¹⁹.

¹⁶ See T. Dębowska-Romanowska, *Financial law - constitutional and general part*, Warszawa, Beck, 2010, p. 193 [polish].

¹⁷ *Ibidem*.

¹⁸ *Ibidem*.

¹⁹ See W.C. Rivenbark, J.M. Kelly, «Performance Budgeting in Municipal Government», *Public Performance & Management Review*, vol. 30, No. 1/2006, Philadelphia, Taylor & Francis, p. 35–46, [english].

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