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COVID-19 pandemic as an enabler of financial law reform to strengthen the effectiveness of fiscal rules to reduce public debt

Pandemia COVID-19 jako czynnik sprzyjający reformie prawa finansowego w zakresie wzmocnienia efektywności reguł fiskalnych służących ograniczeniu długu publicznego

Abstract

The aim of the article is to answer the question whether the COVID-19 pandemic can contribute to the reform of the financial law in the field of fiscal rules that should be modified, and if so, in what direction should their reform go so that they can more effectively counteract excessive public debt in situations of sudden and unexpected economic downturns. The study adopts the thesis that the fiscal rules during the COVID-19 pandemic confirmed their effectiveness because they allowed for a quick response to the economic and financial effects of the pandemic, despite the fact that they did not counteract a significant increase in public debt in relation to GDP in all EU countries (in 2020). However, this was due to the pandemic-related sudden slump in the global economy, and not to the failure of fiscal rules. At the same time, the COVID-19 pandemic confirmed the need to reform the financial law to improve the structure of fiscal rules in order to increase their effectiveness. The study indicates the directions of this reform, both in relation to supranational (EU) and national fiscal rules.

Keywords: fiscal rules, economization of financial law, COVID-19, pandemic

JEL: E61, E62, H1, H6

Streszczenie

Celem artykułu jest odpowiedź na pytanie, czy pandemia COVID-19 może przyczynić się do reformy prawa finansowego w zakresie reguł fiskalnych, które powinny być zmodyfikowane, a jeżeli tak, to w jakim kierunku powinna iść ich reforma, aby bardziej skutecznie mogły przeciwdziałać nadmiernemu zadłużeniu publicznemu w sytuacji gwałtownego i niespodziewanego załamania koniunktury. W opracowaniu przyjęto tezę, że reguły fiskalne w okresie pandemii COVID-19 potwierdziły swoją skuteczność, ponieważ pozwoliły na szybką reakcję na ekonomiczne i finansowe skutki pandemii, mimo że nie przeciwdziałały znacznemu wzrostowi długu publicznego w relacji do PKB we wszystkich państwach UE (w 2020 r.). Było to jednak spowodowane gwałtownym załamaniem koniunktury w gospodarce światowej związanym z pandemią, a nie zawodnością reguł fiskalnych. Jednocześnie pandemia COVID-19 potwierdziła konieczność reformy prawa finansowego dotyczącego udoskonalenia konstrukcji reguł fiskalnych w celu zwiększenia ich efektywności. W opracowaniu wskazano kierunki tej reformy, zarówno w odniesieniu do reguł fiskalnych ponadnarodowych (unijnych), jak i krajowych.

Słowa kluczowe: reguły fiskalne, ekonomizacja prawa finansowego, COVID-19, pandemia

Introductory remarks

The socioeconomic impacts of the COVID-19 pandemic vary in nature, but one of the most severe is the global economic crisis (see *e.g.* Shang *et al.*, 2021, pp. 2 *et seq.*; Lacey *et al.*, 2021, pp. 8 *et seq.*). In order to counteract them, many countries have introduced various types of intervention instruments, including those having the nature of financial support (see *e.g.* Li & Liang, 2021, pp. 1 *et seq*.). In Poland, they took the form of the so-called Anti-crisis shields (see Nizioł, 2022, pp. 450 *et seq*.). Financial implications of such an intervention translated into an increase in public expenditure and, consequently, an increase in public debt in many countries, including Poland and other European Union (EU) Member States. Therefore, one may wonder what the consequences of such a situation may be, especially in the medium- and long-term perspective, and whether it may pose a threat of deterioration of the situation of public finances. The instruments to prevent excessive public debt are fiscal rules which are to counteract the increase in the deficit (of the budget or the general government sector) and, consequently, also the public debt, which could threaten the stability of public finances. In this sense, they can fulfill a specific guarantee function that the state — also in the period of a sudden economic downturn — will use financial instruments of intervention respecting the existing limits set by fiscal rules. Of course, it should also be borne in mind that in times of crisis, as a rule, the operation of such rules is suspended, because the priority is to counteract the socio-economic effects of such situations (see ustawa z 27.08.2009 r. o finansach publicznych, Art. 88). Nevertheless, is it possible to guarantee that in the "post-crisis" period, the state will not seek to prolong the situation in which it will not be limited by such limits, despite the fact that in order to counteract such a "temptation" they are assigned a normative rank (and it is usually in an act which is the highest in the hierarchy of sources of law, *i.e*. in the Constitution[1] of a given state).

Therefore, the research intention undertaken in this study is an attempt to answer the following research questions: has the COVID-19 pandemic shown that fiscal rules should be modified, and if so, in what direction should the financial law reform concerning this matter go? They were more effective in countering excessive public indebtedness in a context of sudden and unexpected economic downturns fueled by the COVID-19 pandemic.

Therefore, the functioning of fiscal rules (supranational and national) in the period of the COVID-19 pandemic (based on selected examples) was analyzed. The conclusions drawn on this basis will allow to formulate *de lege ferenda* postulates regarding the need to reform the financial law with regard to changes in the structure of fiscal rules (supranational and domestic) regarding public debt, which are a consequence of the pandemic.

The study uses the comparative law method.

Fiscal rules limiting public debt — general description

Fiscal rules are one example of the economization of law, understood as such a construction of a legal norm, in which a term relating to a specific economic category is directly used, which norm is intended to serve the socio-economic purpose of regulation (see Nizioł, 2019, pp. 92 *et seq*.). This is because in the case of fiscal rules, specific economic categories (such as gross domestic product, public debt, for example) are usually included in their construction, and at the same time they are intended to achieve specific goals, in this case financial law. If these are fiscal rules on the deficit (structural, general government) or public debt, their purpose is to prevent excessive growth of these categories, which could threaten the stability of public finances of a state. For this reason, the term normative fiscal rules can be used[2], to emphasize the fact that they are part of certain financial law regulations. Indeed, the economic science literature usually uses the term fiscal rules, or numerical fiscal rules, because some of them have a numerically defined purpose, *e.g.* as a constraint on national fiscal policy in the form of general budgetary outcomes such as spending, borrowing, debt (Buti & Guidice, 2002, pp. 3 *et seq*.). A fiscal rule is usually, in macroeconomic terms, defined as a permanent constraint on fiscal policy, usually defined in the form of a synthetic indicator of total (*i.e*. allowable) fiscal (budget) output (Kopits & Symansky, 1998, p. 2; see also Alesina & Perotti, 1999, pp. 15 *et seq*.; Wajda-Lichy, 2006, p. 88; OECD, 2007, p. 4).

The literature also lists the characteristics of an optimal fiscal rule. Their citation may be of interest for further consideration of the possible need to modify the construction of fiscal rules — as a financial and economic consequence of the COVID-19 pandemic. After all, one may wonder whether the fulfillment of the criteria of an optimal rule by a given fiscal rule can better guarantee that it will achieve its purpose, *i.e*. effectively counteract the excessive growth of public debt, also in a situation that poses a challenge to the public finances and economy of a country, such as the COVID-19 pandemic. Such features can be listed of an optimal fiscal rule as, among others: simplicity, ease of verification, long-term nature (Buiter, 2003, pp. 6 *et seq*.), precise definition of the budget indicator to which the rule applies; giving it the appropriate legal status by normalizing it in the constitution or law; transparent assumptions of the rule, understandable to the public (see Misiąg & Niedzielski, 2001, p. 33); definition of sanctions for non-compliance with the rule and the body authorized to impose them; selection of the rule in accordance with the chosen economic and financial strategy of the state in the medium and long term (Marchewka--Bartkowiak, 2010, p. 3). It also needs to be noted that fiscal rules exist at the supranational level (*e.g.* fiscal convergence criteria for public debt and deficit) and at the national level, reinforcing and supplementing supranational fiscal rules (Nizioł, 2013, pp. 318 *et seq*.).

In order to determine what changes in the functioning of fiscal rules were triggered by the COVID-19 pandemic, it is expedient to analyze selected examples of how countries reacted to this situation, supplemented subsequently by empirical data on the amount of public debt in EU countries. For the purpose of the analysis, the years 2019–2021 were chosen, *i.e*. the period before the pandemic, and its first two years, in which states made substantial interventions to counteract its socio-economic effects.

Functioning of fiscal rules on public debt during the COVID-19 pandemic — outline of the problem

The COVID-19 pandemic caused an economic crisis in the global economy, as well as in the national economies of many countries, including Poland (see *e.g.* Kose *et al.*, 2021, pp. 4 *et seq.*) The financial and economic impact of the pandemic will also be felt in 2023. It is estimated that economic growth in the global economy will be 3.2% in 2022 and –2.9% of GDP in 2023, respectively (World Economic Outlook, 2022, p. 5). One of the consequences of the pandemic was also a sharp increase in public spending associated with the interventions undertaken in the economy, resulting in an increase in public debt in many countries (see Eurostat, 2022). During the pandemic period, many countries, in making such intervention, suspended fiscal rules, including those on public debt. This is because, in their design, they can have so-called escape clauses, which can be triggered during periods of crises. In the case of the COVID-19 pandemic, many countries took advantage of this possibility. However, it is important that the use of this option be exceptional and limited to a period when it is justified by the consequences of the crisis. This is because prolonging it can adversely affect the long-term credibility of a country's public finances, and thus undermine the credibility of the fiscal rules (Kose *et al.*, 2021, p. 7). Also in the EU, the so-called general escape clause has been applied, starting in 2020, which is a derogation from the EU fiscal rules in periods of severe economic downturn (see European Commission, 2020; Council Regulation No. 1466/97, Art. 5(1), 6(3), 9(1) and 10(3)).

The literature indicates that countries during the COVID-19 pandemic and the 2008–2010 global financial crisis that preceded it used different ways to modify fiscal rules. In the case of both crises, they mainly activated exit clauses, suspended fiscal rules, and modified their objectives. The activation of exit clauses (at the supranational and national levels) in 2020 was to ensure their flexibility in response to the pandemic (*e.g.* UK, Armenia). Some countries temporarily suspended their fiscal rules for the pandemic period (*e.g.* Azerbaijan, Peru). Another action was to change the limits of fiscal rules during this time (*e.g.* Mexico, Panama). In some cases, different ways of modifying fiscal rules were combined, due, for example, to overly restrictive exit clauses in fiscal rules that proved to be overly restrictive during the pandemic period (*e.g.* Peru, Poland, Brazil) (Davoodi *et al.*, 2022, pp. 13 *et seq.*).

In the case of Polish fiscal rules, the possibility of modifying/suspending them was also exercised. Admittedly, this was not done on the basis of Article 88 of the Public Finance Act (PFA)[3], as none of the states of emergency listed in this provision, justifying derogation from the application of prudential and sanction procedures, was introduced, but changes were made to the Stabilizing Spending Rule (SSR). First, the possibility was introduced to suspend it also in the event of the declaration of a state of epidemic throughout the country (Justification, 2020, pp. 1 *et seq.*). Second, two clauses were introduced into its design to allow for its temporary suspension, *i.e.* the exit clause, "by the state of epidemic throughout the country, if at the same time the economic situation deteriorates significantly," and the return clause, "which will allow for a gradual return to the amount of spending resulting from the original SSR formula over a horizon of 2 to 4 years" (Sejm RP, 2021, p. 1). Thirdly, among other things, the scope of the SSR was expanded, initially to include all state earmarked funds, including those newly created (Sejm RP, 2021, pp. 1 *et seq.*), and later to include the National Fund for Environmental Protection and Water Management, as well as replacing the indicator in the form of the inflation target of the Monetary Policy Council with the average annual consumer price index published by the Central Statistical Office (Sejm RP, 2022, p. 1 *et seq.*). Requires to point out that, as a rule, Polish fiscal rules (*e.g.* the constitutional debt rule, prudential and sanctioning rules) do not contain a correction mechanism allowing them to be suspended in a crisis situation (with the exception of the situation specified in Article 88 of the PFA, *i.e.*, the introduction of the states of emergency listed in that provision). This is undoubtedly their shortcoming, since such a solution could introduce a kind of automatism of their operation in a crisis situation, as exemplified by the amendment to the SSR (see also Article 86a PFA). It is a consequence of the solutions adopted in the EU financial law concerning, among other things, the introduction of the so-called general escape clause (see European Commission, 2020, pp. 1 *et seq.*). In this regard, such a modification of the construction of the SSR, which allows for the adaptation of its operation to a period of crisis, including, *inter alia*, caused by a pandemic, should be evaluated positively. Particularly, since the changes introduced aim, among other things, to expand its scope, and thus also cover the entire so-called off-budget economy, which is one of the criteria of the second-generation fiscal rules (Sejm RP, 2021, pp. 1 *et seq.*).

In order to show the effects of the pandemic and related intervention on the amount of public debt, it is expedient to analyze its amount in relation to GDP in individual EU states. For this purpose, data for 2019-2021 were chosen, which will allow us to compare changes in the two years of the pandemic, also to the year preceding it. The debt of the general government sector in 2020–2021 is presented in the Table 1.

Analyzing the data included in the Table 1, it is apparent that in the first year of the pandemic, *i.e.* 2020, there was an increase in the debt-to-GDP ratio, in all EU countries compared to 2019. On the other hand, in the following year, *i.e*. 2021, the ratio improved, and there was a slight decrease in most states. A similar trend is noticeable for the average debt/GDP ratio in the EU and the eurozone. Anyway, compared to 2020, at the end of 2021, the government debt/GDP ratio increased in twenty EU states (see Eurostat, 2022).

Table 1
General government debt in EU countries in 2019–2021 (relative to GDP, %)

State	2019	2020	2021
EU	77.5	90.0	88.1
Eurozone	83.8	97.2	95.6
Belgium	97.7	112.8	108.2
Bulgaria	20.0	24.7	25.1
Czech Republic	30.1	37.7	41.9
Denmark	33.6	42.1	36.7
Germany	58.9	68.7	69.3
Estonia	8.6	19.0	18.1
Ireland	57.2	58.4	56.0
Greece	180.7	206.3	193.3
Spain	98.3	120.0	118.4
France	97.4	114.6	112.9
Lithuania	71.1	87.3	79.8
Italy	134.1	155.3	150.8
Cyprus	91.1	115.0	103.6
Latvia	36.7	43.3	44.8
Lithuania	35.9	46.6	44.3
Luxembourg	22.3	24.8	24.4
Hungary	65.5	79.6	76.8
Malta	40.7	53.4	56.0
Netherlands	48.5	54.3	52.1
Austria	70.6	83.3	82.8
Poland	45.6	57.1	53.8
Portugal	116.6	135.2	127.4
Romania	35.3	47.2	48.8
Slovenia	65.6	79.8	74.4
Slovakia	48.1	59.7	63.1
Finland	59.6	69.0	65.8
Sweden	34.9	39.5	36.7

Source: Eurostat, 2022.

The crisis caused by the COVID-19 pandemic as a factor in the reform of the financial law on fiscal rules

The economic crisis as a consequence of the COVID-19 pandemic is not the first situation causing a sharp downturn in the global economy, which triggered the need to change and improve the design of fiscal rules. In fact, it should be borne in mind that already the earlier global financial crisis of 2008–2010 (see Nizioł, 2015, pp. 267 *et seq*.) became a factor that allowed to distinguish fiscal rules of two generations, *i.e*. the first and second. The first-generation fiscal rules (from the period before the above-mentioned financial crisis) met the requirements of simplicity, flexibility, but functioned without the introduction of appropriate enforcement mechanisms. In contrast, the second-generation fiscal rules (introduced after the aforementioned financial crisis) served to strengthen their legal enforcement, while increasing their flexibility (which, however, made them more complicated) (Eyraud *et al.*, 2022, pp. 6 *et seq*.). Among other things, they were characterized by the introduction of exit clauses. Another direction in the reform of fiscal rules during this period was to strengthen their normative basis by enshrining them in legal acts, including of constitutional rank, or linking them to formal enforcement mechanisms (*e.g.*, regarding the mechanism for returning to fiscal rules after the cessation of the reason for their suspension), taking into account changes resulting from the business cycle in their construction (*e.g.* in the EU, since 2015, the possibility of adjusting them differently depending on the stage of the business cycle has been introduced in the event of a weaker structural balance than that set for a country under the medium-term fiscal objective — MTO) (Davoodi *et al.*, 2022, pp. 8 *et seq*.). In the EU, the design of fiscal rules was also improved in 2015. As a result, an index of the strength of fiscal rules was built based on the following institutional criteria: legal basis, presence of a monitoring mechanism and enforcement and correction, flexibility and resilience to shocks (Davoodi *et al.*, 2022, pp. 9 *et seq*.).

Thus, there is no doubt that the task of fiscal rules is primarily to strengthen fiscal discipline, which they do, among other things, by counteracting the government's discretionary actions in fiscal policy, if only through the need to limit public spending, and thus the amount of public debt. They also play a signaling role (*e.g.*, by increasing the transparency of the government's fiscal actions) (Eyraud *et al.*, 2022, p. 7). In contrast, second-generation fiscal rules aim to increase their flexibility and enforceability (they are, for example, more detailed), but at the cost of losing simplicity of design (Eyraud *et al.*, 2022, p. 10). The pandemic that has caused another sharp downturn in the global economy has once again prompted discussion of the need for financial law reform in terms of strengthening the effectiveness of fiscal rules. The related challenges include the following areas: the need to treat fiscal rules comprehensively, rather than considering them individually and changing them when they become "inconvenient" for the government, moving away from a simple construction of fiscal rules to a more complex one to make them more flexible and adaptable to changing economic conditions, and — of particular note — countering poor compliance with fiscal rules by governments, which raises the question of the need to strengthen their enforceability and effectiveness (Eyraud *et al.*, 2022, pp. 10 *et seq*.). However, as mentioned earlier, it is difficult for fiscal rules to be simple, flexible and enforceable at the same time. The simplicity of the first generation of fiscal rules, led to their design being reformed to make them more flexible, which, however, translated into the complexity of their structure. Fiscal rules can be effective, however, if they are well designed (and this is borne out by empirical research on combating deficit bias[4]) (Eyraud *et al.*, 2022, pp. 26 *et seq.*). In practice, this leads to an increasing economization of financial law, as strice economic categories and relationships (such as inflation or GDP, for example) are embedded in the construction of fiscal rules. In addition, they can be linked to the business cycle, which in turn requires the use of macroeconomic forecasts, which, to be reliable, should be sound (*e.g.* made by the fiscal council). All this makes the improvement of fiscal rules a complex and difficult process. In addition, the factors affecting their effectiveness are also complex, as the literature points out such as: broad institutional and economic impact (*e.g.*, fiscal rules should also cover off-budget operations), taking into account the business cycle in their construction in such a way that they allow to achieve not only economic stabilization, but also ensure the stability of public finances, should be properly, "calibrated", *i.e*. take into account the optimal limits for the conduct of discretionary fiscal policy (which ensures, among other things, that they are based on sound economic analysis), the escape clauses should also be well designed, that is, such situations that are actually independent of the fiscal authorities and cause deviations from the application of a given fiscal rule. The strengthening of the effectiveness of fiscal rules can also be influenced by the activity of institutions independent of the government (*e.g.* fiscal councils), which make it possible to increase budget transparency if only by strengthening the reliability of fiscal forecasts (Eyraud *et al.*, 2022, pp. 16 *et seq.*). Such institutions are one of the factors that strengthen the operation of fiscal rules (or, more precisely, the fiscal framework of which they are a part), fiscal councils, are aimed at promoting stable public finances, through the evaluation of plans, budget forecasts (see also Calmfors, 2015, pp. 12 *et seq.*). The popularity of such institutions can be evidenced by the increase in their number. In 2021, 49 countries had 51 fiscal councils, more than double the number in 2010. In the EU, a contributing factor to their emergence was the establishment in 2015 — European Fiscal Board (Davoodi *et al.*, 2022, pp. 10 *et seq.*; Giżyński, 2019, pp. 22 *et seq.*). Fiscal councils also played an important role during the COVID-19 pandemic, as, among other things, they prepared rapid analyses on the impact of the pandemic on the economy (especially in the case of highly developed countries such as the UK), or assessed government spending and its consequences for long-term fiscal sustainability (*e.g.* Canada, Czech Republic). They have also monitored use of exit clauses and the consequences of fiscal intervention (Davoodi *et al.*, 2022, pp. 17 *et seq.*). The literature also points to the legitimacy of establishing such an institution in Poland as well (see Panfil, 2021, p. 40).

It can be considered that the period of the COVID-19 pandemic confirmed the effectiveness of the fiscal rules, as they allowed a rapid response to the effects of the pandemic, contradicting the claim that they are too rigid an instrument limiting the government's response to unexpected economic downturns. Nevertheless, they did not prevent a significant increase in public debt. The typical response of countries has been to deviate from fiscal rules, both during the 2008–2010 global financial crisis and the global financial crisis caused by the COVID-19 pandemic, but in the case of the latter it occurred on an unprecedented scale. The consequences included an unprecedented increase in public debt in many states. In the post-crisis period, it may therefore be a challenge to return to the constraints of fiscal rules (Davoodi *et al.*, 2022, pp. 25 *et seq.*; see also End & Hong, 2022, p. 35). Currently, reform of the fiscal framework is also under discussion in the EU. There are calls for, for example, reforming cyclical methods and moving away from calculating structural deficits to introducing a public expenditure rule, as well as introducing flexible, country-dependent public debt reduction strategies (Opinion of the European Economic and Social Committee, 2022)[5]. It is pointed out that a single fiscal criterion of a public debt-to-GDP ratio of 60% for all EU countries no longer seems appropriate, given the macroeconomic changes that have taken place over the past 20 years. However, raising the limit does not mean free debt. The goal of the fiscal framework must be to maintain debt service, and public debt should be reduced during periods of good macroeconomic conditions (Regling, 2022, pp. 8 *et seq.*; Mathieu & Sterdyniak, 2022, pp. 16 *et seq.*). Three foundations for strengthening the EU fiscal framework are also proposed, *i.e*., the maintenance of fiscal rules, an enhanced role of fiscal councils in the context of EU surveillance, and the acquisition of more reliable data (Barnes, 2022, pp. 21 *et seq.*). Thus, work is underway at the EU level to modify the fiscal criteria, among other things. As indicated: „It should be recognised that high-debt Member States cannot abide by the existing 1/20th debt reduction benchmark, since reducing their debt ratios at this speed would have a very negative impact on growth and thereby on debt sustainability itself. Therefore, it is proposed to move to a more risk-based surveillance framework that puts debt sustainability at its core and differentiates more between countries by taking into account their public debt challenges, while adhering to a transparent and common EU framework consistent with the 3% of GDP and 60% of GDP reference values of the Treaty." (European Commission, 2022). These efforts are aimed at developing a new formula for the operation of fiscal rules that address challenges such as, among others, financing a fair transition to a digital and green economy, which translates into higher debt-to-GDP ratios. Fiscal rules should therefore "enable strategic investments while safeguarding fiscal sustainability." (European Commission, 2022). Today, therefore, the discussion of the effectiveness of fiscal rules should have a broader dimension, including both the need to stimulate the economy through public spending, while maintaining a safe level of public debt for each country's economy.

It is therefore important to bear in mind that the pandemic, as well as other factors such as the energy crisis, mean that the traditional understanding of fiscal rules may change significantly. Indeed, the current reality poses new challenges, including the effectiveness of fiscal rules. Mention should be made, for example, of the effects of the pandemic in the form of economic shocks, the many millions of victims of the virus worldwide (see Jack, 2022). This makes in periods of such deep global economic crisis as the current one, their functioning is legitimately subject to suspension, in order to return to them in periods of economic recovery, perhaps already in a new formula (*e.g.*, third-generation fiscal rules).

Final remarks

The COVID-19 pandemic confirmed that fiscal rules are an effective instrument for controlling the amount of, among other things, public debt (provided that certain requirements, regarding their effectiveness, are met), and also indicated the directions of financial law reform concerning them. This is because there is no doubt that the downturn in the global economy, as a consequence of the COVID-19 pandemic, triggered the need for financial law reform in the area of fiscal rules. It should be noted that at the onset of the pandemic, countries variously ways modified the operation of the fiscal rules on public debt to allow public spending on intervention programs to be carried out with them out of the way (*e.g.* they triggered exit, escape clauses). Nevertheless, the significant increase in public debt in a relatively short period of time, and the scale of the negative economic effects, again raised the question of the direction of further reform of the fiscal rules. In this regard, the following *de lege ferenda* postulates for the reform of financial law, concerning fiscal rules, both at the supranational (EU) and national (EU member states) levels, can be identified.

Firstly, fiscal rules at the EU and national levels should be treated comprehensively and complement each other. In this regard, among other things, there is an emerging trend to move away at the EU level from the fiscal criterion of the public debt-to-GDP ratio (60%), which is homogeneous for all countries, to a more flexible approach to public debt limits, tailored to the fiscal and macroeconomic situation of a given state, not least because of the need to prioritize pro-investment budget spending, the purpose of which will be to stimulate economies to recover from the economic crisis caused by the pandemic. This postulate may seem reasonable, but its implementation in practice will require the creation of mechanisms, both legal and economic (*e.g.*, regarding the preparation of reliable economic analyses, free from pressure from fiscal authorities), which will guarantee the reliable application of individual debt limits for each EU state.

Secondly, an important factor in the effectiveness of fiscal rules is the functioning of independent institutions, which are fiscal councils. Such an institution already functions at the EU level and in many EU member states. In Poland, its establishment would also be justified. This is due to the fact that giving fiscal rules a normative character, by including them in a legal act (even of constitutional rank), admittedly protects against *ad hoc* changes, but does not guarantee that fiscal rules will be effective in practice. As previously mentioned, second-generation fiscal rules are increasingly complex, so many economic categories are incorporated into their construction, and they themselves depend on forecasts, or macroeconomic data. Consequently, it is on the reliability of these economic analyses that the effectiveness of fiscal rules will largely depend. Therefore, the compilation of these data by an independent fiscal council, as well as the reliable preparation of economic forecasts, etc. studies, can largely contribute to the effectiveness of fiscal rules, especially regarding public debt. The problem in practice may be not so much the complicated construction of fiscal rules, but their effective application and counteracting the actions of fiscal authorities who may be tempted to present more optimistic economic forecasts than those prepared, for example, by the fiscal council.

Thirdly, the use in the construction of the suspension mechanisms, such as exit (escape) clauses due to sudden economic downturns, should be limited only to the period when justified by the macroeconomic situation, *i.e.* the crisis. Prolonging such a state of affairs, can negatively affect the financial credibility of a state. A factor that would guarantee a return to the operation of pre-crisis fiscal rules would be an unambiguous normalization in the financial law of the rules, when and during what period to return to their application. In this regard, the fiscal council's action could also support the effectiveness of the fiscal rules, ensuring that the return is not delayed. Indeed, it is important for the effectiveness of fiscal rules to strengthen their enforcement so that governments comply with them in practice.

Fourth, the increasingly complex construction of fiscal rules, characteristic of second-rate fiscal rules, is also due to the fact that the business cycle is taken into account in their construction. However, it is important that this should occur in such a way that fiscal rules guarantee the achievement of economic stabilization while striving for the stability of public finances. Thus, they should take into account not only macroeconomic goals, but also those of public finance.

Fifth, relating the above considerations to the postulates formulated in the literature on the construction of the optimal fiscal rule, it can be said that some of them should be taken into account. In the case of second-generation fiscal rules, the criterion of simplicity will not be met, but it can be postulated, for example, that they should be easily verifiable and enforceable (despite their complex design), and their application should be guaranteed and supervised by an appropriate authority.

Undoubtedly, the process of increasing complexity in the construction of fiscal rules, especially the so-called second generation, confirms that further economization of financial law is underway, both at the EU and national levels. As an example, one can cite the construction of the Polish SSR, the construction of which has become even more complicated as a result of the modifications described earlier. In its case, for example, the change in the adopted method of calculating inflation may be relevant. This confirms, therefore, that even the way in which one element of the rule is estimated can make a difference to its effectiveness. This makes it all the more important that the adopted macroeconomic values, fiscal related significant for the effectiveness of fiscal rules were reliable and credible, which is precisely what the existence of fiscal councils is supposed to foster. In the case of SSR, it is undoubtedly positive that its scope has been expanded to include the so-called off-budget economy, which, as previously indicated, is one of the demands of second-generation fiscal rules, strengthening their credibility due to the broad institutional and economic impact of a given fiscal rule.

It should also be borne in mind that the current challenges of fiscal policy and financial law, make it necessary to take a new look at the effectiveness of fiscal rules. Such efforts are being made at the EU level, as a discussion is underway to change the traditional approach to fiscal rules so that they are not only conducive to maintaining the stability of public finances, but also take into account economic objectives, especially important in periods of economic crises. And currently, new challenges are emerging (such as the energy crisis), which also make the traditional approach to fiscal rules in need of modification.

Notes/Przypisy

[1] Such is the nature of, for example, the constitutional debt rule set out in Art. 216 item 5 of the Constitution of the Republic of Poland (Konstytucja Rzeczypospolitej Polskiej z 2.04.1997 r., Dz.U. nr 78, poz. 483 ze zm.).

[2] However, it is used interchangeably with the term fiscal rules, as this is how they are usually referred to in the literature, especially in economic sciences.

[3] Ustawa z 27.08.2009 r. o finansach publicznych (Dz.U. z 2022 r., poz. 1634 ze zm.).

[4] The term "deficit bias" means "the tendency of governments to let the level of deficit and public debt increase" (Irish Fiscal Council Glossary, p. 1). Anyway, the genesis of fiscal rules has to do with countering deficit bias (Carranza *et al.*, 2022, pp. 4 *et seq*.).

[5] Opinia Europejskiego Komitetu Ekonomiczno-Społecznego. "Przekształcenie unijnych ram fiskalnych na rzecz trwałej odbudowy i sprawiedliwej transformacji" (2022/C 105/03) (EU OJ C 2022/105/11).

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