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THE SIGNIFICANCE OF OPENNESS AND TRANSPARENCY FOR ACCOUNTABILITY IN PUBLIC FINANCES

Jolanta Szołno-Koguc[1]

Abstract

An essential condition for asserting responsibility in public finances is that they are open and transparent. The Public Finance Act mentions ways of applying the principles of openness, and also stipulates the entities obliged to present data and information on public finances. There is, however, no legislation connected directly with transparency. So do the general requirements of classification and of accountancy and reporting principles constitute sufficient premises for accountability and asserting responsibility? An analysis of the reports and documents concerning the Polish public finance sector indicates that the processes of collecting and spending public funds are insufficiently transparent. The information system enables formal verification of discipline of public finances; however, it does not provide a sufficient basis to assess the effectiveness and efficiency, which are of key importance in terms of accountability. The aim of the article is to analyse the requirements and standards in the field of openness and transparency insofar as these concern the responsibility and accountability of public authorities, along with elements of how these are assessed in the Polish public finance system. A normative descriptive method was applied which took into consideration elements of finance theory, as well as an analysis of practical experience in the field of how public sector bodies function in Poland. The research objectives are realised mainly on the basis of a critical review of the literature on the subject, and an analysis of legal acts, reports and other documents of domestic and international institutions. The considerations and analyzes have led to several key applications to develop the principles of openness and transparency in relation to improving the accountability of public finances.

JEL classification: H10, H11, H83
Keywords: public finance, openness, transparency, accountability

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Introduction

Openness and accountability are key principles displayed both in the theory and practice of public finance. Achieving them effectively is a necessary condition for asserting responsibility and accountability in terms of managing public funds. *The Public Finance Act* presents ways of achieving openness, and stipulates the entities obliged to present data and information about public finances. There are, however, no regulations connected directly with transparency. So do the general requirements of budgetary classification and of accountancy and reporting principles constitute sufficient premises for accountability? An analysis of the reports and documents concerning the Polish public finance sector indicates that the processes of collecting and spending public funds are insufficiently transparent. The information system enables formal verification of discipline of public finances; however, it does not provide the expected basis to assess the effectiveness and efficiency, which are of key importance in terms of accountability of public authorities (the research hypothesis of this study). Is failure to follow the principles of openness and transparency therefore a violation of public finance discipline? The aim of the article is to analyse the requirements and standards in the field of openness and transparency mainly with regard to responsibility, along with elements of how these are assessed in the Polish public finance system. A normative descriptive method was applied which took into consideration elements of finance theory, as well as an analysis of practical experience in the field of how public sector bodies function in Poland. The research objectives are realised on the basis of a critical review of the literature on the subject, and an analysis of legal acts, reports and other documents of domestic and international institutions.

A theoretical view of openness and transparency

In financial science, principles have long been formed for rationalising the processes of collecting and expending public monies (Szołno-Koguc, 2007, p. 16 ff.). It is worth mentioning that there is no unity of views concerning the nature and essence of individual financial principles, nor unanimity with regard to their contents. The doctrine sometimes stresses that only the ideas from which the principles arise are relatively constant, while the way they are actually developed has been and is subject to modification. The content of these principles changes depending on conditions, place and time, as well as on the views of particular authors writing about public finance, who represent different schools of economic and legal thought (Ruśkowski, 2008, p. 305 ff.). Among the postulates most commonly discussed both in the classical views, limited to the budget and budget management (transparency, alongside universality, unity and propriety, is mentioned by Grodyński, 1932), and in contemporary concepts encompassing the entirety of the public finance system (Pomorska, 2002), are those of openness and transparency, which are often considered jointly as simply transparency.

The principle of budgetary openness appeared along with the first published state budgets, in 18th century Britain, Poland and France. From the very beginning it was considered something rather obvious, bearing in mind the parliamentary relations and democratic tendencies then evolving. It was a symbol of how the principle of keeping rulers' financial policy and the condition of state finances secret, so typical of previous eras, was being abandoned. The 17th century French finance minister J.B. Colbert stated that "Public finances should be understandable for all, but known to just a few" (Kosikowski, 2005).

The principle of openness has always involved the requirement of transparency. As Rybarski so aptly states, the postulate of openness can be satisfied to a greater or lesser degree, honestly or not (Rybarski, 1935, pp. 33-34). Without transparency, and thus the openness, clarity, comprehensibility and logical ordering of budgetary information, openness is impossible. This principle requires precise and systematised descriptive and numeric formulation of public finance management. Information about public revenue and expenditure should be presented in an exhaustive yet concise manner. An overwhelming amount of technical and organisational detail can obscure the essential content, while overgeneralization means the intentions of the authorities cannot be precisely understood. Transparency is important at every stage of public finance management - from planning, through implementing the budget and financial plans, up to reporting and controlling. The point is that the plans and reports prepared by individual public sector entities should reflect the actual state of their financial management, and accentuate the problems

which matter for them, making it possible to arrive at decisions which are optimal with regard to the targets and to the appropriate relation between the expenditure and effects of decisions.

The question of openness and transparency in a fiscal context became one of particular interest to theoreticians in the late 19th and early 20th centuries, both in the conceptual field and in terms of preconditions and methods for measuring it (an interesting review of the foreign and domestic literature: Malinowska-Misiąg, 2016). Also worth mentioning are the works of Kopits and Craig (1998), Petrie (2013), Premchand (2001), Khagram, DeRenzio and Fung (2003), and by the Polish authors Misiąg (2001; 2017), Malinowska-Misiąg (2017), Dziemianowicz and Wyszkowski (2013), and Sawulski (2015).

No analysis of the question of openness and transparency in public finance would be complete without including international initiatives and standards, particularly:

1) the PEFA Programme, which includes an appraisal of public spending, the public procurement system and financial accountability,
2) the World Bank's BOOST initiative, which promotes access to and efficient use of budget data for the improvement of transparency and accountability of decision-making processes in the public sector,
3) *Code of Good Practices on Fiscal Transparency* (1998), along with *Fiscal Transparency Evaluations* (2007),
4) *OECD Best Practices for Budget Transparency* (1999) and *Recommendation of the Council on Budgetary Governance* (2015).

The fundamental importance of transparency in operations involving the management of public money has also been reflected in international civil service ethics standards, the European Code of Good Administrative Behaviour and INTOSAI's recommendations and instructions concerning the organisation and activities of supreme audit bodies (*International Code of Conduct for Public Officials*).

Regulating openness and transparency in the Public Finance Act

A requirement for openness in public finances can be seen to result directly from the Polish constitution, which states that "A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions" (Constitution of the Polish Republic, art. 61, para.1). Information about the revenue and expenditure of the state and other public-legal entities is undoubtedly of the greatest importance. Citizens/taxpayers wish to know what is happening with their money which has been transferred to the budget in the form of taxes, fees and duties, they want to know what help they can count on from the state, which areas of social and economic life are supported by public money, and which have to be financed under market conditions. This results in social control of the decisions and actions taken by public authorities and administration becoming a reality, and even if it does not eliminate financial abuses and waste of public money, it at least makes this more difficult.

The special rank of the principles of openness and transparency is illustrated by the fact that a whole chapter in the *Public Finance Act* is devoted to these rules (section 4 in part 1 of the Act of 27 August 2009). The act quoted does not, however, include a definition of either openness or transparency. Based on the text of its provisions about ensuring the openness not so much of public finances as of the management of public money, it can be stated that this is a matter of free access to information about the activities of the state within the scope presented in the act. It is not entirely clear to whom the aforementioned openness is addressed - whether it concerns all interested parties (individuals and institutions) as is suggested by the expression "publicise", or just some. The lack of any indication of authorised entities in the catalogue (only one group of authorised persons is mentioned in art. 34 para 1 pt.6 - councillors) can be interpreted in favour of wider access, without the necessity to demonstrate a legal or factual interest (as is the case in the *Act on Access to Public Information*), unfortunately this turns out in practice to be the main obstacle to achieving effective openness in public finances.

The Public Finance Act selectively differentiates the ways of implementing the principles of openness, with reference to financial management of the state budget, budgets of local authority entities, and entities included in the public sector. This conceptualisation, in spite of the general suggestion in the title of chapter 4 ("Openness and transparency of Public Finance"), does not allow for openness in a general sense which takes account of the

entirety of the data concerning the collection, holdings and expenditure of all public money and all entities considered part of the public sector.

Openness with regard to the state budget and local authority budgets means openness of debates in both houses of parliament and in local authority bodies on the acceptance of budgets, and then on reporting on their implementation. It also means the duty to publish the amounts of subsidies granted both from national and local authority budgets and from special purpose state funds.

A major part of the duties connected with ensuring the openness of public finances has been assigned directly to the finance minister. What matters most here is to make public the annual report accepted by the government into the implementation of the budget act. The finance minister is also obliged to publicise collective data regarding:

1) the entirety of public sector financial operations, in particular income and revenues, expenditure and outlay, receivables and liabilities, guarantees and sureties,
2) implementation of the state budget for monthly periods, including amounts of deficit or surplus,
3) a list of guarantees and sureties issued by the State Treasury, indicating the entities concerned.

The director of the tax chamber announces in the province's official record a list of legal and physical persons, and organisational units without legal personality, whose tax liabilities, interest payments for delays or prolongation fees of over 5,000 PLN have been cancelled, along with an indication of the amounts cancelled and reasons for the cancellation (art. 36 of the *Public Finance Act* of 27 August 2009).

The minister responsible for finances is also obliged to declare, by way of an official announcement by 31 May of the following year, the amounts and relationship to GNP of the national public debt, the Treasury debt and non-due liabilities from guarantees and sureties issued by public sector entities, including those issued by the Treasury.

A particular expression of economic openness in local authorities is that councillors of a given authority are provided with access to accounting and inventory documents (while adhering to the provisions concerning accountancy and personal data protection), and to information about the results of controls. In addition, the local authority's executive body is obliged to publish information (art. 37 of the *Public Finance Act* cited above):

1) each quarter about the implementation of the local authority's budget (including the amount of the deficit or surplus), and cancellation of non-fiscal budget receivables - by the end of the month following the end of the quarter,
2) about implementation of the local authority budget in the previous budget year - by 31 May of the following year,
3) about the amounts of debt liabilities due, amounts of subsidies received from local authority budgets and granted to other local authorities,
4) about sureties and guarantees issued,
5) about tax- and fee-related breaks, reprieves, cancellations or division of repayments into instalments (where the amount exceeds 500 PLN), along with an indication of the persons/organisational units, amounts and reasons for the cancellation, separately as part of public assistance.

Openness with regard to public sector entities assumes:

1) annual reports concerning the finances and activities of those entities being made available,
2) publication by those entities of the scope of tasks carried out or services rendered, in particular the amount of public money allocated for their realisation, the principles and conditions for providing services to authorised entities, payment principles,
3) publishing a list of non-public sector entities which are granted subsidies, financing for realising a task or loans, or have had liabilities towards a public sector cancelled.

The *Public Finance Act* treats separately the National Health Fund's duty to provide information about revenues and costs, and about the health care providers with whom the Fund has signed contracts, about the objective scope of those contracts and the way in which the price of the health care service ordered is set.

There is only a statutory limitation of openness for money whose source or purpose has been deemed classified pursuant to separate legislation or which results from international agreements (art. 33 para. 2 of the *Public Finance Act*). In accordance with the *Protection of Classified Information Act* of 5 August 2010, classified information is information which if revealed without authorisation could or would result in harm to the Republic of Poland, or would be detrimental to its interests, including during its development, and regardless

of the form and method of its expression (art. 1 of the Act quoted). In addition, contractual clauses concerning the exclusion of openness due to company secrets in contracts signed by local authorities or other entities are also considered non-confidential if the duty arising from the contract is realised or intended for realisation from public money. This limitation does not, though, affect a company's technical, technological or organisational information, or other information with commercial value, in the understanding of legislation against unfair competition, for which the entrepreneur has taken the necessary action to keep it secret, or in the event that the local authority demonstrates that the information constitutes a company secret due to vital public interest or important state interest (art. 35 of the *Public Finance Act*).

Openness of public finances is complemented by their transparency - whereas openness means access to information, transparency is aimed at guaranteeing that the information is sufficiently complete and comprehensible for recipients. The provisions of the *Public Finance Act* do not specify what is meant by transparency, only using it in the chapter title quoted. Neither has there been a clear explanation how transparency should be ensured. General conclusions can be drawn from an analysis of individual articles. So according to the *Public Finance Act*, transparency with regard to management of public funds is indicated by:

- firstly, accountancy principles which are uniform for all public sector entities.
- secondly, an appropriate level of specificity in the classification of income and expenditure, and of revenue and expenses,
- thirdly, and finally, accepted principles and forms of producing financial and budget reports.

The lack of clearly specified consumers of financial information means there can be no unambiguous assessment of whether and to what extent the requirements indicated provide the expected openness (clarity) and comprehensibility.

It is worth noting that the Supreme Audit Office has on many occasions, in both its annual analyses of implementation of the state budget and its statements after controls which reveal problems, shown that the principles of openness and transparency are not sufficiently realised. Comments on the reporting system, which is inconsistent and far from clear, are vital in this context. It is not uncommon for checks to reveal discrepancies even in key data from the point of view of an assessment of state finances, or that financial statements did not present a reliable and clear version of the material and financial situation of the entities being controlled, irregularities resulted both from accounting errors and incorrectly presented data in the statements themselves (*Information about control results* - P15/015). In its reports, the Supreme Audit Office has, on more than one occasion, stressed the need to produce and develop a set of good practices in this area, using the example of international solutions by the OECD or IMF, standards and guidelines which, alongside the general statutory requirements, have made it easier in practice to verify openness and transparency in the context of responsible management of public finances, and enabled society to assess the state's financial activities, and thus increased accountability.

Scope of accountability effectiveness in asserting responsibility in public finances

In Polish public finance law, separate disciplinary solutions have been adopted in the fields of gathering and spending public money. Adhering to these involves a specific kind of responsibility, introduced regardless of any other form of legal liability, currently regulated by the Act of 17 December 2004. According to the provisions of that act, responsibility covers, in particular:

1) members of the body implementing the budget or financial plan of a public sector entity, or the managing body of an entity outside that sector which has been provided with public funds to use or dispose of, or a body managing the property of those entities;
2) managers of public sector entities,
3) employees of public sector entities or other persons who have, pursuant to or on the basis of a separate act, been entrusted with fulfilling responsibilities, if failure to fulfil those responsibilities, or improper performance of them, constitutes a violation of public finance discipline;
4) persons who, on behalf of a non-public sector entity which has been provided with public money to use or dispose of, carries out actions connected with using or disposing of that money.

This is responsibility borne *ex post* for violating those principles of public finance management which are

considered fundamental by legislators. Public money has been given protection by an enumerative calculation of actions which constitute breaches of financial discipline (art. 5-18c of the *Act* in question) which incur penalties when found to have been committed. These penalties can range from an admonishment, through a reprimand and fine, right up to a ban on holding positions involving disposal of public money (art. 31). Responsibility for violating public finance discipline does not therefore concern all rules for managing public money, only a few dozen actions stipulated in the statutory catalogue, which are harmful to the order of public finance to highly varied degrees. This catalogue does not indicate any actions which involve failure to adhere to the demands of openness and transparency. Openness and transparency of procedures for spending public money are only featured indirectly, by a reference to legislation regarding public tendering, including indicating duties involved with publishing an announcement of a public tendering process, specifications of major requirements for an order, informing the head of the Public Procurement Agency of the instigation of proceedings (art. 17, para. 1 Art. 17, para. 1 of the Act of 17 December 2004). A lack of the appropriate correspondence with the provisions of the Public Finance Act and other acts standardising the collection and expenditure of public money does not, unfortunately, form a sufficient basis to assert responsibility in the field of openness and transparency. The question of timely settlement of subsidies can serve as an example. Public finance discipline is breached by the subsidising party failing to approve the settlement of the subsidy on time (art. 8 pt. 2 of the Act in question), or by the subsidised party failing to settle the subsidies received on time (art. 9 pt. 2). Failure to refer to the relevant legislation (including the *Public Finance Act*) hinders any explicit interpretation, thus making the rules for asserting responsibility unclear. Thus it results in insufficient accountability (timeliness becomes paramount, as does compliance of spending with its intended use, without reference to efficiency, as defined by the degree of realisation, or effectiveness, indicating the optimum relation of effort to effect).

The statutory system for asserting responsibility places a limit on the detriment to public finances which does not constitute a violation of public finance discipline in light of the legislation (art. 26 of the *Act* in question), and also indicates the negligible degree of harm to public finances which does not invoke the aforementioned responsibility (art. 28 of the *Act*), The Act also mentions the negligible harmfulness of actions causing financial effects or not - although these are listed, they do not produce the expected clarity of cases, thus making assessment and accountability difficult.

The practice of public finance, the problem of its discipline and thus also of an adequate system of responsibility for violating it, do not unfortunately provide sufficient transparency with regard to which values should be protected. It is worth noting that doctrine has long proposed replacing the existing method of defining the relevant scope of responsibility for violating public finance discipline with an indication of the methods and mode of public finance management, violation of which would result in specific legal liability (Kosikowski C., 2006). This approach could help avoid any digression about whether to recognise and assert violations of public finance discipline in a situation where an action cannot be clearly categorised.

The distinctiveness of the system has resulted in an assumption that responsibility will be borne for breaches of public finance discipline regardless of the consequences provided for by other legislation (art. 25). Within this field there has always been serious doubt as to the nature of the responsibility for breaches of public finance discipline. Although the assumption is that the system of responsibility for breaches of public finance discipline should have a repressive function, proceedings connected with it being violated are neither criminal or disciplinary proceedings, nor is it a matter of employee responsibility. The literature on the topic often indicates that responsibility for breaches of public finance discipline has a mixed or hybrid character - this model is dominated by elements of criminal responsibility, but also includes elements of administrative and employee responsibility (Kosikowski, 2006). The lack of a uniform statutory definition with regard to this leads to varying interpretations of the regulations, which are an obstacle to genuine accountability (Szołno-Koguc, 2015).

Right from the start, there have been many controversies raised by the very question of asserting guilt and administering punishment. The problem of guilt is of key importance for effective assertion of responsibility, and thus of the efficiency of the entire system. In procedural practice, however, the question of demonstrating the guilt of a specific person or persons presents a range of problems, and results in proceedings involving time-

Table 1: Data concerning assertion of responsibility for violations of public finance discipline by adjudicating commissions in 2010-2016

	2010	2011	2012	2013	2014	2015	2016
Announcements by spokespersons							
- regional	2815	2648	2308	1811	1695	1433	1460
- departmental*	474	529	403	338	315	239	257
Motions for penalties							
- regional commissions	1085	1475	1165	1020	926	873	890
- departmental*	29	201	141	166	161	101	102
Number of accused	1458	1669	1517	1186	1089	1201	1195
Proceedings discontinued	263	349	268	133	122	128	138
Acquittals	366	330	352	303	315	287	286
Penalties waived	478	569	481	374	419	396	425
Penalties	318	367	367	305	289	378	331

*Including the Joint Adjudicating Commission (WKO)

Source: Author's own work based on Sprawozdania zbiorcze GKO (Composite reports of the Supreme Adjudicating Commission),2010-2016, electronic documents, access mode:(http://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc/ciala-(20.02.2018)

consuming and labour-intensive verification of the legal and factual circumstances in which the public finance discipline was violated. If this takes into consideration the insufficient transparency of financial documents, plans and reports, and the frequent incomparability of entities and periods, the statistical data on the activities of commissions adjudicating on breaches of public finance discipline (Table 1) should not be surprising.

An analysis of the composite reports of the Supreme Adjudicating Commission (GKO) indicates that between 2010-2016 adjudicating commissions very often annulled proceedings or refrained from administering penalties, and rarely administered a penalty other than an admonishment, and there were only two cases during that decade when the highest repression was applied, i.e. a ban on holding public office (*Sprawozdania zbiorcze GKO* (Composite reports of the Supreme Adjudicating Commission), 2010-2016). This is by no means a result of increasingly good management of public finances, or adherence by holders of funds to the formal-legal rules for handling it, but more an indication of how difficult it is to explicitly establish that an act is a violation of public finance discipline, to ascribe guilt and thus also responsibility.

Lack of clarity of interpretation, and lack of precision with regard to the principles for designating responsibility and administering an adequate penalty mean that the adjudicating commissions concentrating on adhering to procedural requirement from fear of potential appeals and lawsuits, and "carefully" set the lowest possible penalty, often failing to administer it. A reading of the texts of adjudications regarding violations of public finance discipline also confirms that the significance of the material aspect of caring for order in public finance is on the decrease. Individual commissions focus on legality and procedural aspects. This is a result of the Act in question adopting a closed catalogue both of actions which constitute a violation of public finance discipline, and of the subjective scope of that responsibility. Although transparent, the catalogue and scope raise many problems of interpretation, thus rendering the system of particular responsibility and accountability in managing public finance illusory and superficial.

Conclusions

The solutions implemented allow for several conclusions to be drawn in the context of developing principles of openness and transparency with regard to improving accountability in public finances.

Firstly, openness and transparency of public finances cannot be left as simply a general statutory declaration - to function effectively they require specific solutions to cover, in particular, forms of responsibility for non-execution or improper execution of duties in this area.

Secondly, since the question of responsibility arises, it is vital to specify, besides the question of access to

financial information, the requirements and indicators of its legibility (openness and comprehensibility), reliability and honesty, taking into account the various groups of parties with an interest in the information and their different perceptions.

Thirdly, sufficient transparency of public finance is not currently served by either the complex budgetary classification and structure of budgetary documents based on it (the state budget is still above all the budget of those who dispose of the parts of the budget), or the extensive reporting system of public sector entities.

Fourthly, openness, and particularly transparency, has insufficient dimensions and is superficial, which does not meet accountability in public finances, as proven by the low effectiveness of the system for asserting responsibility for violations of public finance discipline.

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