Union keeps the speed in which it regulates these problems there will be soon a time when there will be the need of an even 'newer' approach. As I see it, in order to grow as a union, the attempts should be made to form something like a European Code. This is said easily but unequally harder to accomplish but maybe an aim for the future.

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Miecznikowski S.
Professor in the Chair of Transportation
Market, Faculty of Economics,
University of Gdańsk

Michałowski T.
Assistant Professor in the Institute of
International Business, Faculty of
Economics, University of Gdańsk

FINANCING TRANSPORT INFRASTRUCTURE IN POLAND. TRENDS AND RISKS

On January 15, 2016, Standard & Poor's Ratings Services (S&P), which is one of the Big Three credit-rating agencies, lowered the long-term foreign currency sovereign credit rating on Poland from 'A-' to 'BBB+'. In support of that decision, S&P stated that new Poland's government led by Law and Justice party, which in the election in October 2015 won an absolute majority in the parliament and the senate, has initiated various legislative measures that weaken the independence and effectiveness of key institutions, such as the constitutional court and public broadcasting. S&P also changed the Poland's rating outlook to negative fearing that there is potential for further erosion of the independence, credibility, and effectiveness of key institutions, especially the National Bank of Poland. The Agency also expressed concern that – contrary to earlier expectations – Poland's fiscal metrics would not improve and some reversals in the country's sound macroeconomic management of the past years would be observed. Several days after the S&P announcement, Moody's Investors Service – another credit-rating agency from the “Big Three”– raised Poland's deficit forecast for 2016 and warned that larger than expected deficits and changes to expenditure rule made by Polish authorities are credit negative [1].

Also, the third main credit-rating agency, Fitch, warned Poland against the danger of downgrade. It confirmed that deficits much above 3% of GDP would be rating-negative. The agency warned that it could cut Poland's rating, if the country's decision to convert Swiss franc-denominated mortgages significantly undermined the health of the banking sector [1]. It should be added that Poland’s authorities adopted earlier the law which imposes tax on assets of financial institutions. Since February 1, 2016, banks in Poland have been charged 0.44% of their adjusted total assets annually. According to Moody’s estimates, the tax will cost the Poland’s banking sector EUR 1 billion in 2016, which is equivalent to one third of banks’ annual earnings for the first ten months of 2015/16 [2].

The S&P downgrade has led to the increase in the yield on Poland’s bonds. On the next working day after the S&P announcement, the yield on Poland’s 10-year bonds rose 22 basis points, the most since September 2014. There was the selloff in the longer-dated securities which pushed their premium over two-year notes to the widest since at least 2002 [3]. In the public finance sector debt management strategy in the years 2015-2018, Poland’s stipulates that the average maturity of domestic debt will be increased to about 4.5 years [4, 5]. However, a growing reluctance of investors to hold money in Poland’s longer-dated bonds may make this goal difficult to achieve [3].

It should be noted that issuance of long-term bonds is a source of financing or co-financing of transport infrastructure investment [5, 42]. An increase in bond yields has a negative impact on investment costs. Moreover, actions leading to the weakening of the banking sector may limit its ability to provide financing to the Polish economy including capital-intensive transport infrastructure investment. On the other hand, it is likely that banks will pass partly the new tax onto borrowers, which would also adversely affect the cost of financing of infrastructure investment.

Since 1991, the most important challenges before successive Poland’s governments had been the economic transition and gaining membership in the European Union (EU). The country had to prepare for a successful participation in the EU cohesion policy after accession. An important step towards this was the administrative-territorial reform which was adopted in 1998 and went into effect in 1999. The reform introduced a three-level administrative division. Poland has been divided into 16 voivodeships (provinces) which replaced the 49 former voivodeships. Each voivodeship is subdivided into powiats (named also counties or districts), which are further divided into gminas (municipalities or communes). Since the accession to the EU, each Poland’s voivodships has been a region of the EU corresponding to the EU NUTS II level.

The 1999 administrative-territorial reform created a clearer regional dimension of government [8, 205]. The new territorial entities have been granted wide competencies including the responsibility for delivering regional development policy [9, 6]. Regional self-governments have been entitled to independently set development strategies and plans, as well as programmes and projects aimed at their implementation at the voivodeship level [10, 7]. Therefore, the conditions for reliable development project planning and implementation have been improved.

The 1999 administrative-territorial reform was made in anticipation of substantial EU funding for development at the regional level [8, 205]. However, until the EU accession on May 1, 2014, Poland had been receiving only the EU pre-accession assistance under the three funds: PHARE, ISPA and SAPARD. It is estimated that in 1990-2003, the overall EU support for Poland exceeded EUR 7 billion [11, 3]. Over the same period, under PHARE and ISPA, Poland received about EUR 1.9 billion for transport development. The EU pre-accession assistance was very small compared to post-accession funding. Nevertheless, it had played an important role in preparing candidate countries for the appropriate EU structural funds [12, 28-31].

Considering the above, at the local government units level, the possibilities of funding transport infrastructure projects from external sources were very limited. In addition to the contribution from the EU, sources of external financing included funds from the multilateral institutions such as the European Bank for Reconstruction and Development or the European Investment Bank. However, these funds were of minor importance. Some municipalities issued bonds to fund transport infrastructure projects. An example of this may be the issue of municipal bonds by Gdynia in 1996 to purchase several dozen low-suspension buses [13]. Nevertheless, until the accession to the EU in May 2004, the state budget had been the main source of funding transport infrastructure projects in Poland [14, 58].

With the accession to the EU, Poland has been entitled to apply for EU funds. EU funding opportunities for Poland improved substantially with the beginning of the new EU financial perspective 2007-2013. Under this financial framework, Poland was allocated 67.3 billion EUR (compared to EUR 12.8 billion in 2004-2006), which made that country the biggest beneficiary of EU funds [15].

Spending on transport has the largest share in the structure of EU financial support for Poland. In 2004-2013, transport projects accounted for 36% of total value of all project financing agreements, ranging from 25% in the Kuyavian-Pomeranian Voivodeship to approximately 45% in the Łódź Voivodeship [16, 20].

From 2004 to 2013, EUR 28.7 billion of EU funds went to transport infrastructure projects in Poland. In 2007–2013, 673 km of motorways were built, and 808 km of expressways were built or modernised, worth a total of EUR 16 billion, of which EUR 10 billion was EU co-funding [17, 16]. In 2007-2013, more than EUR 5 billion of EU funds were allocated for railway investments. They should result in modernization or revitalization of over 2,600 km of tracks [18]. It is worth noting that investments in road transport have surpassed railway investments.

An example of the use of EU funds at the regional level is the construction of the Pomeranian Metropolitan Railway (PMR) line which will finally link Tri-City with Lech Wałęsa Airport and the Kashubian region. The PMR provides a great opportunity for the region in terms of labour market development, attracting new projects from business services sector or the residential and commercial real estate segment [19 and 20]. The project will also contribute to the environmental protection and tourism development.

In the case of the Pomerania region, investment in railways surpasses investment in road infrastructure. This trend continues. The situation is different than in the country as a whole.

In the programming period 2014-2020, Poland should receive EUR 82.5 billion [15]. As in the previous financial framework, the largest amounts are to be invested in transport infrastructure. As of January 31, 2016, under the programming period 2014-2020, the General Directorate of National Roads and Motorways (Generalna Dyrekcja Dróg Krajowych i Autostrad – GDDKiA) submitted payment applications which relate to 13 projects for constructing expressways including such sections as Kaźmierzów – Legnica, Nowa Sól Południowa – Kaźmierzów or Olsztyn –

Olsztynek. Total EU co-funding for these projects are estimated at over PLN 8 billion (approximately EUR 2 billion). On the other hand, railways are falling behind on investment. By the end of January 2016, contracted works amounted to only 7% of total value of all railway investment projects planned for implementation under the 2014-2020 EU financial framework [21].

The current financial perspective may be the last chance for Poland to get EU funding for transport infrastructure development in such a large scale. Therefore, it is particularly important that the allocated funds are fully absorbed. For this to happen, project beneficiaries should be able to obtain funds for their own contributions. It should be mentioned that EU co-funding usually reaches about three-quarters of total project costs, the rest is own contribution. However, after signing a project agreement, a beneficiary must cover all costs with its own funds. EU funding is released after project completion. The increase in bond yields related to rating downgrade, weakening banks or shifting funds from investment to consumption may weaken Poland’s ability to take advantage of opportunities of EU funds.

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Wiemker M.
Research Assistant at the Chair for
European and Polish Private Law and
Comparative Law, University of Osnabrueck

THE RELEVANCE OF THE DIRECTIVES` ELEVANCE OF THE DIRECTIVES` RECITALS FOR THE INTERPRETATION OF THE EU-LAW – THE STRUGGLE ON THE NOTION OF 'CONSUMER'

Why is the understanding of the notion of 'consumer' important in the context of European Private Law? In practice the word 'consumer' is used in various meanings. In particular the notion of 'consumer' as it is known in law varies significantly from the concept of consumer as used in marketing and sociology. So, in law a person who is a consumer is entitled to extend legal protection in relations with traders. This is because of the trader´s stronger position. In order to delimit the circle of those persons that are entitled to extend legal protection, a precise definition of consumer is essential [1, 44-53].

In current EU consumer acquis[56] the notion of consumer has been specified separately in each adopted instrument. Thus, the notion has been defined in several directives in the area of contract law. [57] But the consumer has also been defined in the area of procedural law, in the regulations Brussels I. Since those definitions do not entirely coincide, there is a struggle on the notion of consumer.

In 2002 the European Research Group on the Existing European Community Private Law was found. As a reaction on activities of EU institutions in the field of European Contract Law, the so called Acquis-Group targeted a systematic arrangement of existing Community Law which will help to elucidate the common structures of the emerging Community Private Law. The research of the Acquis-Group was published as 'Principles of the Existing EC Contract Law' (ACQP).

However, this wording has been highly criticized by Jansen and Zimmermann [2, 505-514], two German Law Professors. Under this norm a person would also be qualified as a consumer if he entered into a contract intended for purposes which are in part within his business activity that in fact plays a minor but not an irrelevant role

[56] Aquis also known as aquiscommunautaire or community aquis means the accumulated legislation, legal acts and court decisions which constitute the body of European Union Law

[57] Article 2 of the original doorstep selling directive (85/577/EEC) and Article 2 (2) of the distance contracts directive (97/7/EC); Article 2 (b) of the unfair terms directive (93/13/EEC); Article 1 (2) a) of the consumer sales directive (99/44/EC); Article 2 (e) of the electronic commerce directive (2000/31/EC); Article 2 e) of the price indication directive (98/6/EC); Article 2 (1) f) of the new timeshare directive (2008/122/EC); Article 2 (D) of the distance marketing of consumer financial services directive (2002/65/EC); Article 2 (a) of the unfair commercial practices directive (2005/29); Article 4 (11) of the new payment services directive (2007/64/EC); Article 2 (4) of the package travel directive (90/314/EEC); Article 3 (a) of the original consumer credit directive and Article 3 (a) of the new consumer credit directive (2008/48/EC).