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### INDIVIDUAL DEBT LIMITATION OF TERRITORIAL SELF-GOVERNMENT ENTITIES AS EITHER THREAT OR OPPORTUNITY IN CREATING LOCAL DEVELOPMENT

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### INDYWIDUALNA LIMITACJA ZADŁUŻENIA JEDNOSTEK SAMORZĄDU TERYTORIALNEGO SZANSĄ CZY PRZESZKODĄ W KREOWANIU ROZWOJU LOKALNEGO

**Summary:** Individual debt ratio limits the possibility of borrowing by local government units. The changes that occurred in 2014 will have an impact on the financing of current tasks, but primarily they affect the realization of investment projects, which are the basis of local development. The purpose of the paper is to present the results and limitations resulting from changing regulations concerning the possibility of incurring debt and also to present self-government entities' opinion on the changes that the Public Finance Law is going to bring about. The study was conducted among self-government entities. The method that was used to gather the data was a questionnaire. A total of 397 questionnaires were obtained, which means that the answer was given by 397 local government units.

**Keywords:** finance, territorial self-government finance, debt, individual debt ratio, local development.

**Streszczenie:** Indywidualny wskaźnik zadłużenia ogranicza możliwość zaciągania zobowiązań dłużnych przez JST. Zmiany, jakie zaszły w 2014 roku, mają wpływ zarówno na finansowanie bieżących zadań, ale przede wszystkim wpływają na realizację projektów inwestycyjnych, które są podstawą rozwoju lokalnego. Celem artykułu jest przedstawienie wyników i ograniczeń wynikających ze zmiany przepisów dotyczących możliwości zaciągania długu, a także do przedstawienia opinii podmiotów samorządowych na zmiany ustawowe. Badanie zostało przeprowadzone wśród jednostek samorządu terytorialnego za pomocą kwestionariusza. Łącznie uzyskano 397 ankiet, co oznacza, że odpowiedź została udzielona przez 397 jednostek samorządu terytorialnego.

**Słowa kluczowe:** finanse, finanse samorządu terytorialnego, dług, indywidualny wskaźnik zadłużenia, rozwój lokalny.

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## 1. Introduction

Self-government entities (SGEs), acting in a changing environment for the sake of society, realise a number of various tasks resulting from both legal acts and those undertaken on the basis of self-government authorities' decisions. One must emphasise that while realising various tasks self-government entities take responsibility for social and economic development and are even considered to be the animators of this development. In order to facilitate this development, self-government entities more and more often take decisions on incurring debt obligations. These decisions often concern the acceleration of investment involvement which is supposed to improve the quality of the social life or to provide access to desired public services.

The act concerning debt limitation that came into force in 2014 and especially the regulations concerning individual debt ratio calculation, in the case of incurring debt obligations, not only change the approach to this problem but also influence the potential possibility of realisation of investment tasks financed with debt resources, which, in turn, influences the capability of social and economic development.

The purpose of the following paper is to present the results and limitations resulting from changing regulations concerning the possibility of incurring debt and also to present the self-government entities' opinion on the changes that the Public Finance Law is going to bring about.

## 2. Local government debt and the cause of its the limitation

In the literature it is indicated that the starting point for the functioning of local government units is to establish a list of attributable tasks assigned to them and determine which assumptions underlie this agenda [Piotrowska-Marczak 2013, p. 17]. Furthermore, an important issue is to consider:

- the ability to perform tasks;
- the effectiveness of management of public funds;
- the cost of implementation of tasks;
- the ability to best perform tasks.

At the root of the implementation of the tasks of local government units, there lies constitutionally guaranteed income [Konstytucja RP, art. 167]. Not always its level allows realizing not only all the necessary tasks, but forces their quantitative and qualitative limiting. Local governments units are looking for ways to finance the tasks that do not have coverage in income by external means, of a return or non-return nature (e.g. EU grants).

A major problem in addition to current and timely implementation of the tasks is the flawed structure of expenditures, accumulation of repayment of liabilities abroad, whether the scope of the use of financial instruments such as guarantees or sureties.

These phenomena arise due to decisions of local government units, the need for intervention in the local economy or are the result of the occurrence of the risks associated with ongoing and planned tasks [Filipiak 2011, pp. 77–78; Poniatowicz 2014, pp. 158–160]. It can be also indicated that in the case of local government units, the resulting shortage of funds is related to the effort to improve the infrastructure, which is positioned in the sphere of investments.

The primary reason for seeking feedback and non-returnable funds by local government units is shortfalls in their budgets because of realized values of revenue and expenditure of local government units incurred for the implementation of tasks determined by the size of the balance (deficit or surplus) [Piotrowska-Marczak 2013]. It should be remembered that any potential deficit, understood as the difference between revenue and expenditure must be always financed. Source of coverage of the deficit can be either a surplus from previous years [Ustawa o finansach publicznych 2009, art. 113 and 217], or debt. If we accept that “from an economic point of view, public debt is all liabilities incurred by local government units and their representative institutions of the local government subsector” [Pietrzak, Polański, Woźniak (eds.) 2003, p. 437].

In the literature it is also indicated that debt is a consequence of insufficient funds in the form of budget deficits [Piotrowska-Marczak 2013, p. 19]. “It is also a kind of alternative income” allowing the execution of tasks in the accepted standards [Poniatowicz 2014, p. 6 and 41]. Local Government debt is also understood as commitments made as loans, sales contracts, lease agreements, contracts public-private partnership and contracts unnamed [Bitner, Kulesza 2011, p. 15]. The economic literature also indicates that debt is a method of balancing the budget of the local government [Jastrzębska 2012, p. 190]. Self-government debt is part of the public debt of government institutions, local government and the state treasury [ESA 95].

The problem of the size of local government public debt appeared in theoretical terms and was discussed in particular by: Keynes, Friedman, Gaudemet, Poniatowicz, Dylewskiego and Uryszka. The theory, as well as the practice, shows the effects associated with the borrowing (both positive and negative). Modern economy, as well as EU regulations, indicates the need for reducing debt levels [Uryszek 2010, pp. 22–40]. The basic problem comes down to the two most important (albeit complex) questions: what should be the basis for determining the local government units’ debt to maintain liquidity and perform tasks at the level accepted by society and what consequences does the local debt have and who has to bear the burden?

Against this background, there is a need for regulating the level of debt, or of limiting debt. The issue is considered as a limitation of debt around the state and the limitation of debt of local government units.

### 3. Existing solutions concerning local government units' debt limitation

The existing legal situation leads to a number of problems concerning debt limitation. Self-government entities need to take into consideration a wide range of factors resulting from legally binding regulations if they want to incur debts. Moreover, one must consider the change in legal conditions as far as incurring debt is concerned, which means moving away from quantitative limitation towards individual debt limits. Debt limitation resulting from constitutional solutions or legally binding regulations in terms of:

1) limitations resulting from basic fiscal criteria (restricting) legally binding in EU countries that concern the Excessive Deficit Procedure in a given country when the factual or planned public finance sector deficit exceeds 3% GDP or when the ratio of public debt to GDP exceeds 60%;

2) limitations concerning reaching the value higher than 55% and lower than 60% of the amount of national public debt to Gross Domestic Product relation leading to the introduction of curative actions;

3) limitations of incurring debts, providing financial guarantees and sureties, as a result of which national public debt will exceed 3/5 of annual GDP<sup>1</sup> remains unchanged.

By the end of 2013 the upper limit of debt – 60% of the total self-government entity debt to this entity's income in a given budgetary year<sup>2</sup> together with the limitations resulting from debt service, setting the limit of debt service at the level of 15% of the planned income of a given self-government entity (and during curative actions 12%)<sup>3</sup> is binding.

One must bear in mind that the year 2014 brought moving away from the described regulations concerning quantitative debt limitation resulting from Art. 169 and 170 of the Public Finance Law of 30 June 2005 [Ustawa o finansach publicznych 2005], mentioned above, towards the individual debt limitation mentioned in Art. 243 of the Public Finance Law of 27 August 2009 [Ustawa o finansach publicznych 2009]. Individual debt ratio (IDR) will be calculated according to the following formula:

$$\underbrace{\left(\frac{R+O}{D}\right)}_{\text{side determining SGE debt service,}} \leq \frac{1}{3} \times \underbrace{\left(\frac{Db_{n-1} + Sm_{n-1} - Wb_{n-1}}{D_{n-1}} + \frac{Db_{n-2} + Sm_{n-2} - Wb_{n-2}}{D_{n-2}} + \frac{Db_{n-3} + Sm_{n-3} - Wb_{n-3}}{D_{n-3}}\right)}_{\text{side determining debt service limit, so-called right side}}$$

<sup>1</sup> This restriction results from the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, No. 78, item 483 and is still legally binding.

<sup>2</sup> This restriction was legally binding until 2014 – The Public Finance Act of 27 August 2009, Journal of Laws, No. 157, item 1240 as amended; Act of 27 August – regulations introducing the Public Finance Act, Journal of Laws, No. 157, item 1241.

<sup>3</sup> This restriction was legally binding until the end of 2013.

where:  $R$  – planned for the budgetary year total amount on account of credit and loan instalment repayment mentioned in art. 89, sec. 1, items 2–4 and art. 90 of the Act, and on account of buyout of securities issued for the purposes mentioned in art. 89, sec.1, items 2–4 and art. 90;  $O$  – planned for the budgetary year interest on credit and loans mentioned in art. 89, sec.1, and art. 90, interest and discount on securities issued for the purposes mentioned in art. 89, sec.1 and in art. 90, and repayments resulting from provided financial guarantees and sureties;  $D$  – total income in the budgetary year;  $Db$  – current income;  $Sm$  – asset sale gains;  $Wb$  – current expenses;  $n$  – the budgetary year for which the relation is determined;  $n - 1$  – year prior to the budgetary year for which the relation is determined;  $n - 2$  – year two years prior to the budgetary year;  $n - 3$  – year three years prior to the budgetary year.

Starting from 2014, or, in practice from the fourth quarter of 2013, the work on the budget will be commenced and one will need to take into consideration the restrictions in terms of self-government entity budget preparation that will involve [Ustawa o finansach publicznych 2009, art. 243]: a legal ban on SGE's budget preparation, whose realization in the budgetary year and in all the years following the budgetary year will make the relation between the total amount of (in a given budgetary year)

- credit and loan instalment repayment together with accrued interest (in a given year) on account of credit and loans, the buyout of securities issued for the purposes mentioned in the Public Finance Act together with the interest and discount on securities issued for the purposes mentioned in the Public Finance Act;
- potential repayments on the amounts resulting from provided guarantees and sureties

to planned total budget income exceed the arithmetic mean of the relation (calculated for the last three years) of its current income enhanced by the asset sale gains and reduced by current expenditure to total budget income calculated according to the formula of IDR. While calculating IDR for the year prior to the budgetary year, the values stated in the self-government entity financial report of the realization of the budget for three quarters are taken into consideration. In order to calculate the relation for the previous two years, the values from annual statements are taken into consideration.

The legislator introduced departures from the aforementioned rule, which concern the buyout of securities, repayment of credit and loans incurred with regard to the programme, project or financial task realization contract with the help of foreign capital that is not subject to return [Ustawa o finansach publicznych 2009, art. 5, paragraph 1, subparagraph 2], excluding the interest on these liabilities, and guarantees and sureties granted to self-government artificial persons realizing the tasks of self-government entity as part of the programmes financed with the help of foreign capital for not more than 90 days after finishing the programme, project or task and receiving the refund of these resources. One must bear in mind, however,

that if the foreign resources mentioned in the contract are not transferred, or after their transfer the return is adjudicated, then the self-government entity may not issue securities, obtain credit or loans nor grant guarantees and sureties until IDR ratio is complied with.

This provision constitutes a substantial restriction not only to the further absorption of the EU funds intended for underdeveloped regions support or for equalization of opportunities between regions. This provision results in considerable difficulties with SGE budget preparation concerned with the realization of existing contracts. The construction of IDR during financial crisis that leads to a decline in SGEs' own income, restrictions in disposing of assets or asset privatization (asset depletion, transactional restrictions from contractors, lack of tenderers) might lead to non-compliance with the mentioned IDR relation and the inability to approve the budget.

The consequence of statutory solutions might be investment limitation, and as a result of that, a slowdown in social and economic development. The question of possibility of EU funds absorption in the new programming period also arises.<sup>4</sup> Will the introduced changes allow incurring debt to pre-finance the tasks resulting from own contribution to the realization of projects, programmes and tasks financed jointly with foreign capital?

## **4. Influence of individual debt limitation of self-government entities onto the local development from the perspective of respondents' opinions**

### **4.1. Research method**

The issues of self-government entities' debt were taken into consideration from several points of view, referring not only to examining the expectations of self-government authorities in terms of desired changes, but also to the influence onto financial situation, ability to realize tasks and potential and current opportunity to create local development. The thesis verified was the one according to which the existing legal regulations in terms of incurring debt (legally binding in 2013 and those coming into force in 2014) pose a serious impediment to development, as they, in particular, limit the possibility of incurring debt in order to realize investment supporting local development. Legal regulations that concern incurring debt and the ability to keep financial liquidity were also analysed. The latter factor is essential as it is the cornerstone of fulfilling debt obligations.

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<sup>4</sup> Professor M. Poniatowicz indicates that self-government debt is a key instrument of financing investment activity of SGEs, but simultaneously it makes it possible to absorb EU resources. Quoted after Poniatowicz, Salachna, Perlo [2010, pp. 68–69].

The study was conducted among self-government entities. The method that was used to gather data was a questionnaire. The population specificity and the fact that self-government entities need to comply with a constitutional disclosure principle as far as their financial management is concerned, influenced the sampling process, which was done randomly. Seven voivodeships out of the sixteen voivodeships functioning according to the new administrative division were randomly selected, which constitutes 40% of the overall voivodeship population. There were two major reasons for voivodeship random sampling: increasing the sample representativeness and increasing the comparability between particular self-government entities, which can be obtained by examining the entities within the same voivodeship. Phase 2 of sampling consisted in the division of the sample into three layers: voivodeship, powiat and commune. Phase 3 of sampling consisted in selecting self-government entities from each layer, that is, entities from the voivodeship, powiat and commune layers. A number of self-government entities functioning within each randomly selected voivodeship were designated. A total of 397 questionnaires were obtained, which means that an answer was given by 397 local government units.

It was assumed that due to the SGE specificity and the size of the selected research tool, field research would be conducted by means of a direct contact of an interviewer with respondents on the basis of PAPI method (direct interview with the respondent with the use of a traditional questionnaire form).

The present paper presents only some of the obtained results which concern the influence of selected legal solutions in terms of SGEs' ability to incur debt onto the ability to create local development. The following study was financed as part of a scientific project with budgetary resources for science in 2010–2013 as a research project no. NN 113 063 139.

## 4.2. Study results

A lot of attention has been paid in the literature to the fact that financing the development of each self-government entity is significantly dependent upon its own financial capabilities. This means that realising the pro-developmental tasks will be possible only if a given self-government entity has the resources to finance them or the ability to fulfil the obligations in the future when it has to repay incurred debts [Dylewski, Filipiak, Gorzałczyńska-Koczkodaj 2004, pp. 123–130; 2010, pp. 97–110; 2011, pp. 84–96]. The ability to conduct debt service by a self-government entity will be determined by finding available resources that can be used in debt service [Filipiak 2011, pp. 185–186; Poniatowicz, Salachna, Perlo 2010, p. 101].

The basic criticism of legally binding solutions (up to the end of 2013) was mainly focused upon the following statements:<sup>5</sup>

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<sup>5</sup> Pointed out by Fitch Ratings in their special report – October 2006, moreover, the following views should be taken into consideration – Wiewóra [2009, p. 27]; Dylewski et al. [2010, pp. 108–109].



1) the solution does not take into consideration the time horizon of incurred obligations;

2) asset sale gains ( $S_m$ ) are included into the ratio construction (the relation mentioned above) and then they are referred to the total income ( $D$ ). Asset sale gains, which usually come from sales of assets, are not, contrary to current income, repeatable income;

3) financial situation (especially financial liquidity, that is, the ability to service debt together with accrued interest) of the self-government entity incurring debt at present and in the future is not taken into consideration;

4) erroneous approach is taken in debt calculation methodology (not all financial obligations are included into debt).

Moreover, one must bear in mind that not fulfilling or fulfilling improperly the obligations concerning the supervision over the realization, determined in budgetary resolution, income and expenditure, budgetary revenues and expenditures of SGE, as a result of which contravention of the relation concerning the debt level or repayment of financial obligations of self-government entity do not contravene public finance discipline. Simultaneously, SGE is required to draw up a debt amount forecast which is included in a long-term financial forecast. According to art. 230, sec. 4 of the Public Finance Act, Regional Accounting Chamber as the authority supervising SGE finance management presents – on the basis of adopted by SGE long-term financial forecast and budgetary resolution – opinion on the correctness of the planned debt amount of self-government entity resulting from planned and incurred obligations. This opinion concerns correctness of the calculations, and the impunity for exceeding the debt limit – 60% according to the law, did not impose the right approach towards incurring self-government public debt.

The intention of the legislator introducing the described changes in regulations was undoubtedly determining such a debt level that would ensure its full repayment and public tasks realisation by SGE. Moreover, the legislator introducing the discussed changes was striving to make the debt limit of the self-government sector more flexible and at the same time more realistic, to increase the quality and predictability of the forecasts concerning SGE debt level and deficit, and also to make SGE finance management more flexible.<sup>6</sup>

Will the introduced changes to the criticized solutions included in the Public Finance Act of 30 June 2005 fulfil the pinned hopes? Will the described in the justification objectives of making the SGE financial management more flexible and using debt to finance pro-developmental investment be really possible under the new law? The responses to these and other questions were obtained from the respondents.

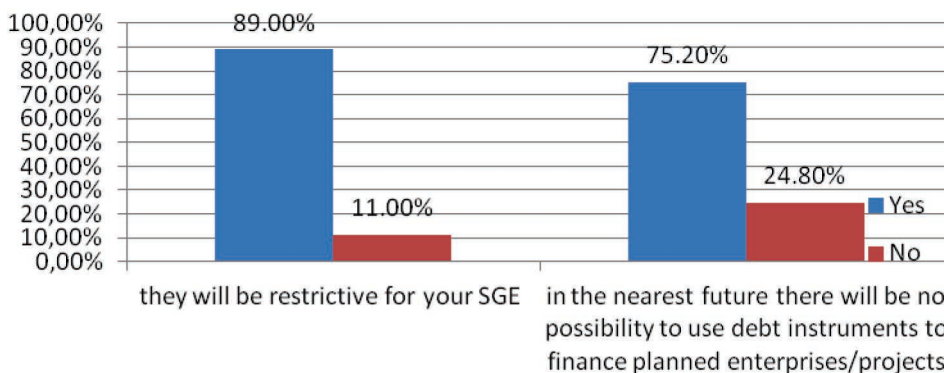
The results of the conducted study indicate that 89.00% of the respondents think that the new solutions in terms of individual debt limitation will be restrictive for

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<sup>6</sup> These objectives are discussed in the government document: Uzasadnienie do nowelizacji projektu... [2013].



SGEs, and as many as 75.20% claim that in the next few years there will be no possibility of using debt instruments in order to plan investment supporting local development. This, in turn, indicates that the introduced changes are perceived negatively (compare Figure 1).



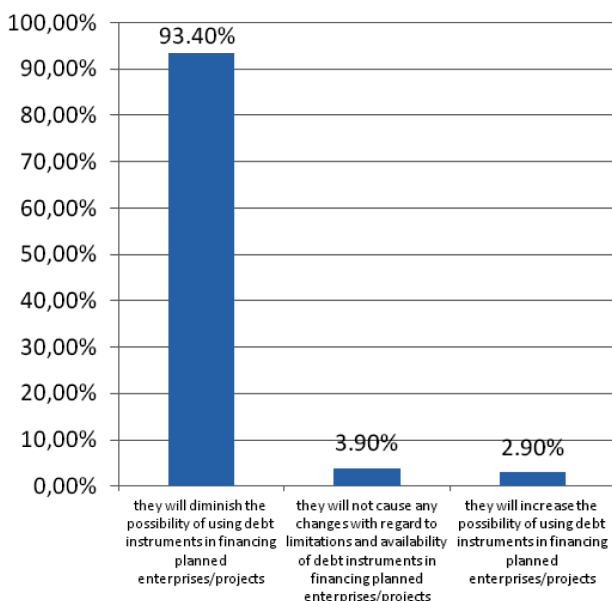
**Figure 1.** Assessment of the new solutions in terms of individual debt limit (art. 243 of the Public Finance Act) as far as the influence onto the local development created by SGE is concerned

Source: prepared on the basis of own research results.

The vast majority of SGE under study assessed negatively also the new solutions regarding individual debt limitation; as many as 93.40% are convinced that they will diminish the possibility of using debt instruments in financing planned investment enterprises, projects or tasks that are supposed to support development. Only 2.90% of the respondents assess the changes positively and 3.90% believe that they will not bring any change in terms of restrictions and availability of debt instruments in financing.

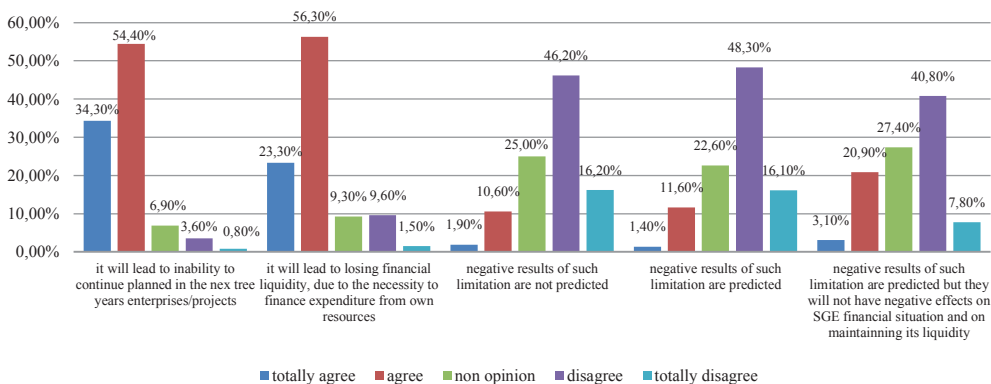
As many as 88.70% of all the respondents claim that introducing additional restrictions in terms of incurring debt, as well as balancing the current budget in a given budgetary year poses a serious threat of inability to continue planned in the following three years enterprises, projects and investment tasks, and 79.60% are afraid of losing financial liquidity because of the obligation to finance the expenditure from their own resources (see Figure 3).

As many as 70.10% of the respondents claim that the new solutions in terms of debt limits for self-government entities will have a very unfavourable effect onto the SGE financial situation (compare Figure 4). Therefore, one might draw a conclusion that the new solution not only does not enhance the flexibility of finance management but, as a result of the financial situation deterioration, restrictions in financing tasks supporting development together with the influence onto the civic attitudes towards undertaking pro-developmental initiatives will follow.



**Figure 2.** Assessment of the new solutions with regard to debt limitation and their influence onto using debt instruments

Source: prepared on the basis of own research results.

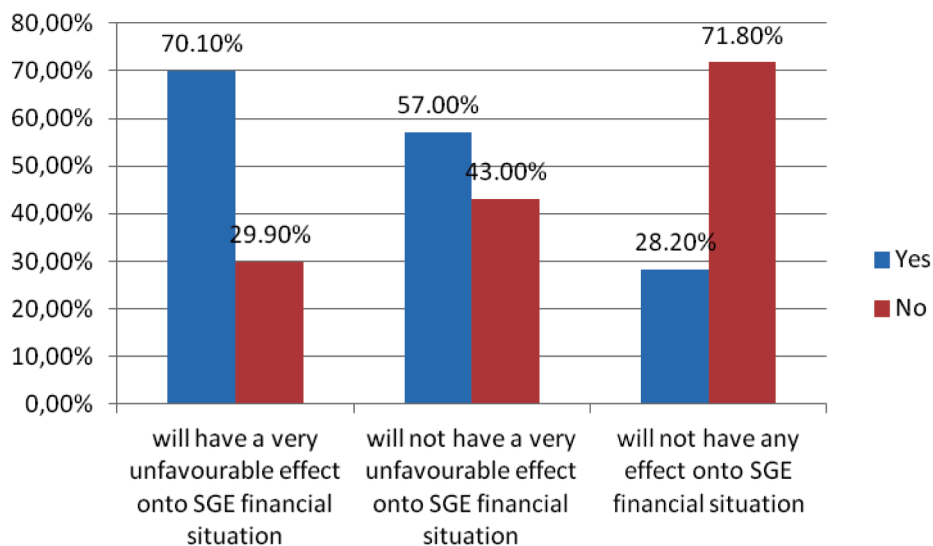


**Figure 3.** Respondents' opinions on introducing additional restrictions in terms of incurring debt by SGE

Source: prepared on the basis of own research results.

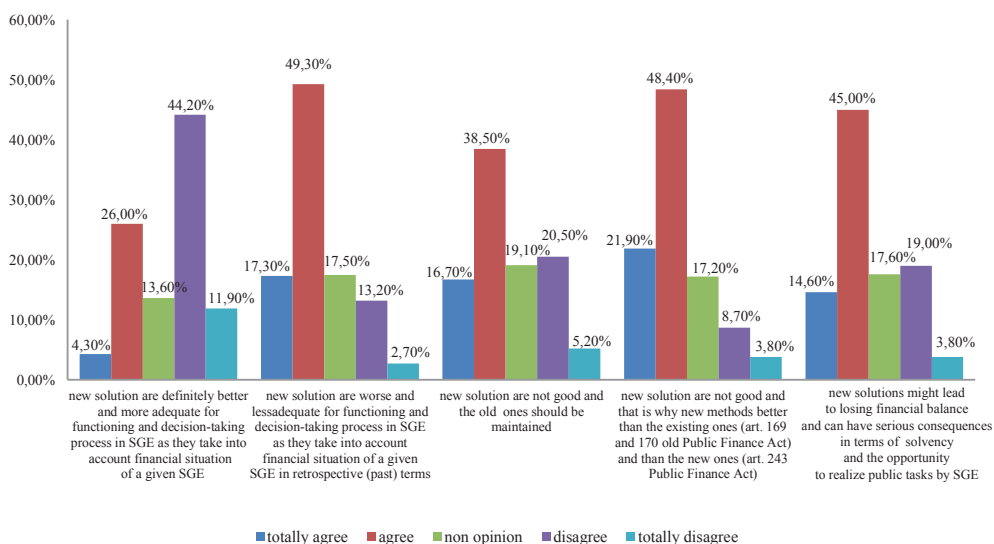
The respondents were asked questions concerning the assessment of the old and the new solutions in terms of debt limitation (compare Figure 5). The assessment

Individual debt limitation of territorial self-government entities...



**Figure 4.** Assessment of the new solutions' influence in terms of debt limits of SGE

Source: prepared on the basis of own research results.



**Figure 5.** Respondents' opinions on the influence of the new solutions onto task realization, including pro-developmental tasks (investment)

Source: prepared on the basis of own research results.

of the new solutions that were supposed to come into force in 2014 was not positive. These new solutions are not assessed positively from the perspective of supporting local development. The respondents also assessed negatively the existing temporary solutions. Generally speaking, one might conclude that the new solutions pose a serious threat in terms of losing financial balance and might have serious consequences regarding solvency and the possibility of realizing public tasks, including investment supporting local development.

To recapitulate, it must be stressed that the respondents not only have negative opinions as far as the solutions that were binding until the end of 2013 are concerned, but they also emphasize the threats that result from the new solutions regarding individual debt limitation.

## 5. Conclusion

While exceeding the scope of statutory restrictions, one can fully assess the real liabilities of a given self-government entity. This fact is presented in numerous expert opinions and scientific publications. Changes need to be made as the solutions accounted for in art. 243 of the Public Finance Act of 27 August 2009 might threaten not only the process of local development and investment tasks realization but might also cause problems with budget creation and approval.

The legislator, while designing the new solutions, did not take into consideration the influence of the economic situation onto the SGE income level and the fact that the new solutions concerning individual debt limitation would come into force during economic downturn, scarce budgetary cash inflows and the lack of prospective buyers of self-government assets. Individual debt limitation is an important and decisive notion. But the very construction of the limit duplicates the solutions that have already been strongly criticized. The new solutions should support the possibility of incurring debt that enhances development; however, this development cannot be ostensible but real. Moreover, they should be constructed in such a way that they would guard the ability of fulfilling both short- and long-term obligations, that is, they should be based on financial liquidity.

The question about the outcomes and restrictions resulting from individual debt limitation can be answered unambiguously. The effect for many SGE will be reducing development and possibility to realize tasks; however, some of the entities will gain wider access to investment resources that could be used to finance pro-developmental tasks. Will, however, the individual debt ratio in the presented form come into force and be used? The author is not absolutely convinced.

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