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## **Supporting investment projects in the Act on Sureties and Guarantees (ASG) granted by the State Treasury (ST) and certain legal entities – analysis of selected issues**

**Wspieranie przedsięwzięć inwestycyjnych w ustawie  
o poręczeniach i gwarancjach udzielanych przez  
Skarb Państwa oraz niektóre osoby prawne – analiza  
wybranych zagadnień**

**Abstract.** The paper discusses a significance of guarantees and sureties granted by the State Treasury and Bank Gospodarstwa Krajowego (BGK) within the framework of governmental guarantee and surety schemes covering projects implemented with the use of the European Union funds. The aim of the study is to determine whether the legislator adjusts the provisions of the currently effective Act of 8 May 1997 on Sureties and Guarantees granted by the State Treasury and

certain legal entities<sup>1</sup> to the economic needs of the state, including those related to obtaining funds from the European Union for the implementation of undertakings and projects. It has been assumed that the analysed sureties and guarantees of the State Treasury and BGK have constituted an important and practically applied instrument of economic development of the state for several decades. In the final conclusions, the Author states, among others, that the discussed solutions of the ASG are conducive to supporting an innovative, investment and development activity in the state. However, only the sureties and guarantees of BGK are an effective tool of obtaining the European Union funds which are related to the governmental surety and guarantee scheme. The Author has used a dogmatic and analytical research method, based on the legal status in force on 15 November 2019. Certain aspects of the historical method are evidenced by considerations on the evolution of the solutions adopted in the ASG.

**Keywords:** sureties; guarantees; State Treasury; government programmes.

**Streszczenie.** W opracowaniu omówiono znaczenie poręczeń i gwarancji udzielanych przez SP oraz BGK w ramach rządowych programów poręczeniowo-gwarancyjnych obejmujących projekty realizowane z wykorzystaniem środków pochodzących z funduszy Unii Europejskiej. Celem opracowania jest ustalenie, czy ustawodawca dostosowuje przepisy aktualnie obowiązującej ustawy z dnia 8 maja 1997 r. o poręczeniach i gwarancjach udzielanych przez Skarb Państwa oraz niektóre osoby prawne<sup>2</sup> do potrzeb gospodarczych państwa, w tym związanych z pozyskiwaniem środków z Unii Europejskiej na realizację przedsięwzięć i projektów. Przyjęto założenie, że analizowane poręczenia i gwarancje SP i BGK stanowią istotny i od kilkudziesięciu lat praktycznie stosowany instrument rozwoju gospodarczego państwa. We wnioskach końcowych autor stwierdza m.in., że omawiane rozwiązania uPiG sprzyjają wspieraniu działalności innowacyjnej, inwestycyjnej i rozwojowej w państwie. Jednakże jedynie poręczenia i gwarancje BGK stanowią efektywne narzędzie służące pozyskiwaniu środków z Unii Europejskiej, które są związane z rządowym programem poręczeniowo-gwarancyjnym. Autor wykorzystał dogmatyczną oraz analityczną metodę badaw-

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<sup>1</sup> The Act of 8 May 1997 on Sureties and Guarantees granted by the State Treasury and certain legal entities (consolidated text: Dz.U. [Polish Journal of Laws] of 2018, poz. [item] 1808 with subsequent amendments), hereinafter: ASG.

<sup>2</sup> Ustawa z dnia 8 maja 1997 r. o poręczeniach i gwarancjach udzielanych przez Skarb Państwa oraz niektóre osoby prawne (tekst jedn. Dz.U. z 2018 r. poz. 1808 ze zm.), hereinafter: uPiG.

czą, opierając się na stanie prawnym obowiązującym 15 listopada 2019 r. O pewnych aspektach metody historycznej świadczą natomiast rozważania poświęcone ewolucji rozwiązań przyjmowanych w uPiG.

**Słowa kluczowe:** poręczenia; gwarancje; Skarb Państwa; programy rządowe.

## **1. Introduction**

As of 1 January 2003, the provisions of the Act of 23 November 2002 amending the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities and amending certain acts, entered into force<sup>3</sup>. As a result of the above mentioned rule-making activities in the Polish legal system, it became possible to grant guarantees or sureties on condition that the loan covered by them, or that funds that come from the issuance of bonds, are allocated to the creation of credit lines by banks, in order to co-finance programmes or projects under the European Union (EU) aid programmes. The most important task which was indicated in the course of works on the above-mentioned solutions was the need to improve the situation and regional development of the state with the use of the EU assistance funds<sup>4</sup>. However, in the literature, the discussed legal issues are rarely analysed and evaluated.

Since 15 May 2009, it has also been possible for Bank Gospodarstwa Krajowego (BGK) to grant sureties or guarantees under governmental guarantee and surety schemes, covering in particular projects implemented with the use of the EU funds, including those implemented with the use of public funds. This includes a scheme called “Supporting entrepreneurship with the use of sureties and guarantees of Bank Gospodarstwa Krajowego”, which fits into areas of implementation of the first of the three specific objectives of the Strategy for Responsible Development, which was adopted by a resolution of the Council of Ministers on 14 February

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<sup>3</sup> Act of 23 November 2002 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities and on the amendment of certain acts (Dz.U. of 2002, No 216, poz. 1824), hereinafter: the Act of 23 November 2002.

<sup>4</sup> Opinion of the Secretary of the European Integration Committee, Secr.Min DH/1846/2002/DPE/ar. (26 June 2002), Warsaw, p. 1.

2017<sup>5</sup>. In this way, sustainable economic growth, including knowledge and organisational excellence, are pursued.

The Author's task is to determine whether the analysed sureties and guarantees of ST and BGK constitute an important instrument of economic development, which is adequate to the needs and applicable in practice, from the perspective of the above-mentioned legal solutions being in force for more than ten years, and whether the ASG solutions are properly adapted to the existing needs on the market. It should be borne in mind that the sureties and guarantees in question are the only permissible forms in which the State authorities and BGK may contractually establish the material liability of the ST for the obligations of other entities.

Information on the guarantees and sureties of the ST granted in the years 2003–2018, i.e. starting from the date of entry into force of Article 7 (2)(3)(b) of the ASG, as well as in the period of implementation of the above mentioned Entrepreneurship Support Scheme from 2009 to 2018, will be of important significance in the conducted research.

## **2. Amendments to the Act on Sureties and Guarantees as an expression of the pursuit of the State's economic development needs**

Sureties granted by state entities were present as early as in the inter-war period and they came under the normative name of "a state warrant"<sup>6</sup>.

The Act on Sureties and Guarantees granted by the State Treasury and certain legal entities has undergone several dozens of changes since its adoption, currently providing the basis not only for granting of sureties and guarantees by the State Treasury, but also by BGK, under governmen-

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<sup>5</sup> Supporting entrepreneurship with the use of sureties and guarantees of Bank Gospodarstwa Krajowego of 7.03.2018, [https://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc-poreczenia-i-gwarancje/informacje-podstawowe/-/asset\\_publisher/9Hdo/content/program-wspieranie-przedsiębiorczości-z-wykorzystaniem-poreczenia-i-gwarancji-banku-gospodarstwa-krajowego](https://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc-poreczenia-i-gwarancje/informacje-podstawowe/-/asset_publisher/9Hdo/content/program-wspieranie-przedsiębiorczości-z-wykorzystaniem-poreczenia-i-gwarancji-banku-gospodarstwa-krajowego) (access on-line: 15.11.2019).

<sup>6</sup> Act of 1 July 1925 on granting state guarantee (Dz.U. of 1925, No 68, poz. 481), Act of 10 March 1932 on granting state guarantee (Dz.U. of 1932, No 33, poz. 341). More: I. Weinfeld, *Skarbowość polska*, Warszawa 1934, pp. 127–128.

tal guarantee and surety schemes. Legal regulations, especially procedural regulations and policies for granting sureties and guarantees, should take into account the a related to the involvement of public funds in the performance of tasks by various economic entities (not necessarily related to the public finance sector).

The process of evolution of the solutions adopted in the above-mentioned Act indicates that the legislator has systematically and consistently aimed at adapting the discussed financial instruments to the needs related to the economic development of the state (both in the public and private sector<sup>7</sup>). These actions should have taken various forms: e.g. the extension of the ASG solutions with new financial instruments, such as guarantees for the repayment of loans and credits<sup>8</sup>, support for intervention measures undertaken by certain units of the public finance sector<sup>9</sup>, increasing the sources of financing particular programmes, e.g. housing programmes<sup>10</sup>, and instruments that are conducive to restructuring employment in mining companies<sup>11</sup>. The economic objectives (set out in Article 7 of the ASG) which conditioned the implementation of an investment project to be covered by a surety or guarantee, were also extended, making the whole system of surety and guarantee more flexible<sup>12</sup>.

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<sup>7</sup> A. Drwiłło observes that the sureties and guarantees were only applicable under private law, and it was only with time that they became applicable under public law. More: A Drwiłło, *Poręczenia i gwarancje Skarbu Państwa jako instrument finansów publicznych* [in:] Z. Ofiarski (ed.), *XXV lat przeobrażeń w prawie finansowym i prawie podatkowym*, Szczecin 2014, p. 58.

<sup>8</sup> Act of 6 July 2001 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities (Dz.U. of 2001, No 81, poz. 876).

<sup>9</sup> For example the Agricultural Market Agency. These changes were introduced by the Act of 4 July 2002 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain Legal Entities (Dz.U. of 2002, No 121, poz. 1032).

<sup>10</sup> Act of 3 February 2001 on amending the Act on certain forms of supporting housing construction and the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities (Dz.U. No 16, poz. 167).

<sup>11</sup> Act of 27 June 2003 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities and on the amendment of certain acts (Dz.U. of 2003, No 139, poz. 1325).

<sup>12</sup> Act of 23 November 2002 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities and on the amendment of certain acts (Dz.U. of 2002 No 216, poz. 1824).

In order to meet the requirements of business practice, the ASG introduced the possibility of covering those transactions with a surety and guarantee of the Treasury that hedge against foreign exchange or interest rate risk, related to a loan covered by a surety or guarantee of the State Treasury. This was due to the growing importance of the use of derivative instruments to hedge against foreign exchange and interest rate risks<sup>13</sup>, which also reflected a targeted evolution of the surety and guarantee system. It should be emphasised that the changes referred to above did not concern only the Polish legal order, but were related also to the adoption of the EU legal order in Poland. The ASG provisions had to comply with the EU law, including with the definition of a micro-enterprise, small and medium-sized enterprise<sup>14</sup>, *de minimis* aid and aid scheme<sup>15</sup> etc.

The Act of 2 April 2009 amending the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities, the Act on Bank Gospodarstwa Krajowego and certain other acts<sup>16</sup> were of considerable importance in the process of developing the surety and guarantee system. In this act, Chapter 8a was introduced into the Act on Sureties and Guarantees granted by BGK under government programmes. This law also changed the objectives of BGK, as its main objectives included support for the government's social and economic programmes, as well as local government and regional development programmes, which covered in particular projects implemented with the use of the EU funds, and as of

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<sup>13</sup> Cf. The explanatory memorandum for the government draft act on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities and on the amendment of certain acts, form 679, Sejm of IV term of office, p. 20, 22. [http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/679/\\$file/679.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/679/$file/679.pdf) (access on-line: 15.11.2019).

<sup>14</sup> Act of 22 February 2019 amending the Act on supporting rural development with the participation of funds from the European Agricultural Fund for Rural Development under the Rural Development Programme for 2014-2020 and certain other acts (Dz.U. of 2019, poz. 504).

<sup>15</sup> Act of 25 January 2013 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities (Dz.U. of 2013, poz.198).

<sup>16</sup> Act of 2 April 2009 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities, Act on Bank Gospodarstwa Krajowego, and on the amendment of certain other acts (Dz.U. of 2009 No 65, poz. 545).

23 February 2011 also international financial institutions<sup>17</sup>. To the extent regulated in Chapter 8a of the ASG, the amendment triggered by the Act of 24 November 2017 amending the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities, and certain other acts<sup>18</sup> was also significant, as it referred to, *inter alia*, *ad hoc* instruments of intervention to prevent economic slowdown<sup>19</sup>. The evolution of the ASG solutions led also to the creation of a system of providing entrepreneurs with permanent and stable access to preferential guarantees, which enabled to plan the use of guarantee instruments in a strategic perspective<sup>20</sup>.

Subsequent amendments to the ASG also showed the importance of the experience of entities that were directly involved in granting guarantees and sureties. Thus, the aim was to make a more thorough use of BGK in the process of granting guarantees and sureties to entrepreneurs on an arm's length basis, possibly in the form of individual public aid. Therefore, it can be concluded that over time individual changes of the ASG allowed BGK to grant public aid or *de minimis* aid in the form of guarantees and sureties on a wider scale<sup>21</sup>. The explanatory memorandum to the government's draft of an amendment to the ASG explicitly indicates that BGK's experience of cooperation with banks with regard to surety activities is the starting point for the amendment<sup>22</sup>. This leads to the conclusion that the legislator recognized the need for the adequacy of changes made

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<sup>17</sup> Act of 5 January 2011 on the amendment of the Act on Bank Gospodarstwa Krajowego and certain other acts (Dz.U. of 2011, No 28, poz. 143).

<sup>18</sup> Act of 24 November 2017 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities, and certain other acts (Dz.U. of 2017, poz. 2433).

<sup>19</sup> A. Drwiłło, *Poręczenia...*, p. 57.

<sup>20</sup> The explanatory memorandum to the government draft act on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities, and certain other acts, form No 1965, Sejm IV term of office, p. 1965, <http://sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=1965> (access on-line: 15.11.2019), p. 2.

<sup>21</sup> Entry into force of the Act of 25 January 2013 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities (Dz.U. of 2013, poz. 198).

<sup>22</sup> Cf. the explanatory memorandum to the government draft act on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities, and certain other acts, form No 964, Sejm IV term of office, <http://www.sejm.gov.pl/Sejm7.nsf/druk.xsp?nr=964> (access on-line: 15.11.2019).

to the surety and guarantee system, i.e. adjusting the law not only to the changing economic and social conditions, but first of all – to use practical knowledge and experience of the entities participating in the surety and guarantee system.

### **3. The importance of the ST sureties and guarantees in the process of supporting investment projects with the use of funds from the European Union**

With the perspective of several dozens of years of the ASG regulations in force, there is no doubt that the ST sureties and guarantees are important instruments of supporting the state's economic development. This is evidenced by the fact that the amount of unmatured liabilities with regard to the above amounted to nearly PLN 108.8 billion at the end of 2018<sup>23</sup>, while the sum of guarantees granted in 2018 reached nearly PLN 11.5 billion<sup>24</sup>. The legislator's determination of the economic objectives of each investment project which may be supported with the use of the discussed instruments, should be evaluated positively.

Article 7 of the ASG lists several pro-developmental areas which are important to the state economy. The first category of the above mentioned ST sureties and guarantees is a surety or a guarantee granted on condition that the credit covered by them or the funds coming from the issue of bonds are used to finance investment projects. The detailed enumeration of these guarantees is contained in Article 7(1)(1–6) of the ASG. In paragraph 2 of the above-mentioned Article, the legislator also indicated other

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<sup>23</sup> The announcement of the Minister of Finance of 27 May 2019. (Dz.Urz. [Official Journal] of 2019, poz. 468).

<sup>24</sup> *Information on sureties and guarantees granted in 2018 by the State Treasury, certain legal persons and Bank Gospodarstwa Krajowego*, Warszawa 2019, [http://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc/poreczenia-i-gwarancje/informacje-podstawowe/-/asset\\_publisher/9Hdo/content/informacje-o-poreczeniach-i-gwarancjach-udzielonych-przez-skarb-panstwa-niektore-osoby-prawne-oraz-bank-gospodarstwa-krajowego/pop\\_up?\\_101\\_INSTANCE\\_9Hdo\\_viewMode=print](http://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc/poreczenia-i-gwarancje/informacje-podstawowe/-/asset_publisher/9Hdo/content/informacje-o-poreczeniach-i-gwarancjach-udzielonych-przez-skarb-panstwa-niektore-osoby-prawne-oraz-bank-gospodarstwa-krajowego/pop_up?_101_INSTANCE_9Hdo_viewMode=print) (access on-line: 15.11.2019).



areas supported by the ST sureties and guarantees<sup>25</sup>. However, following the limited framework of this study, it is necessary to first of all specify the sureties and guarantees granted in connection with the purpose of the credit covered by them or the use of funds from the issue of bonds for the creation of credit lines by banks in order to finance investment projects of local government units and micro-enterprises, small and medium-sized enterprises (SME), as well as to co-finance schemes or projects under EU aid programmes. An application of a lower commission fee for the above-mentioned sureties and guarantees on condition that a loan or funds from the issue of bonds were allocated for the establishment of credit lines for co-financing the above-mentioned schemes (projects) was a specific incentive to use the instruments in question. Currently, the commission fee is 0.2% of the amount of the liability in the case of a surety and 0.3% of the amount of the liability in the case of a guarantee<sup>26</sup>. The commission fee charged for these sureties and guarantees has not changed since 2003<sup>27</sup>. The assumptions of the authors of the draft allow to conclude that these guarantees and sureties are intended to enhance internal and external competitiveness of the State's economy.

Sureties and guarantees provided by the ST may be regarded as a form of a public aid. However, this will be the case only as consequence of providing sureties and guarantees to a particular undertaking or produc-

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<sup>25</sup> Cf. A. Jerzyk, *Gwarancje udzielane w imieniu i na rachunek Skarbu Państwa* [in:] E. Kowalewska, P. Mańczyk, *Współczesne problemy bankowości i sektora finansów publicznych. Vol. I*, Szczecin 2015, p. 295.

<sup>26</sup> § 5 of the Regulation of the Council of Ministers of 19 May 2009 on granting sureties and guarantees by the State Treasury, and a commission fee on sureties and guarantees (Dz.U. of 2009, No 77, poz. 650).

<sup>27</sup> § 17 of the Regulation of the Council of Ministers of 20 February 2003 on the granting of sureties and guarantees by the State Treasury, and a commission fee on sureties and guarantees (Dz.U. of 2003, No 41, poz. 348). § 17 of the Regulation of the Council of Ministers of 20 February 2004 on the granting of sureties and guarantees by the State Treasury, and a commission fee on sureties and guarantees (Dz.U. of 2004, No 170, poz. 1786); § 17 of the Regulation of the Council of Ministers of 19 May 2009 on the granting of sureties and guarantees by the State Treasury and a commission fee on sureties and guarantees (Dz.U. of 2009, No 77, poz. 650). More on the commission fee: W. Bożek, *Konstrukcja prawna opłaty prowizyjnej od poręczeń i gwarancji udzielanych przez Skarb Państwa* [in:] Z. Ofiarski (ed.), *XXV lat przeobrażeń w prawie finansowym i prawie podatkowym*, Szczecin 2014, pp. 25–33.

tion sector is favoured. This is a very important issue from the point of view of the principle of a fair competition on the market as the instruments in question could distort competition and affect trade between the EU Member States under the above-mentioned conditions<sup>28</sup>. Therefore, the analysis of the adopted legal solutions leads to the conclusion that in the circumstances of a specific case it is necessary to assess whether the State aid which has been granted in the analysed form is compatible with Articles 107 and 108 of the Treaty on the European Union and the Treaty establishing the European Community<sup>29</sup> (TFEU). Any aid granted by the EU Member State or through the State's resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market in so far as it affects trade between Member States. The TFEU<sup>30</sup> identifies the types of an aid that have been declared compatible with the single market. This includes an aid to promote the economic development of areas where the standard of living is low or where there is a serious underemployment, as well as an aid to promote an execution of important projects that are subject of a common European interest or to remedy a serious disturbance in the economy of a Member State. Furthermore, the development of certain economic activities or of certain economic areas may also be facilitated where trading conditions do not adversely affect trading conditions to an extent contrary to the common interest of the EU Member States.

The conclusion from the analysis of the above mentioned issues is that the sureties and guarantees provided by the ST in the discussed area of the Polish economy may be used in the conditions statutorily defined, with respect towards the limitations resulting from the ASG itself, as well as international acts.

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<sup>28</sup> Opinion of the Secretary of the European Integration Committee, Secr.Min DH/1846/2002/DPE/ar. (26 June 2002), Warsaw, p. 1.

<sup>29</sup> Treaty on the European Union and the Treaty establishing the European Community of 29 December 2006 consolidated version of the Treaty on European Union (Dz.U. 2004, No 90, poz. 864[2], with subsequent amendments).

<sup>30</sup> Article 107(3) TFEU.

#### 4. Information on sureties and guarantees granted by the State Treasury in the years 2003–2018

In accordance with the principle of a transparency of public finances, the Council of Ministers makes annual submissions to the Sejm with an information on sureties and guarantees granted by the State Treasury, as well as sureties and guarantees granted by BGK under government schemes, at a date appropriate to the presentation of the report on the implementation of the state budget for a given year, i.e. at the latest by the end of the fifth month of the financial year following the year to which this information relates to<sup>31</sup>. This makes it possible to determine not only the total amount of the sureties and guarantees granted by the ST (Table 1), but also the sureties and guarantees granted by the SP for the purpose indicated in Article 7(2)(3)(b) of the ASG (Table 2). It is worth noting that the ST guarantees and sureties must not exceed the limits set annually in the budget law.

Table 1. Sureties and guarantees granted by the ST and their statutory limit in the period 2003–2018.

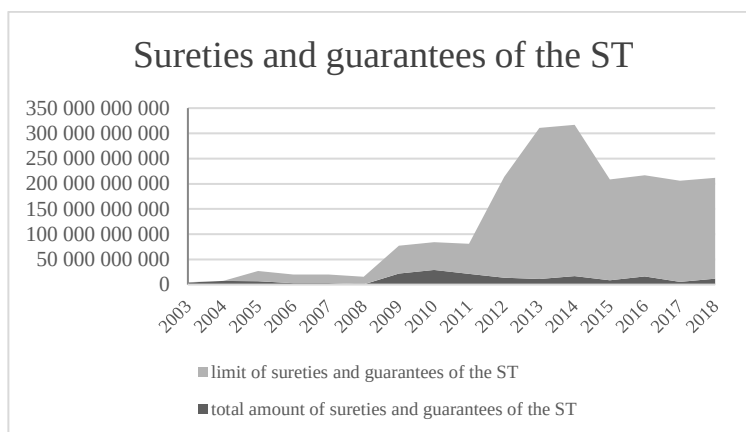
Sureties and guarantees of the ST			
	A	B	A/B (in %)
	total amount of sureties and guarantees of the ST	limit of the sureties and guarantees of the ST	
2003	4,354,130,510	23,000,000,000	18.93%
2004	7,093,010,068	17,000,000,000	41.72%
2005	6,758,362,050	20,000,000,000	33.79%
2006	3,034,800,900	17,000,000,000	17.85%
2007	3,080,774,798	17,000,000,000	18.12%
2008	628,878,000	15,000,000,000	4.19%
2009	22,029,008,300	55,000,000,000	40.05%
2010	29,178,339,395	55,000,000,000	53.05%

<sup>31</sup> More on transparency: T. Dębowska-Romanowska, *Prawo finansowe. Część konstytucyjna wraz z częścią ogólną*, Warszawa 2010, p. 118.

2011	21,221,962,222	60,000,000,000	35.37%
2012	13,648,732,180	200,000,000,000	6.82%
2013	10,959,774,560	300,000,000,000	3.65%
2014	16,878,348,600	300,000,000,000	5.63%
2015	8,502,210,200	200,000,000,000	4.25%
2016	16,514,925,000	200,000,000,000	8.26%
2017	5,718,060,000	200,000,000,000	2.86%
2018	11,632,581,100	200,000,000,000	5.82%

Source: Own study based on: *information on sureties and guarantees granted by the State Treasury, certain legal entities and Bank Gospodarstwa Krajowego, Warszawa 2003–2018*, <http://www.mf.gov.pl/> (access on-line: 15.11.2019), Budget laws in the period 2003–2018<sup>32</sup>.

Chart 1. The amount of sureties and guarantees granted by the ST and their limitation over the years 2003–2018.



<sup>32</sup> By chronology: Dz.U. of 2002 No 235, poz. 1981; Dz.U. of 2004 No 17, poz. 167; Dz.U. of 2004 No 278, poz. 2755; Dz.U. of 2006 No 35, poz. 244; Dz.U. of 2007 No 15, poz. 90; Dz.U. of 2008 No 19, poz. 117, Dz.U. of 2009 No 10 poz. 58 with subsequent amendments, Dz.U. of 2010 No 19 poz. 102, Dz.U. 2011 No 29 poz. 150, Dz.U. of 2012 poz. 273, Dz.U. of 2013 poz. 169, Dz.U. of 2014 poz. 162, Dz.U. of 2015 poz. 153 with subsequent amendments, Dz.U. of 2016 poz. 278 with subsequent amendments, Dz.U. of 2017 poz. 108 with subsequent amendments, Dz.U. of 2018 poz. 291; Dz.U. of 2019 poz. 198.

Source: Own study based on: *information on sureties and guarantees granted by the State Treasury, certain legal entities, and Bank Gospodarstwa Krajowego*, Warszawa 2008–2018, <http://www.mf.gov.pl/> (access on-line: 15.11.2019), Budget laws in the period 2003–2018<sup>33</sup>.

The analysis of the information on sureties and guarantees granted by the ST leads to the conclusion that the total amount of sureties and guarantees granted by the ST did not exceed 54% of the statutory limit in the years 2003–2018. In the last seven years there has been a significant increase in the limit of sureties or guarantees granted (from PLN 60 billion in 2011 to PLN 200 billion in 2018), but the total amount of the ST sureties and guarantees in this period did not exceed 8.5%. The dynamics of the total amount of the ST sureties and guarantees granted, which amounted from about PLN 0.63 billion in 2008 to nearly PLN 29.18 billion in 2010 (increase by about 98%) is also noticeable. Significant diversification can also be noted as regards to the statutory limit of guarantees and sureties granted by the ST which in the analysed period amounted to PLN 15 billion in 2008 to PLN 300 billion in 2013 and 2014. The data in Table 1 shows that in the years 2003–2018 the statutory limit for guarantees and sureties granted by the State Treasury was never exceeded, and so the Council of Ministers, the Minister of Finance and BGK performed tasks imposed on them in the ASG in a rational manner and within the limits set in the budget law. This was important for maintaining the security and the stability of the public finance sector. At the same time, it allows us to make a conclusion on the specific nature of the sureties and guarantees, which constitute a unique form of establishing the material liability of the ST for the obligations of other entities (both private and public, as the legal form and ownership structure of the entity is of no importance). It should be stressed that shaping statutory

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<sup>33</sup> By chronology: Dz.U. of 2002, No 235, poz. 1981; Dz.U. of 2004, No 17, poz. 167; Dz.U. of 2004, No 278, poz. 2755; Dz.U. of 2006, No 35, poz. 244; Dz.U. of 2007, No 15, poz. 90; Dz.U. of 2008, No 19, poz. 117, Dz.U. of 2009, No 10 poz. 58 with subsequent amendments, Dz.U. of 2010, No 19 poz. 102, Dz.U. 2011, No 29 poz. 150, Dz.U. of 2012 poz. 273, Dz.U. of 2013 poz. 169, Dz.U. of 2014 poz. 162, Dz.U. of 2015 poz. 153 with subsequent amendments, Dz.U. of 2016 poz. 278 with subsequent amendments, Dz.U. of 2017 poz. 108 with subsequent amendments, Dz.U. of 2018 poz. 291.

limits at such high level is connected with its use for activities that may potentially be taken in the event of a possible deterioration of the conditions of operation of the Polish financial system in the face of a possible financial and economic crisis, through the possibility of supporting entities belonging to this sector. Due to the preventive character of the above-mentioned measures, the fact of not using a fixed limit for the above purpose should be assessed positively.

The above analysis of the general issues is to show the importance of the title types of financial instruments, as in only three budget years (2003–2005) were guarantees and sureties granted on behalf of the ST for the establishment of credit lines, *inter alia*, for the purpose of co-financing programmes or projects under the EU aid programmes, as presented in Table 2.

Table 2. Sureties and guarantees of the ST granted for the objective indicated by Article 7(2)(3)(b) of the ASG.

Sureties and guarantees of the ST granted for the objective indicated by Article 7(2)(3)(b) of the ASG				
year	type of assistance	amount	currency	beneficiary
2003	Granting a guarantee for the repayment of a loan taken out by Bank Ochrony Środowiska S.A. for the establishment of credit lines to co-finance investment undertakings of local government units and small and medium-sized enterprises, as well as schemes or projects under European Union aid programmes.	53,500,000	EUR	European Investment Bank
2004	Guarantee of the State Treasury in connection with the liability of Bank Ochrony Środowiska S.A. for the establishment of credit lines to co-finance investment undertakings of local government units and small and medium-sized enterprises, as well as programmes or projects under European Union aid programmes.	53,500,000	EUR	European Investment Bank

2005	Guarantee granted on the basis of the Resolution No 116/2005 of the Council of Ministers of 4 May 2005, which concerned repayment of the loan taken out by BGK for partial financing of the Programme of Social and Economic Cohesion with the EU, schemes or projects under EU aid programmes and projects related to regional development and urban renovation, and constitutes a commitment of the ST.	42,000,000	EUR	European Investment Bank
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Source: Own study based on: *information on sureties and guarantees granted by the State Treasury, certain legal entities and Bank Gospodarstwa Krajowego*, Warszawa 2003-2018, <http://www.mf.gov.pl/> (access on-line: 15.11.2019).

## 5. Sureties and guarantees of BGK under the governmental surety and guarantee schemes

Sureties or guarantees of BGK are granted under the governmental surety and guarantee schemes and they relate to the repayment of credits and loans, carrying out obligations arising from bonds, as well as other obligations, in particular due performance of an agreement or making of a security deposit. With this in mind, it can be pointed out that the basic objectives of BGK activity include supporting the economic policy of the Council of Ministers, governmental social and economic programmes, including the surety and guarantee schemes, as well as local government and regional development programmes.

Since 15 May 2009, the possibility of granting sureties or guarantees under governmental surety and guarantee schemes has been introduced into the Polish legal system, these schemes were defined before 1 January 2018 as social and economic programmes and local government and re-

gional development programmes<sup>34</sup>. Changing the name of these programmes clarified the understanding of this idea and this also made it possible to distinguish a governmental programme defined in that way from the programmes referred to in the Act of 6 December 2006 on the principles of conducting development policy<sup>35</sup>.

The above mentioned sureties and guarantees may be provided by BGK in its own name and on its own account. These instruments shall cover, in particular, projects which are relevant from the point of view of the scope of the research carried out with the EU funds, but also by international financial institutions, i.e. financial institutions the majority of whose equity capital belongs to countries that are members of the Organisation for Economic Cooperation and Development or the central banks of such countries<sup>36</sup>. Apart from the above-mentioned, governmental schemes may also include infrastructure and SME sector development projects. Most of the beneficiaries of the above-mentioned surety and guarantee scheme are centred around these projects. It should be borne in mind that each of the above-mentioned projects may be implemented with the use of public funds, and sureties or guarantees may constitute public aid or *de minimis* aid. The solutions in question definitely have a positive impact on the competitiveness of the economy and entrepreneurship, including on the functioning of enterprises.

From the perspective of the last ten years of the implementation of the above-mentioned legal solutions, it can be concluded that the governmental surety and guarantee schemes which *de facto* facilitate the access of the SME sector to external sources of financing through a recognisable surety and guarantee scheme, operating in accordance with the applicable standards, and also using the EU funds. From the point of view of our deliberations, “Supporting Entrepreneurship with the Use of Sureties and Guarantees”

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<sup>34</sup> Act of 24 November 2017 on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities, and certain other acts (Dz.U. of 2017, poz. 2433).

<sup>35</sup> Act of 6 December 2006 on the principles of conducting development policy, i.e. Dz.U. of 2019 poz. 1295.

<sup>36</sup> Article 4(1)(3) of the Banking Law of 29 August 1997 (consolidated text: Dz.U. of 2018, poz. 2187, with subsequent amendments).



tees of Bank Gospodarstwa Krajowego” of 7 March 2018 is the most important of the governmental surety and guarantee schemes. Its primary objective is to enable the use of sureties and guarantees, including mainly portfolios of loans granted by banks – the so-called portfolio guarantees – as instruments preferred by banks and other institutions for hedging the risk of financing and implementation of the projects referred to in Article 34a(1)(1) of the ASG. In particular, we should emphasise the pursuit of providing support for the access of the SMEs to the financing of their development needs, including investment needs, aimed at increasing the role of guarantees as an instrument ensuring taking over part of the risk from entrepreneurs on preferential terms (*de minimis* aid). This solution should be appreciated as it facilitates the use of the EU funds, provided that there are beneficiaries interested in such support.

Bank Gospodarstwa Krajowego implements the scheme of supporting entrepreneurship based on cooperation with the lending banks. It is worth stressing that BGK conducts its activity both in direct form (granting guarantees and sureties) and by performing tasks related to the development of the system of regional and local guarantee funds. A detailed analysis of the information on the sureties and guarantees granted by BKG under the scheme of supporting entrepreneurship<sup>37</sup> leads to the conclusion that in the group of the most frequently used products one should indicate<sup>38</sup>:

1. loan repayment sureties/guarantees granted on a portfolio basis, including:
  - a) loan repayment guarantees under the *de minimis* Portfolio Guarantee Line (PLD guarantees); under PLD guarantees, BGK also granted combined guarantees under loan repayment security with a guarantee granted by a guarantee fund (PLD PLUS guarantees);

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<sup>37</sup> *Information on sureties and guarantees granted in 2018 by the State Treasury, certain legal persons and Bank Gospodarstwa Krajowego*, Warszawa 2018, [http://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc/poreczenia-i-gwarancje/informacje-podstawowe/-/asset\\_publisher/9Hdo/content/informacje-o-poreczeniach-i-gwarancjach-udzielonych-przez-skarb-panstwa-niektore-osoby-prawne-oraz-bank-gospodarstwa-krajowego/](http://www.mf.gov.pl/ministerstwo-finansow/dzialalnosc/poreczenia-i-gwarancje/informacje-podstawowe/-/asset_publisher/9Hdo/content/informacje-o-poreczeniach-i-gwarancjach-udzielonych-przez-skarb-panstwa-niektore-osoby-prawne-oraz-bank-gospodarstwa-krajowego/) (access on-line: 15.11.2019).

<sup>38</sup> In addition, BGK also granted, on a portfolio basis, guarantees for student loans.

- b) loan repayment guarantees under the Portfolio Guarantee Line with re-guarantee granted by the European Investment Fund under the COSME programme (PLG COSME guarantees);
  - c) loan repayment guarantees granted under the FG POIR Portfolio Guarantee Line financed from the Guarantee Fund for the support of innovative enterprises under the Smart Growth Operational Programme
2. sureties/guarantees granted on an individual basis, including:
- a) sureties and guarantees of loan repayment,
  - b) performance bonds.

The area of the analysed types of sureties and guarantees is still a topical and developmental area of functioning of public finance. The solutions of the ASG should therefore make it possible to initiate new undertakings related to the guarantee and surety system. Works carried out in 2018 in BGK is a guarantee resulted in product financed from the EU funds, under the Digital Poland Operational Programme. These guarantees which have been/are addressed to entrepreneurs, will help to improve an access to the financing of broadband investments and liquidity financing of telecommunications companies.

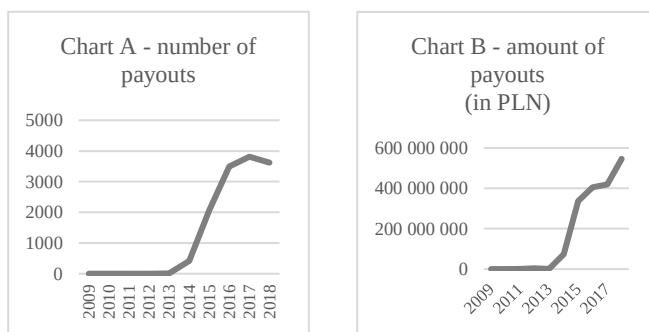
The number of sureties and guarantees granted by BGK under the scheme of supporting entrepreneurship from 2013 to 2018 remains at the level of several tens of thousands – the highest of them was achieved in 2014, when it was over 63 thousand sureties and guarantees (Table 3.). However, the significant increase in the number of payouts on an account of economic sureties and guarantees granted in the analysed period is worrying. While in the period 2009–2010 there were no payouts on account of the above, in 2018 there were as many as 3615 (Chart 2A). Moreover, the amount of payouts on account of guarantees and sureties granted increased significantly (from PLN 0 in 2010 to nearly PLN 550 million in 2018).

Table 3. Economic sureties and guarantees of BGK under the scheme of supporting entrepreneurship over the period 2009–2018.

year	number of granted economic sureties and guarantees	amount of granted economic sureties and guarantees	payouts under the granted economic sureties and guarantees	
			number of payouts	amount of payouts (in PLN)
2009	17	6,771,996.00	0	0.00
2010	51	34,644,698.00	0	0.00
2011	26	19,970,452.50	2	793,821.87
2012	274	91,383,180.09	3	4,568,821.87
2013	41,354	7,276,326,550.14	7	1,242,021.00
2014	63,162	9,744,646,350.05	420	74,055,000.00
2015	54,217	8,989,653,517.01	2,054	336,636,950.67
2016	50,042	9,622,655,190.02	3,493	405,199,209.27
2017	43,178	10,473,517,865.13	3,813	419,823,873.73
2018	42,912	11,684,856 608.30	3,615	546,286 046.33

Source: author on the basis of the *Information on sureties and guarantees granted by the State Treasury, certain legal entities and Bank Gospodarstwa Krajowego*, Warszawa 2009–2018, <http://www.mf.gov.pl/> (access on-line: 15.11.2019).

Chart 2. Number and amount of payouts under economic sureties and guarantees in the period 2009–2018.



Source: author on the basis of the *Information on sureties and guarantees granted by the State Treasury, certain legal entities and Bank Gospodarstwa Krajowego*, Warszawa 2009–2018, <http://www.mf.gov.pl/> (access on-line: 15.11.2019).

## 6. Conclusion

The ST guarantee and surety system is primarily used to support infrastructure projects important for the national economy<sup>39</sup>. Over the past several decades, the legislator has recognised the above objective by adapting the solutions of the ASG to the economic needs and changing social conditions in the Republic of Poland, taking into account the experience of the entities participating in this system, as well as meeting innovative market needs. Therefore, it can be asserted that an increase in competitiveness and innovativeness of the economy, as well as changes in expectations of Polish society went hand in hand with the systemic adjustment of the functions of financial instruments related to the granted sureties and guarantees. The analysis of guarantee products offered on the market based on the ASG indicates that, apart from the obvious benefits for the national economy, it is possible to obtain the EU funds to continue and initiate further guarantee programmes carried out, inter alia, at BGK.

Due to the involvement of not only domestic but also foreign funds, in the discussed scope it is particularly desirable to maintain high standards of services that are provided regardless of the location and an area of operation of entities benefiting from sureties and guarantees of the ST and BGK. Nevertheless, it should be stressed that stimulation of economic development by means of public guarantees and sureties should be carried out with the use of funds from the foreign aid<sup>40</sup>, but, at the same time, with the reasonable activity of the ST. This activity must not jeopardise or distort internal competition between entities of the free economy or affect trade between the EU Member States<sup>41</sup>.

It should be borne in mind that the direct effect of the sureties and guarantees granted by the ST is that there is a risk of disbursement of

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<sup>39</sup> Z. Ofiarski, *Prawo finansowe*, Warszawa 2010, p. 56 and P. Paradowski, *Regulacja prawna poręczeń i gwarancji skarbowych w Polsce* [in:] A. Pomorska, M. Pypec (eds), *Reforma sektora finansów publicznych – wybrane problemy*, Radom 2003, p. 31.

<sup>40</sup> R. Pastusiak, *Poręczenia Skarbu Państwa*, „Rzeczpospolita” of 10 grudnia 1996, p. 14.

<sup>41</sup> M. Bączyk, *Poręczenia i gwarancje w udzielane przez Skarb Państwa oraz niektóre osoby prawne*, Warszawa 1998, pp. 4–5; J. Rynkiewicz, *Kontrola podwyższonego ryzyka*, „Gazeta Bankowa” 1996, No 31, p. 5.

funds from the State budget resulting from the performance of the duties of a guarantor or a surety by the State. The scale of financial risk related to the sureties and guarantees granted, and the impact of the ST sureties and guarantees on the amount of public debt, result in setting high requirements that must be met by entities applying for support in this form. It is also reasonable to pursue the limitation of the risk of disbursements from the state budget related to the granted sureties and guarantees. Only a far-reaching prevention based on legal solutions will contribute to preventing, e.g. possible pressure to use the SP guarantees and sureties as a substitute for grants<sup>42</sup>.

It should be stressed that the transparency of activities related to guarantees and sureties granted by the ST and BGK is conducive to the assessment of the degree of an impact which the instruments in question have on the state's economic development. In particular, with regard to the government's surety and guarantee schemes, information obligations serve to assess the impact of the guarantees and sureties granted to SMEs in the area of, *inter alia*, investment and innovation.

The number of guarantees and sureties granted in the period of 2003–2018 by the ST within the scope defined in the title of this study is small, as opposed to guarantees and sureties granted by BGK, which supports, *inter alia*, the development of social housing, infrastructure, innovation, and assisting local government units in using the EU funds or supporting projects related to environmental protection. The main tasks of BGK include carrying out guarantee or surety activities under the governmental guarantee and surety schemes or on behalf of and for the account of the State Treasury on the basis of the ASG, in particular for the SME sector. Therefore, it can be concluded that BKG implements the postulates of the necessity to aid investments using the EU funds, which were raised in the

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<sup>42</sup> P. Panfil, *Prawne i finansowe uwarunkowania długu Skarbu Państwa*, Warszawa 2011, p. 332, A. Drwiłło, *Poręczenia...*, p. 65 and The explanatory memorandum to the government draft act on the amendment of the Act on Sureties and Guarantees granted by the State Treasury and certain legal entities, and certain other acts, form No 679, Sejm of IV term of office, [http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/679/\\$file/679.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/679/$file/679.pdf), p. 30, (access on-line: 15.11.2019).

literature, including investments in the field of innovation, infrastructure, housing, environmental protection, and job creation<sup>43</sup>.

The conclusion from the analysis of the discussed legal solutions in their juxtaposition with statistical data also leads to the assertion that the discussed legal and financial instruments increase entrepreneurs' access to external sources of financing by granting sureties and guarantees – they also facilitate the financing of projects implemented in selected areas of the social and economic periphery with poor access to public services, or border areas. The support granted by BGK in the analysed area is conducive to the promotion of development undertakings (modernisation of means of production, equipping with new or further equipping the existing workplaces), undertakings related to modern information and communication technologies, as well as product and process innovations (e.g. through the adaptation of ready technologies and solutions purchased by the enterprise, introduction of the so-called imitation innovations, and innovations on the enterprise scale).

In conclusion, the sureties and guarantees referred to in the ASG have a positive impact on the development of enterprises and improvement of their competitiveness, as well as the efficient use of EU funds. The sureties and guarantees granted by BGK are of particular importance in this respect.

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<sup>43</sup> K. Marchewka-Bartkowiak, *Gwarancje i poręczenia Skarbu Państwa – niewykorzystane możliwości?*, „Infos Biuro Analiz Sejmowych” 2007, No 9, p. 3.

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