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Agata Kowalska
Maria Curie-Skłodowska University (Lublin), Poland
ORCID: 0000-0002-0539-4710
agata.kowalska@mail.umcs.pl

International Financial Reporting Standards as a Source of Balance Sheet Law

Międzynarodowe Standardy Sprawozdawczości Finansowej jako źródło prawa bilansowego

ABSTRACT

This article examines the admissibility of the adoption by EU authorities of Regulation No. 1606/2002 on the application of international financial reporting standards (IFRS) in the Member States. The paper also defines the relationship between the provisions of the EU Regulation and the Polish Accounting Act. The legal dogmatic analysis carried out leads to the conclusion that the EU authorities, in issuing the Regulation on the application of IFRS, acted within the limits of the competence entrusted by the Member States. The issuance of the regulation is lawful and proportionate to achieve the goal of unifying accounting rules. In the current state of the law, there is also no conflict between the provisions of the EU Regulation and the Polish Accounting Act.

Keywords: balance sheet law; accounting; IFRS; EU regulation; primacy of EU law

CORRESPONDENCE ADDRESS: Agata Kowalska, Research Assistant, Maria Curie-Skłodowska University (Lublin), Faculty of Law and Administration, Institute of Legal Sciences, 5 Maria Curie-Skłodowska Square, 20-031 Lublin, Poland.

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INTRODUCTION

The paper presents the legal nature of international financial reporting standards (IFRS). These standards, together with the Polish Accounting Act,[1] constitute one of the most important sources of balance sheet law. Originally, IFRS (formerly IAS – international accounting standards) were enacted by an independent organization of a private nature. Later, however, under an EU regulation, they were adopted in EU Member States. Although there is no doubt that IFRS are normative acts that determine rules of conduct, the current state of research in this area is insufficient. Previous scientific publications[2] only deal with the harmonisation of legal solutions in the field of accounting, while the tool of harmonisation is a directive and not an EU regulation. Undertaking research on the legal nature of IFRS and their place in the Polish legal system is therefore justified by the lack of research that would present this issue in a comprehensive manner.

This study aims primarily to examine the competence of EU bodies to issue a regulation on the application of IFRS. The article attempts to answer the question whether there is a standard of competence in the currently applicable legal provisions entitling EU bodies to adopt such normative acts in the field of accounting. In turn, the secondary objective is to assess the appropriateness of continuing to adopt IFRS in the form of a Union regulation. In connection with the above research problem, the study also concerns the effectiveness of regulations regarding the application of IFRS in the Polish legal system, with particular emphasis on constitutional regulations.

Achieving the research objectives formulated in this way required the use of primarily a formal-dogmatic method consisting in the analysis of national and EU law provisions. The basic normative material examined are the provisions of the Constitution of the Republic of Poland,[3] the Polish Accounting Act, and the EU treaties. The full implementation of the research objectives also required the use of the method of analysis and criticism of the literature on the subject. The above research methods allowed for a response to the applicable legal solutions and the formulation of conclusions *de lege lata* and *de lege ferenda*.

[1] Act of 29 September 1994 on accounting (consolidated text, Journal of Laws 2023, item 120, as amended).

[2] These publications are presented and analyzed in the substantive part of the article.

[3] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended).

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THE ORIGINS AND ESSENCE OF IFRS AS A SOURCE OF BALANCE SHEET LAW

International Financial Reporting Standards are intended to unify legal regulations used in accounting. They define rules for the recognition of income and expenses in books and records, rules for the valuation of assets and liabilities, and the rules for the preparation of financial statements. Therefore, IFRS cover by their regulation the issues characteristic of balance sheet law norms. In literature, both balance sheet law and accounting are terms that are defined in a varied manner. According to one of the definitions adopted, accounting is a specific type of record-keeping that reflects the economic activity and the property situation of the enterprise.[4] The difficulties in identifying what accounting is are mainly due to the fact that the Polish Accounting Act fails to define the main subject matter of the regulation. The only indication seems to be the provision of Article 4 (3) of the Accounting Act, which determines the substantive scope of accounting. According to this provision, accounting includes, among others, keeping accounts on the basis of accounting evidence, valuation of assets and liabilities, determination of financial performance, and preparation of financial statements. The wording of Article 4 (3) of the Accounting Act allows us to assume that accounting consists of the entirety of financial reporting activities.[5] On the other hand, all the rules governing accounting thus understood are called balance sheet law.

From the point of view of legal dogma, balance sheet law is considered part of commercial law.[6] The basic function of balance sheet law is the information function of providing information to owners, investors, creditors and public authorities about the property and financial situation of the economic operator and other entities. The objectives and functions of balance sheet law make it possible to distinguish it from tax law. Tax law serves to regulate legal relationships whose purpose is to provide proceeds to the national budget and the budgets of the local government. However, the links between the two branches of law cannot be overlooked. These links may arise from mutual references and even the spontaneous similarity of some legal institutions. As an example, the accrual basis for determining the timing of the cost incurred in income taxes or the depreciation of fixed assets and intangible assets can be cited. When analysing the essence of accounting, it should also be noted that balance sheet law shows strong links with law of public finance. This is primarily about the rules on the budgetary accounting of public finance entities.[7]

[4] See S. Skrzywan, *Teoretyczne podstawy rachunkowości*, Warszawa 1973, p. 13.

[5] See M. Supera-Markowska, *Rachunkowość – aspekty prawne i podatkowe*, Warszawa 2022, pp. 32–33.

[6] In the study of Czech financial law, balance sheet law is traditionally categorised as part of financial law. Balance sheet law, together with norms on valuation and financial reporting, is regarded as a specific area of financial law. See in more detail P. Hrubá Smržová, *Pojem finanční právo a jeho systém*, [in:] P. Hrubá Smržová, P. Mrkývka et al., *Finanční a daňové právo*, Plzeň 2020, pp. 54–55.

[7] For more details on this subject, see A. Hanusz, *Miejsce prawa finansowego w systemie prawa polskiego*, "Państwo i Prawo" 2020, no. 7, p. 21.

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As an example, the financial plans of special purpose funds and executive agencies are presented on an accrual basis of accounting.

The need to harmonize national accounting legal solutions in the EU Member States has emerged owing to the rapid development of capital and money markets as a result of the intensification of international trade. In 1973, the International Accounting Standards Committee was established by an agreement between professional accounting organizations in Australia, Canada, Ireland, the United Kingdom and the United States. Its main objective has been to develop, considering also the public interest, a set of globally applicable, transparent accounting standards.[8] The Committee has also taken steps to promote the application of the standards and to achieve a state of compliance between IAS and national accounting standards. The next step to harmonize accounting rules internationally was the establishment in 1997 of the Standing Interpretations Committee, which was later transformed into the International Accounting Standards Board. Today, the Council continues to develop standards that have been referred to as IFRS since 2001.

In the literature, the process of adaptation of IFRS by the EU is limited to considerations of the harmonisation of accounting rules through the enactment of EU directives.[9] The authors who study this matter refer to the rationale for the gradual approximation of the economic policies of EU Member States. The legal basis for the issuing of directives by EU institutions harmonising the rules of functioning of economic operators is Article 114 of the Treaty on the Functioning of the European Union.[10] Pursuant to the cited regulation, the EU shall, for the purpose of establishing or ensuring the functioning of the internal market, adopt measures for the approximation of the laws, regulations and administrative provisions of the Member States. The linguistic interpretation leads to the conclusion that the norm derived from Article 114 TFEU empowers the EU institutions only to issue directives.[11] On the other hand, an act adopting and ordering application of IFRS is an EU regulation, hence the need to assess and identify the competence norm[12] which authorises the EU to issue a regulation in this respect.

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[8] On the origins of IAS and IFRS, see A. Helin, *Charakterystyka Międzynarodowych Standardów Rachunkowości na tle ustawy o rachunkowości*, [in:] *Ustawa o rachunkowości. Komentarz*, Warszawa 2012, pp. 626–628.

[9] See F. Grzegorczyk, *Dyrektywa 2006/43/WE w sprawie sprawozdań finansowych w kontekście funkcjonowania rynku wewnętrznego UE*, "Europejski Przegląd Sądowy" 2011, no. 3, pp. 29–30; A. Jarugowa, *Międzynarodowe i krajowe regulacje rachunkowości*, [in:] *Komentarz do ustawy o rachunkowości*, eds. A. Jarugowa, T. Martyniuk, Gdańsk 2006, pp. 19–26.

[10] Consolidated version (OJ C 326/47, 26.10.2012), hereinafter: TFEU.

[11] On the legal nature of EU directives, see A. Hanusz, *Spójność norm polskiego i unijnego prawa finansowego jako przesłanka działalności prawodawczej Sejmu RP*, "Przegląd Sejmowy" 2025, no. 3, pp. 51–52.

[12] On competence norms, see Z. Ziembiński, *Kompetencja i norma kompetencyjna*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1969, no. 4, pp. 33–35.

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NATURE OF IFRS AS A SOURCE OF EU LAW

International Financial Reporting Standards were adopted by Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.[13] Pursuant to Article 288 TFEU, the basic sources of EU secondary law are regulations, directives, decisions, recommendations and opinions. Of these acts, only regulations, directives and decisions are binding on addressees whose catalogue is internally differentiated.[14] Any legal remedy provided for in Article 288 TFEU can be used only for the exercise of competences of the EU. The literature indicates that Article 288 TFEU does not imply a rule of competence authorising the EU institutions to adopt certain types of European law acts in any field of social relations.[15] The authorisation to adopt a legal act in the appropriate form must be made under the provisions of the founding treaties, which contain the grounds for the adoption of legal acts binding on the Member States. Another issue is how the competence to adopt the act is transferred. As the case law of the Court of Justice of the European Union points out, it does not always have to take the form of an explicit conferral contained in a treaty. This means that the competence of EU bodies to adopt legal norms can be included in the provisions of a treaty implicitly. Apart from this legal view, one can come across the view that a competence norm may also arise from other provisions of a treaty or from acts adopted on the basis of those provisions by the relevant EU institutions.[16]

According to Article 5 (1) of the Treaty on European Union,[17] the limits of the Union's competence are set by the principle of conferral. According to it, the EU may only act within the limits of the competences conferred on it by the Member States in their founding treaties.[18] The principle of conferral of competences is, in fact, an expression of the principle of legalism and sovereignty of the Member States. Only actions that fall within the scope of conferred powers are legitimate actions taken by the EU institutions. One of the consequences of the principle of conferral is the obliga-

[13] OJ L 243/1, 11.9.2002.

[14] See J. Maliszewska-Nienartowicz, *System instytucjonalny i prawny Unii Europejskiej*, Toruń 2010, p. 268.

[15] See T. Jaroszyński, *Rozporządzenie Unii Europejskiej jako składnik systemu prawa obowiązującego w Polsce*, Warszawa 2011, p. 71.

[16] Cf. judgment of the Court of 31 March 1971 in Case 22/70, *Commission of the European Communities v Council of the European Communities*, para. 16.

[17] Treaty on European Union of 7 February 1992 (Journal of Laws 2004, no. 90, item 864), hereinafter: TEU.

[18] See A. Wyrozumska, *Zasada przyznania kompetencji*, [in:] *Instytucje i prawo Unii Europejskiej*, eds. J. Barcz, M. Górka, A. Wyrozumska, Warszawa 2017, pp. 99–100; D. Miąsik, *Zasady traktatowe*, [in:] *System Prawa Unii Europejskiej*, vol. 2: *Zasady i prawa podstawowe*, ed. D. Miąsik, Legalis 2022, margin no. 3.

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tion to indicate the legal justification for every piece of secondary legislation adopted by the EU. The requirement to indicate the rationale for the EU authorities to decide to adopt an act is established by a norm resulting from the provision of Article 296 TFEU.[19] The obligation to state reasons also includes the need to determine the legal basis for the action.[20] Moreover, pursuant to Article 296 TFEU, where the provisions of the Treaties do not provide for the type of act to be adopted in a given field, the Union institutions shall make a choice on their own. They do so in compliance with the applicable procedures and the principle of proportionality.[21]

Determining EU competences requires the identification of their categories and assigned thematic areas.[22] The EU competences deriving from the treaties can be divided into three categories: exclusive, shared and supporting competences. Shared competences seem to be the most important from the point of view of assessing the legality of the empowerment of EU bodies to adopt IFRS. The exercise of shared competences is governed by Article 2 (2) TFEU. According to that provision, where the Treaties confer on the EU a shared competence with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. However, Member States may legislate in areas of shared competence only if the EU does not exercise its competence or decides to stop acting in this field.[23]

One of the areas in which the EU has shared competence is the internal market. Pursuant to Article 26 TFEU, the internal market comprises the area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. The existence of the internal market is a measure intended to achieve the EU's objectives of economic integration.[24] As noted in the explanatory memorandum to the IFRS Regulation, the purpose behind issuing it is to strengthen the free movement of capital in the internal market. The obligation for Member States to apply IFRS is intended to ensure transparency and comparability of the figures contained in financial statements. This proves that the EU is authorised to issue a legislative act on the application of IFRS. This action falls within the shared competence. There

[19] Cf. A. Nowak-Far, *Prawo Unii Europejskiej. Języki, struktury, działanie w praktyce*, Legalis 2021, item 2.4.

[20] It is noted in the literature that, in choosing a legal basis, EU institutions cannot be guided by the subjective belief that the act being issued is a means to achieve a certain objective. It is necessary to point to objective circumstances that can be subject to judicial review at a later stage. See T. Jaroszyński, *op. cit.*, p. 72.

[21] The principle of proportionality results from Article 5 (4) TEU pursuant to which the scope and form of Union action must not exceed what is necessary to achieve the objectives.

[22] See R. Grzeszczak, *Komentarz do art. 5*, [in:] *Traktat o Unii Europejskiej. Komentarz*, eds. R. Grzeszczak, D. Kornobis-Romanowska, LEX/el. 2023, item 5.4.2.

[23] J. Maliszewska-Nienartowicz, *op. cit.*, pp. 232–233.

[24] See A. Grzelak, *Komentarz do art. 3*, [in:] *Traktat o Unii Europejskiej. Komentarz*, eds. R. Grzeszczak, D. Kornobis-Romanowska, LEX/el. 2023, item 3.4.2.2.

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is also no doubt about the legal basis that legitimises EU institutions to take action in harmonising accounting rules in the Member States. The source of competence to issue a legal act on the application of IFRS is primarily Article 114 TFEU. The competence-setting norm can also be derived from Article 296 TFEU. However, the appropriateness of adopting IFRS in the form of a regulation is another issue.

The Union regulation is often referred to as a law unification measure. Pursuant to Article 288 TFEU, a regulation has general application, is binding in its entirety and directly applicable in all Member States. The regulations are addressed not only to the Member States but also to individuals. The fact that the regulation is directly applicable in all Member States does not mean that it is not possible to limit its binding force to one or more Member States.[25] The general scope of the regulation must be understood as being effective in relation to generally defined and abstract categories of persons.[26] Unlike the directive, the regulation is not binding solely as to the purpose, but also as to the forms and methods by which that objective is to be achieved. This means that all provisions of the regulation, including annexes, are legally binding.[27] It is therefore not possible for Member States to apply the provisions of regulations in a selective manner.

The literature points out that the regulation, despite its direct applicability, may require that national implementing measures be adopted.[28] There are two situations where action by Member States is advisable. Firstly, if a specific national mechanism needs to be established. Secondly, if a provision of the regulation allows Member States to extend or restrict its subjective or objective scope.[29] The Regulation 1606/2002 generally leaves Member States free to define the list of entities that can or should apply IFRS-derived norms. An exception is Article 4 of the Regulation, which requires Member States to adapt their national legislation to provide for the mandatory use of IFRS by certain entities. In order to comply with this obligation, the Polish legislature has introduced Article 55 (5) into the Accounting Act. This provision stipulates that banks and parent companies that are issuers of securities are required to prepare their consolidated financial statements in accordance with standards arising from IFRS. To the extent not regulated by IFRS, these entities may apply the provisions of the Polish Accounting Act.

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[25] See A. Wróbel, B. Kurcz, *Komentarz do art. 288*, [in:] *Traktat o funkcjonowaniu Unii Europejskiej. Komentarz*, vol. 3: *Art. 223–358*, eds. D. Kornobis-Romanowska, J. Łacny, Warszawa 2012.

[26] Cf. judgment of the Court of 11 July 1968 in Case 6-68, *Zuckerfabrik Watenstedt GmbH v Council of the European Communities*.

[27] This has important implications for other EU regulations adopting individual IFRS in the Annex to the Regulation. There is no doubt in the literature that the consequence of the Regulation as a whole is the normative character of the annexes. See A. Wróbel, B. Kurcz, *op. cit*.

[28] Cf. A. Wyrozumska, *Podstawowe formy aktów instytucji*, [in:] *Instytucje i prawo…*, p. 250; A. Łazowski, *Rozporządzenie jako źródło prawa Wspólnot Europejskich*, "Europejski Przegląd Sądowy" 2007, no. 3, pp. 14–15.

[29] See Article 5 of Regulation 1606/2002.

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DIRECT EFFECT OF THE IFRS-ADOPTING REGULATIONS AND THE POLISH LEGAL SYSTEM

The provision of Article 87 (1) of the Polish Constitution sets out the catalogue of sources of generally applicable law. The literature indicates that this enumeration is closed-ended.[30] When analysing the direct effectiveness of Regulation 1606/2002 in the system of Polish law, it is necessary to determine the relationship between the provisions of Article 87 (1) and Article 91 (3) of the Polish Constitution. The legislature mentions among the sources of generally applicable law the Constitution, laws, ratified international agreements and regulations.[31] The catalogue referred to in Article 87 (1) of the Polish Constitution contains no regulation concerning EU law. Therefore, doubts are raised in the literature on the subject whether the acts referred to in Article 91 (3) of the Polish Constitution can be considered a source of generally applicable law.[32] It seems right to claim that the list of sources of law set out in Article 87 (1) of the Polish Constitution is not a strictly closed enumeration.[33] The provision of Article 91 (3) of the Polish Constitution is one of those that point to the fulfillment of the sources of generally applicable law specified in Article 87 (1) of the Polish Constitution. According to the norm under Article 91 (3) of the Polish Constitution, a law adopted by an international organization is directly applicable in the Polish legal system. However, the condition for direct application is prior ratification by the Republic of Poland of the agreement establishing this international organization. EU regulations, including Regulation 1606/2002, are issued on the basis of a ratified agreement referred to in Article 91 (3) of the Polish Constitution. This prejudges the possibility of direct application of the provisions of the IFRS Regulation in the Polish legal system.

The term "direct application" must be distinguished from direct effect and direct applicability of a legal act. An act of EU secondary law that is characterised by direct applicability, direct application and direct effect is a regulation. Upon entering into force, they become automatically part of the legal system of a Member State, creating rights and obligations for their addressees. The provisions of the EU

[30] As in B. Banaszak, *Komentarz do art. 87*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012; M. Wiącek, *Komentarz do art. 87*, [in:] *Konstytucja RP*, vol. 2: *Komentarz do art. 87–243*, eds. M. Safjan, L. Bosek, Warszawa 2016.

[31] Pursuant to Article 87 (2) of the Polish Constitution, the sources of generally binding law are acts of local law, in the area of activity of the bodies that adopted them. However, due to the subject matter of this study, acts of local law remain outside the scope of discussion.

[32] For example, see A. Bień-Kacała, J. Galster, *Głos w dyskusji*, [in:] *System źródeł prawa w Konstytucji Rzeczypospolitej Polskiej. Materiały XLII Ogólnopolskiej Konferencji Katedr i Zakładów Prawa Konstytucyjnego. Nałęczów, 1–3 czerwca 2000*, ed. M. Granat, Lublin 2000, p. 160.

[33] See T. Jaroszyński, *op. cit.*, p. 280; M. Wiącek, *op. cit*.

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regulation may therefore form the basis for a decision on a case without having to be implemented, as is the case with directives.

However, the relationship between the principle of primacy of EU law and the principle of supremacy of the Polish Constitution requires special attention. In the case of the principle of primacy of EU law, we are talking about the primacy of application and not the primacy of validity. The principle of primacy thus understood does not infringe upon the principle of primacy of the Polish Constitution.[34] The priority of application of EU law is referred to only in the situation of a content-related conflict between a norm belonging to the legal system of a Member State with a norm of EU law.[35] In the case of a conflict, the provisions of EU law cannot derogate national law regulations that are contrary to them. They only have priority in application. The essence of the principle of primacy boils down to the necessity to ensure that the norms of EU law prevail in the validation process in the event of a conflict with any earlier or subsequent legal norm of a Member State.[36] The literature therefore rightly points out that the norms of EU law and national law form a horizontal structure, and that the relationship between them is heterarchical.[37]

Despite the direct effect of the IFRS Regulation, there is no conflict between the content of the norms of the Regulation and of the Polish Accounting Act. When adopting Regulation 1606/2002, the EU bodies included therein a clause requiring Member States to issue relevant legislative acts introducing mandatory application of IFRS by banks and parent companies that are issuers of securities. All other entities, depending on the will of the national legislature, may apply IFRS optionally or obligatorily. The provision of Article 55 (5) of the Accounting Act in its current wording does not violate the provisions of the EU Regulation. It does not duplicate its rules but is an embodiment of the obligation imposed on Member States by the EU. Moreover, the national legislature rightly provides in Article 10 (3) of the Accounting Act for the possibility of subsidiary application of IFRS by entities other than banks and issuers of securities.

[34] As rightly pointed out by T. Jaroszyński (*op. cit.*, p. 293).

[35] For more details on the subject, see E. Całka, *Zasada pierwszeństwa w prawie Unii Europejskiej. Wybrane problemy*, "Studia Iuridica Lublinensia" 2016, vol. 25(1), pp. 48–49.

[36] Cf. C. Mik, *Europejskie prawo wspólnotowe. Zagadnienia teorii i praktyki*, vol. 1, Warszawa 2000, p. 551.

[37] See idem, *Państwo i prawo wobec procesów internacjonalizacji, integracji i globalizacji*, vol. 2, Toruń 2022, p. 676.

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DISCUSSION AND CONCLUSIONS

To conclude, it should be stated that the EU has the competence to adopt a legislative act on the application of IFRS. This action falls within the limits of the competences conferred by the Member States, and the basis for the empowerment is Article 114 TFEU. However, this empowerment does not decide the way in which the competence will be implemented. The provisions of the founding treaties do not specify the type of legislative act to be adopted in the field concerned. The freedom to choose given to the EU bodies is only limited by the principle of proportionality. The choice, according to which the EU has adopted IFRS in the form of a regulation, is primarily justified by the legal nature of this measure, which does not require implementation into the Polish legal system. The process of implementation naturally gives rise to discrepancies between the provisions of laws adopted to implement the directive and the directive itself, taking into account the specific interests of the Member States. By adopting Regulation 1606/2002, the European Union therefore ruled out any differentiation in the wording of the law, which could differ from one Member State to another as regards the rules of accounting. The adoption of Regulation 1606/2002 can also be considered justified for the sake of subsequent implementing regulations. In the implementing regulations, individual IFRSs take the form of annexes. Since the regulation is binding on the Member States in its entirety, the content of the annexes is also of a law-making nature, harmonizing the areas of social relations being regulated.

Despite the adoption of Regulation 1606/2002 by the EU, the provisions of the Accounting Act are still valid in the Polish legal system. The analysis carried out in the paper allows concluding that the provisions of the Accounting Act do not conflict with this Regulation. The Accounting Act independently fulfils the obligations arising from the EU law. The simultaneous application of the Accounting Act and of the Regulation does not generate a conflict that would have to be resolved in a situation of inconsistency between EU law and national law. In the future, such a conflict may occur if the provisions of the Accounting Act contradict the provisions of the Regulation.

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ABSTRAKT

Przedmiotem opracowania jest ocena dopuszczalności przyjęcia przez organy Unii Europejskiej rozporządzenia nr 1606/2002 w sprawie stosowania międzynarodowych standardów sprawozdawczości finansowej (MSSF) w państwach członkowskich. W pracy określono także relację pomiędzy przepisami rozporządzenia unijnego i ustawy o rachunkowości. Przeprowadzona analiza dogmatyczna prowadzi do wniosku, że wydając rozporządzenie w sprawie stosowania MSSF, organy unijne działały w granicach kompetencji powierzonych przez państwa członkowskie. Wydanie rozporządzenia jest zgodne z prawem i proporcjonalne do osiągnięcia celu w postaci ujednolicenia zasad prowadzenia rachunkowości. W aktualnym stanie prawnym nie ma też kolizji pomiędzy przepisami rozporządzenia Unii Europejskiej i ustawy o rachunkowości.

Słowa kluczowe: prawo bilansowe; rachunkowość; MSSF; rozporządzenie unijne; pierwszeństwo prawa Unii Europejskiej