

## **The Importance of The Exchange Rate in Public Procurement on The Example of The Polish Market in The Context of Unfinished Monetary Integration with The Euro Area\***

Jaroslaw Czaja

University of Economics, Wroclaw, Poland

Correspondence should be addressed to: Jaroslaw Czaja; [jaroslaw.czaja@ue.wroc.pl](mailto:jaroslaw.czaja@ue.wroc.pl)

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### **Abstract**

The importance of the zloty exchange rate against the euro in public procurement in the context of monetary integration with the European Union. The content of this article refers to determining the meaning of the euro exchange rate and expressing the value of goods and services in it in the Polish procurement law in the period 2004-2023. The article also takes into account the specificity of shaping the levels of this EURPLN rate. The importance of a selective derogation in favor of the Polish zloty in the Public Procurement Law under the so-called sub-threshold orders, which is a noticeable change in the until recently strong attitude (these processes have slowed down) to the use of the euro as part of the broadly understood monetary integration of the new EU member states. Member States retain the possibility of derogating from the Public Procurement Law for transactions below the EU thresholds in order to protect their internal markets against the effects of incomplete monetary integration. The literature lacks extensive research on the interaction between the exchange rate and the Public Procurement Law, and the presented publication is an attempt to fill this gap.

For the analysis, time series of the Polish zloty exchange rate against the euro, provided by the National Bank of Poland and in the executive acts of the Prime Minister and in the announcements of the President of the Public Procurement Office, referring to the relevant acts of EU law.

**Keywords:** public procurement law, monetary integration, exchange rate, European Union, euro currency.

**JEL:** G28, E52, F15, K23, I28.

### **Introduction**

The purpose of this article is to attempt to determine the importance of the euro exchange rate as a determinant of the value of goods and services in the Polish Public Procurement Law (PPL) due to the fact that it is used by the legislation of all European Union Member States. The analysis also includes an attempt to answer the research question to what extent the "exchange rate tools" of the public procurement law are used in the process of monetary integration with the euro area. PPL is one of the areas of particular importance in the economic policy of this organization, as it also applies to the functioning of the common market, including economic ties between the public and private sectors. The second research question refers to whether the lowest threshold in the procurement law is needed, which was justified by the change of the currency of the lowest "threshold" from the euro to the Polish zloty (PPL Act of September 11, 2019, in force from January 1, 2021 ((Dz.U. 2021 poz. 1129 (polish Journal of Laws of 2021)). In the context of the

pursuit of fulfilling the commitments for a complete abandonment of the national currency, this becomes a warning signal resulting from the weakness of some groups of enterprises.

The research period covers 2004-2023, as this is the date of entry into the European Union of a group of new member states, which is associated with the expansion of the public procurement market.

### **Monetary integration in the European Union as a premise for using the euro in PPL**

Pursuant to the Treaty on the Functioning of the European Union (TFEU), Poland and other European Union Member States should adopt the euro currency. It is a treaty obligation, imprecise in time, which obliges to take actions to completely abandon the national currency. Article 140 TFEU requires countries with a derogation (name referring to the failed changeover to the euro, Article 139 TFEU) to "report on (...) the fulfillment of their obligations for the completion of Economic and Monetary Union". They do not only boil down to changing the name of the currency when listing prices from day to day or opening a bank account with foreign exchange support. The changeover to the euro is actually implemented through activities of a different nature in many areas of both law and economy. However, this is done without close synchronization of integration efforts between member states and individual sectors, until the exchange rate of a given currency is entered into the so-called ERM II Corridor (Exchange Rate Mechanism) for two years to significantly reduce volatility through interventions. Therefore, the process of monetary integration in the European Union is fraught with the lack of a unified approach, as there are both activities that are part of this process and those that depart from it. The example of the public procurement law is an indirect solution and boils down to the fact that, despite the provisions of the threshold values in euro, it does not impose on the parties to contracts settlements in this currency in the territory of the Republic of Poland.

### **Literature review**

There is a lack of studies on the effects of using thresholds in foreign currencies in public procurement law that comprehensively analyze the impact of exchange rates. Collections of good practices for public procurement are usually available, which indicate that the exchange rate is a natural element of the market and contracts should take this problem into account. It should be noted that in the case of procurement law in the European Union, the existence of thresholds for the value of contracts in the national currency and in euro is not assessed positively, and secondly, the reasons for their periodic modification are also assessed as not very adequate to market conditions.

Attention is drawn to the need to take into account the currency risk due to the globalization of markets in purchasing strategies through the use of contract withdrawal clauses and strict determination of the distribution of currency risk between the buyer and the supplier. Inflation and exchange rate fluctuations have gradually reduced the real value of the thresholds, and EU lawmakers have not taken any proactive reductions, unlike what has been done with trade tariffs. As a result, the current threshold levels do not reflect any efficiency gains or transaction cost reductions achieved over the last 40 years. Financial thresholds, first introduced in the 1970s, are arbitrary and have no clear justification for their specific values (Telles 2016). It is also indicated that setting thresholds promotes an increase in costs for both parties to the transaction (Slemrod 2013). The costs associated with them are also higher due to increased controls, which distorts the real value of orders and limits the search for substitutes for a given order (Carril 2022). The existence of thresholds contributes to difficulties in managing the performance of the contract within the Single European Market (Becker 2019). Taking the example of the ZP market in Canada, in some cases it may be beneficial to accept the risks and rewards of currency fluctuations. In such circumstances, the bidder may be offered the option of mitigating the risk by including a provision in the contract to deal with currency fluctuations, but this may be accompanied by a policy that provides opportunities to avoid open competition. This results in manipulation by grouping orders just below thresholds in works and services and to a lesser extent in goods (Palguta, Pertold 2017).

### **The average exchange rate of the euro for two-year periods in PPL**

Based on the analysis of the public procurement law, it is possible to distinguish some kind of exchange rate tools used in the common market and contributing to the deepening of integration with the euro area. The first is to determine the exchange rate of the euro to a given currency, and the second is the thresholds for the value of orders in common currency. Both tools are determined centrally, as their values are determined by the relevant EU authorities for two-year periods and are valid throughout the European Union. Then, these values are announced at the national level (in Poland, in the regulations of the Prime Minister, after the amendment of the Act, in legal acts known in Poland as announcements (Article 3(3) of the Public Procurement Law)).

According to the Polish Public Procurement Law (Article 3.1), the so-called procurement thresholds should be understood as the amounts of the value of contracts or competitions, which are initially expressed in the relevant directives of the European Parliament and of the Council, updated in the executive acts of the European Commission. According to the new Polish act, they are announced by the President of the Procurement Office, who "informs about the current EU thresholds, their PLN equivalent and the PLN equivalent of the amounts expressed in the Act in EUR, determined in accordance with the communication of the European Commission" (Article 3 section 2 point 1 of the

Public Procurement Law). The indicated authority also announces exchange rates (Article 3.2 of the Public Procurement Law) informing about the "average exchange rate of the zloty against the euro, which is the basis for converting the value of contracts or competitions, determined on the basis of the amounts specified in the communication of the European Commission".

An auxiliary legal tool can also be considered as a selective departure from the euro in favor of the Polish zloty for sub-threshold contracts as a determinant of the application of the Public Procurement Law, which is expressed in several of its articles in the amount of PLN 130,000 (e.g. Article 2(1)(1)).

It should be emphasized that in the legal sense there is a significant difference between the exchange rates announced in the announcements of the President of the Public Procurement Office and those indicated by the National Bank of Poland (until 2007, the Ordinances announcing a given EURPLN exchange rate entered into force in a given year in different months. It was only in subsequent years that the implemented exchange rate policy for the value of orders in euro came down to the entry into force of these legal acts from 1 January of a given year). In the case of contracts, we deal with the average exchange rate of PLN against EUR, which is the basis for converting the value of public contracts or competitions, determined on the basis of the amounts specified in the Communication of the European Commission on the equivalent of the thresholds set out in Directives 2014/23/EU of the European Parliament and of the Council, 2014/24/EU, 2014/25/EU and 2009/81/EC ( *Komunikat ... 2021* (Communication act)). Also in the Commission's communication, for each threshold, there are separate tables containing its value in euro and conversion into several currencies, such as Swedish krona, Bulgarian lev, Czech koruna, Danish krone, Croatian kuna, Hungarian forint ( *Obwieszczenie ... 2019* (Announcement act)). In this case, the exchange rate is calculated in relation to the value of goods and services (EU threshold amounts). Both figures are revised at the same time and the duration of their changes is maintained for two years. Thus, the period of invariability of the adopted exchange rate is related to the time of maintaining a fixed amount of thresholds, which supports the durability of provisions in contracts .

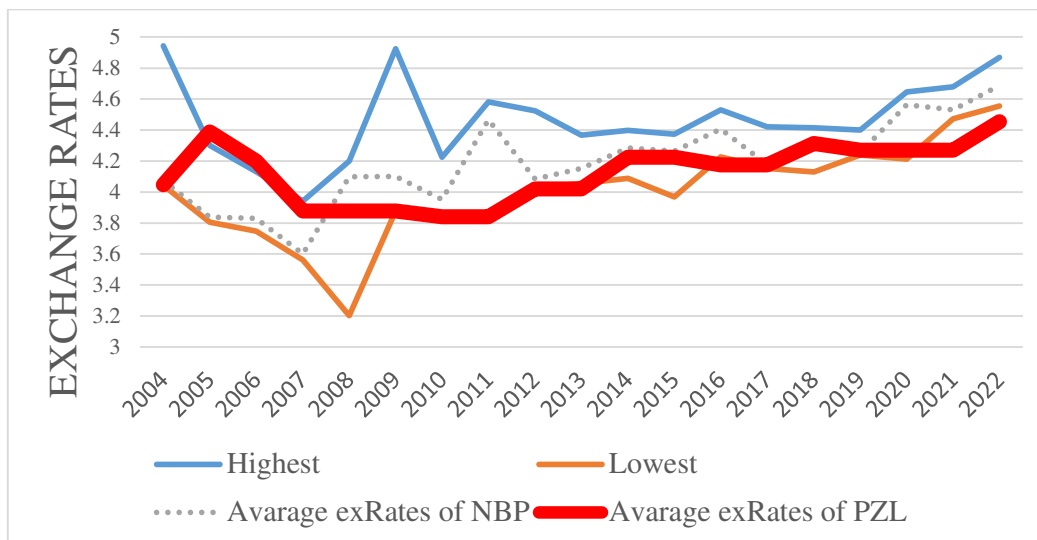
It should be noted that currently setting the exchange rate ex officio is a rather unusual practice, which is very far from the liberalization of the law on the use of foreign currencies, especially in comparison to the policy of each central bank in the European Union. As a result, it resembles the policy of independent exchange rates on the part of the executive (the Council of Ministers and the Public Procurement Office). In this respect, the sphere of public procurement is unique with the specificity of the limited market mechanism of supply and demand and centrally defined procurement thresholds expressed in euro. On the other hand, the issue of the exchange rate for PPL is a special area of activity that is only part of monetary integration as one of the components of this process without affecting, for example, the entire banking system. In this context, it should be taken into account that the exchange rate of the domestic currency against other currencies is not completely detached from the will of the government. Article 24 of the Act on NBP indicates that Polish central bank implements the currency policy established by the Council of Ministers in consultation with the Monetary Policy Council, which also applies to the exchange rate of the Polish zloty (Rutkowski 2016).

## **The importance of the exchange rate announced in the public procurement law**

### ***Stabilizing function***

It is worth noting that a fixed exchange rate may be a tool that stabilizes the value of the subject of the transaction in the field of legal and economic activities, which is relevant to public procurement. Thanks to the appropriate application of the implementing acts of the Public Procurement Law, the fixed exchange rate can be used as an equivalent of the indexation clause in various contracts between contractors and contracting authorities. From a typical economic point of view, announcing a fixed exchange rate belongs to the so-called anchors, i.e. basic stabilizing tools (restoring balance) in economic policy on the part of central banks, the government and its bodies. Hence, it applies to the determination of the exchange rate of the national currency (exchange rate anchor) by designated official institutions (Matecka, Wierzba 2008). In the aspect under consideration, this refers to activities stabilizing the value of prices of goods and services in public procurement.

According to the Public Procurement Law, a given level of the exchange rate is fixed for periods of at least two years for public procurement (marked with a bold line in Figure 1), thus ensuring much lower volatility compared to the NBP average for EURPLN. As a result, the rate set in PZL remains within the corridor determined by market minima and maxima (you can never be sure that their amplitude will not increase or decrease). Thus, central determination of the exchange rate for public procurement is more conducive to risk control than floating exchange rates, which result from typical market mechanisms of current supply and demand reactions for different currencies (in the period under review, the minimum and maximum are becoming less and less distant from each other year by year) .



**Figure 1. EURPLN exchange rate determined in PPL and by NBP (2004 - 2022)**

Source: 1.PPL: Average exchange rates of the zloty against the euro from the Regulations of the Prime Minister for the period 2004-2019, Dz.U. 2004 nr 40 poz. 356, Dz.U. 2006 nr 87 poz. 610, Dz.U. 2007 nr 241 poz. 1763, Dz.U. 2011 nr 282 poz. 1650, Dz.U. 2013 poz. 1692, Dz.U. 2015 poz. 2254, Dz.U. 2017 poz. 2477, Dz.U. 2019 poz. 2453, Obwieszczenie ... 2021.

2.NBP: Average foreign exchange rates in PLN, [www.nbp.pl/home.aspx?f=/kursy/arch\\_a.html](http://www.nbp.pl/home.aspx?f=/kursy/arch_a.html), accessed on 07.05.23

Table 1 presents the average volatility of the EURPLN exchange rate (PPL and NBP) together with revisions of the EU thresholds. The calculations were carried out based on the nominal values of the above-mentioned exchange rate from 3.2 to 4.90.

**Table 1. Indices of volatility of EU thresholds and EURPLN exchange rates in 2004-2022.**

Indicator	Value
Average revision volatility of thresholds	3.3%
Average volatility of PPL rates	0.7%
Average volatility of NBP exchange rates	4.4%

Source: 1.PPL: Average exchange rates of the zloty against the euro from the Regulations of the Prime Minister for the period 2004-2022, Dz.U. 2004 nr 40 poz. 356, Dz.U. 2006 nr 87 poz. 610, Dz.U. 2007 nr 241 poz. 1763, Dz.U. 2011 nr 282 poz. 1650, Dz.U. 2013 poz. 1692, Dz.U. 2015 poz. 2254, Dz.U. 2017 poz. 2477, Dz.U. 2019 poz. 2453, Obwieszczenie ... 2021.

2.NBP: Average foreign exchange rates in PLN, [www.nbp.pl/home.aspx?f=/kursy/arch\\_a.html](http://www.nbp.pl/home.aspx?f=/kursy/arch_a.html), accessed on 07.04.23

The results of the calculations indicate a clear difference between the exchange rate volatility of the PPL and the NBP (understood as the market level of EURPLN). For example, both in 2020 and 2021, the average exchange rate of the zloty against the euro, which is the basis for converting the value of public procurement, is 4.2693 (*Obwieszczenie ...2021*). It is worth noting that the average NBP exchange rate deviates from the indicated value and in 2020 it amounted to 4.44, and in 2021 to 4.50 (NBP 2023). For some entities, such differences may be of great importance, because even in the case of a revision of the value of the PPL thresholds, the frequency of modifications is more conducive to stability. This is because volatile rates are the main element of increased risk, decision errors or loss of creditworthiness, etc.

The author of this analysis believes that in the context of globalization and increasingly aggressive competition, the clash of interests of small and large economic entities. It means the stabilizing function of public procurement is of the greatest importance in the long term. So this stabilization attracts many companies, which also create more permanent jobs. As a whole, this helps to prevent economic cycles, reducing the risk of new economic crises, or in the event of their occurrence, the stabilizing function restores economic balance.

### **Improvement of investment conditions**

In the context of the public procurement market, it is worth pointing to the conclusion from the research on tools conducive to risk reduction: "the nominal anchor can take many forms (e.g. exchange rate, monetary aggregate or inflation), the ultimate goal of its use is to ensure price stability in the economy as a long-term condition qua non of efficient resource allocation" (Grostal et al. 2016). This means that top-down fixing a fixed exchange rate for longer

periods can attract and increase investment. This may be supported by the competition mechanism in the national and EU dimension, thanks to the interest of a greater number of economic entities in the sphere of public procurement, moving from other markets. In this aspect, the primary objective of an effective purchasing policy within the EU is to promote efficiency, i.e. to choose the supplier with the lowest price to achieve the best "value for money". Due to the internationalization of markets, this is particularly visible in the currency aspect, which is part of the significant share of public procurement in GDP. Therefore, in the case of Poland (share of 8.35%, MAPS standard, 2017) and other EU countries aspiring to a full change of money, the sphere of public procurement allows for a kind of "testing" of the euro in the relationship between the private and public sectors (in the world share in GDP ranged from 7%-20%, and in groups of EU countries: 14%, OECD 12%, Asia 20%, MENA 18%, Africa 15%, South America 7. MAPS is an international standard and a universal assessment tool any public procurement system anywhere in the world (MAPS 2020) .

### ***Promote monetary integration while preserving the use of the euro and national currency***

As we know, the transition to the euro must include activities that promote this currency, but without excessive pressure due to fears of limiting independence in the field of economic policy. In the case of PPL, it is permissible to express liabilities in euro and in Polish zloty. This possibility is related to a number of actions (e.g. the abolition of the currency principle), which are conducive to the freedom of choosing a currency other than the Polish zloty. However, it was the central authorities who first had to express their will to use the euro, which is done precisely in the content of various regulations. The manifestation of this are the so-called EU thresholds expressed in euro, which have a significant place in the extensive range of pro-integration activities (an element of the common economic policy) of the Member States within the common EU market. At the same time, expressing order thresholds directly in euro is a strengthening of monetary integration, e.g. in legal terms, even if not all enterprises are able to fully use this possibility. This is to be facilitated by the specific nature of the public procurement market, based on a strong bond between the public and private sectors . Therefore, one cannot speak of a completely free formation of the price and quantity of goods and services. This is also evidenced by its subjective segmentation, broken down by order value amounts ( table 2 ), subject to change every two years. These data express the need to adapt the transaction value law to market dynamics, due to, among others causes, inflationary pressure, resulting, for example, from salary increases or attracting the procurement contractors by profitable transaction value of the public sector.

**Table 2. EU thresholds for the value of contracts (2010 - 2023)**

Orders			2010-2011	2012-2013	2014-2015	2016-2017	2018-2019	2020-2021	2022-2023
For deliveries	Finances	EUR	125,000	130,000	134,000	135,000	144,000	139,000	140,000
	Public	PLN	479 875	522 548	566,136.60	563 612	620 885	593 433	594 433
	Self-government	EUR	193,000	200,000	207,000	209,000	221,000	214,000	215,000
		PLN	740 927	803 920	874,554.30	872 554	952 886	913 630	914 630
	sector	EUR	387,000	400,000	414,000	418,000	443,000	428,000	429,000
		PLN	1 485 693	1 607 840	1,749,108.60	1 745 108	1 910 083	1 827 260	2 827 260
For construction works	All	EUR	4,845,000	5,000,000	5,186,000	5,225,000	5,558,000	5,350,000	6,350,000
		PLN	18 599 955	20,098,000	21,910,331.40	21 813 853	23 921 312	22 840 755	23 840 755

Source: own study based on the Regulations of the Prime Minister (2009-2019) on the amounts of the value of contracts and competitions, which determine the obligation to submit notices to the Office for Official Publications of the European Communities, Dz.U. 2009 nr 224 poz. 1795, Dz.U. 2011 nr 282 poz. 1649, Dz.U. 2013 poz. 1735, Dz.U. 2015 poz. 2263, Dz.U. 2017 poz. 2479, Dz.U. 2019 poz. 2450, Obwieszczenie ... 2021, pp. 2-3.

## The value of public procurement below the EU thresholds

Subliminal procurement is a specific area of behavior by national authorities to protect and support small and medium-sized enterprises. Unfortunately, despite many efforts to eliminate disproportions between the countries of the European Union, there are many economic differences, and therefore the thresholds for applying public procurement law are different in individual Member States (table 3). It should therefore be emphasized that even periodic freezing of the exchange rate in the public procurement law for periods of two years will not be sufficient support for some groups of enterprises that perform contracts.

**Table 3. Exclusions or limitations of the application of public procurement law (2018-2022) (thresholds in euros except Poland, which uses Polish zloty currency for the lowest PPL threshold)**

France	Germany	Italy	Poland	Spain	Slovakia	Hungary	The Czech Republic
40000	Varied Thresholds (10000-100000)	40000	130000 (PLN) about 30000 euro	15000 (goods and services) 40000 (construction)	15,000 with separate thresholds for different orders	46200	79000 (goods and services) 237000 (construction)

Source: CMS 2022. <https://cms.law/en/int/expert-guides/cms-expert-guide-to-public-procurement/hungary>

At the same time, the introduction of thresholds for public procurement in the national currency can be treated as a failure of monetary integration on the one hand, and a weakness of the small and medium-sized enterprise sector on the other. This is evidenced not only by the change in the denomination currency of the value of orders in the Act, but also by the introduction of many legal restrictions when applying for foreign currency loans, as there is no exemption in the regulations for the euro. Therefore, the member states were left with a lot of freedom in the field of sub-threshold procurement in the form of currency duality of regulations (euro and national currency). For larger entities and larger orders, it seems that a strong reference to the euro currency does not carry the risk of a collapse of the order market at this level. On the other hand, below the EU thresholds, it is better to take care of smaller entities. For this reason, the exchange rate policy for public procurement and the "EU thresholds policy" seem to be more favorable to the domestic market than is the case on the part of the national central bank. The consequence of this is the parallel application of common rules on the part of the European Union, from the level of the so-called EU thresholds, but below them the country has a lot of freedom. In this way, an attempt is made to protect the idea of a common market, otherwise it would often be undermined as harmful to a huge number of entrepreneurs.

Member States consider it necessary that transactions below the EU thresholds are not subject to full procedures under the Public Procurement Law. It is also important that there is no uniformity of these lowest thresholds, which should also be treated as a tool protecting small entrepreneurs and taking into account their position in relation to enterprises from other countries. This means that broadly understood competition within the entire European Union may be treated as a threat to participants of the domestic public procurement market. According to the literature review, the lowest thresholds are treated as a negative element (according to Telles 2016)), but this criticism does not take into account the economic and even political needs to protect small enterprises on domestic markets in the face of weakening monetary integration in the European Union.

## Summary

Irrespective of the course of integration with the euro zone, the exchange rate of the single currency in the area of public procurement is still important. This is related to the diversity of the subject of procurement within the European Union and the possible use of foreign suppliers, which is consistent with the status of the euro as an international currency with all exchange rate effects. Therefore, it must be borne in mind that the problem of choosing an exchange rate system is never subject to permanent arrangements. When concluding contracts, the predictability of profits is associated with the need for provisions conducive to securing them in the best possible way. With regard to the exchange rate, the point is that its final value for a given contract does not expose to the loss of profits. Therefore, the issue of adjusting procurement market participants to the exchange rate is a continuous process, but with varying durability. So referring to the second research question, it seems that the positive meaning of admissibility of preferential treatment of public contracts below the lowest threshold and allowing it to be expressed in the national currency prevails. This means that each country, sector or economic entity needs to maintain an adequate level of the exchange rate for other periods, as adjustments must take place at different levels of the legal and economic system (In the case of the integration of member states, the slogan of a multi-speed Europe appears, however, to the possibility of switching to the euro, this may even apply to individual sectors of the economy, which means uneven ability to switch to the single currency and many public procurement contractors are an example of this (Heller, Kotliński 2018)). So there is an admissibility to choose the transaction currency and its exchange rate, as a result of which it is

possible to assume its fixed level in the liquid system or even fully use the statutory scope of expressing the value of orders in the domestic currency, which is possible thanks to the Polish PPL.

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- *Rozporządzenie Prezesa Rady Ministrów z dnia 18 grudnia 2019 r. w sprawie średniego kursu złotego w stosunku do euro stanowiącego podstawę przeliczania wartości zamówień publicznych, Dz.U. 2019 poz. 2453*
- *Rozporządzenie Prezesa Rady Ministrów z dnia 23 grudnia 2009 r. w sprawie kwot wartości zamówień oraz konkursów, od których jest uzależniony obowiązek przekazywania ogłoszeń Urzędowi Oficjalnych Publikacji Wspólnot Europejskich, Dz.U. 2009 nr 224 poz. 1795*
- *Rozporządzenie Prezesa Rady Ministrów z dnia 16 grudnia 2011 r. w sprawie kwot wartości zamówień oraz konkursów, od których jest uzależniony obowiązek przekazywania ogłoszeń Urzędowi Publikacji Unii Europejskiej, Dz.U. 2011 nr 214 poz. 1795*
- *Rozporządzenie Prezesa Rady Ministrów z dnia 23 grudnia 2013 r. w sprawie kwot wartości zamówień oraz konkursów, od których jest uzależniony obowiązek przekazywania ogłoszeń Urzędowi Publikacji Unii Europejskiej, Dz.U. 2013 poz. 1735*
- *Rozporządzenie Prezesa Rady Ministrów z dnia 28 grudnia 2015 r. w sprawie kwot wartości zamówień oraz konkursów, od których jest uzależniony obowiązek przekazywania ogłoszeń Urzędowi Publikacji Unii Europejskiej, Dz.U. 2015 poz. 2263*
- *Rozporządzenie Ministra Rozwoju i Finansów z dnia 22 grudnia 2017 r. w sprawie kwot wartości zamówień oraz konkursów, od których jest uzależniony obowiązek przekazywania ogłoszeń Urzędowi Publikacji Unii Europejskiej, Dz.U. 2017 poz. 2479*
- *Rozporządzenie Ministra Rozwoju z dnia 16 grudnia 2019 r. w sprawie kwot wartości zamówień oraz konkursów, od których jest uzależniony obowiązek przekazywania ogłoszeń Urzędowi Publikacji Unii Europejskiej, Dz.U. 2019 poz. 2579*