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THE ECONOMIC SETTING OF THE REQUIREMENTS OF FINANCIAL LAW

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Abstract
Law imposes obligations that interact with the economic setting. The setting is a correlated system determined by financial, social, political, administrative, and philosophical factors, etc. Each of the factors is shaped and modified by the laws in force.

Key words
Economic setting; law in force

To identify the setting in which financial law operates we need to characterise it first and then use the acquired knowledge as a basis for presenting the economic determinants of law.

A turning point that initiated the emergence of a law that was initially called a fiscal law to be renamed a financial law after some time occurred when rulers' treasury was divided into public and private assets. „This had to replace the relation „the sovereign – the subject" with relation „the state – the citizens"[1]. As a result, the executive authority had to make decisions meeting social needs, particularly public needs. The legislature became responsible for determining the type and manner of securing resources to fund these needs and for passing laws stimulating social and economic development of the state. This system involved the creation of appropriate institutions, the most important of them being the Parliament and the state budget, whose main duty is to supervise how public funds primarily originating from the collected taxes are supervised. All these processes need special budget law founded on constitutions and public finance laws. At the same time, the order created by financial law constitutes a framework within which the authorities make and implement their financial decisions.

Financial law setting the directions and volumes of transfers occurring in the economy in order to regulate monetary processes quite naturally operates in the economic setting and produces economic consequences. Therefore, financial law arises from the necessity to determine and control money movements. On the other hand, the economic setting is a correlated system shaped by the following groups of factors:

[1] Finanse publiczne i prawo finansowe. C. Kosikowski i E. Ruśkowski (eds), collective work, Dom Wydawniczy ABC, Warszawa 2003 p. 47.

financial,

social,

political,

administrative,

philosophical.

Each group has its specific characteristics and produces some definite phenomena.

As regards the financial factors, decisive are processes that affect:

budget deficit,

public debt,

investor behaviour,

poverty levels,

foreign trade balance.

These factors lead us to the question about their interaction with the legal requirements.

The European law sets upper limits on both budget deficit and public debt and country's failure to comply with the limits triggers relevant sanctions.

A risk of the limits being crossed must entail a relevant action, such as modification of the tax law, which requires relevant amendments of laws at different levels, from the acts of the Parliament to executory regulations issued by the interested ministries.

This situation can be found in Poland as well as many EU Member States.

Table 1. Gross debt of the central and local governments' institutions in Poland (% of GDP).

	2005	2006
Czech Republic	30.4	30.6
Denmark	35.9	28.6

Estonia	4.5	3.7
Cyprus	69.2	64.7
Latvia	12.1	10.7
Lithuania	18.7	18.4
Hungary	61.7	67.5
Malta	74.2	68.3
Poland	42.0	42.0
Slovenia	28.0	28.5
Slovakia	34.5	31.1
Sweden	50.4	46.5
UK	42.4	43.7

Source: European Central Bank, Annual report 2006, p. 92.

The situation of public finance in the European Union has made the European Commission consider the introduction of new taxes, i.e. on financial transactions, CO2 emissions and air carriers, or charging fixed commissions on VAT and CIT.

In Poland, the per capita debt has been growing.

Table 2. The per capita debt in Poland, years 2009-2011.

Year	Total (in thousand PLN)
2009	17.0
2010	19.0
2011	21.7

Source: Rzeczpospolita daily no. 147 (26 -27 June 2010).

As estimated, in 2010 the Polish budget deficit will total PLN 48.3bn[2] and the public debt PLN will be 750.8bn[3], representing altogether 53.2% of Polish GDP. It is expected that by the year 2012 the rate will reach 54.3%. In other words, it will approach the limit of 55% of GDP that all EU Member States must respect.

In 2011, the public debt service in Poland will consume PLN 38.6bn, an amount equal to that contributed by the personal income tax.

In an attempt to ameliorate the situation of public finance, the Parliament reduced PIT rates in 2009, cancelled the third tax bracket (40%) and cut the rate applied to the first bracket from 19% to 18%, while raising it for the second bracket from 30% to 32%. Being partly intended to win public approval, the new solutions were primarily designed to stimulate investment activities, i.e. to trigger another financial factor – production capacity growth driven by investments.

However, the reality turned out to be different than expected. Investment activity was not strong.

Table 3. Outlays on long-term investments in Poland, years 2010-2012.

Outlays	Total (in thousand PLN)
Total outlays in which investors' own contribution	19.426 000 2.371 000

Source: Parliament document 2560 pp. 209-212.

An explanation for the insufficient investment activity could be the level of savings and poverty affecting 800 000 people in Poland [4]. A financial factor of importance for the economic growth process is the foreign trade balance that stands for the relations between import and export.

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[2] Rzeczpospolita daily, 3 Sept. 2010, no. 206.

[3] Rzeczpospolita daily, 29 Sept. 2010, no. 228.

[4] „Po biednej stronie świata" Polityka weekly, no. 42 (2778 p. V)

The second group of factors is social factors, among which the rate of unemployment plays an important role.

In 2010, the unemployment rate in Poland was 12.3; its level is predicted to fall to 9.9 in 2011. However, in the same period higher VAT rates will make goods prices grow by 2.3%. The VAT standard rate will go up from 22 to 23%, while the rates applied to particular items will increase from 3 to 5% for unprocessed goods and from 7 to 8% for construction services, medicines and cosmetics; only the rate on food will decrease from 7% to 5%. Therefore, the standard of living of the population will not improve.

The VAT rates were raised because of the necessity to strengthen public finance in Poland and to adjust the system to the EU laws.

Another group of factors operating in the economic setting is political factors that have a conclusive effect on the shape of financial policy formulated by the decision makers.

Defining financial policy aims involves the making of public choices. Public choice theory confirms that this issue is significant: „naturally, making a choice is making a decision that favours one solution (a variant) over the other variant(s)"[5]. Political choices are made by mandated groups „In democratic systems that are typical of mature market economies, a public choice is made by citizens electing their representatives to rule"[6]. Parties successful in parliamentary elections form a political grouping that decides about the policies to be pursued, including financial policy. However, their concepts are usually contested by the opposition. Therefore, the two parts to the dilemma over the selection of financial policy aims is the necessity to handle possible resistance from the opposition and the unavoidable reduction of aims to choose the preferred ones that will be given the green light. Besides, each winning group has its own set of values that determines its goals.

The next group of factors operating within the economic setting of law is administrative factors.

The unavoidable expansion of bureaucracy limits the efficiency of administrative bodies and institutions. At the same time, both national economies and the global economy evolve at a very fast rate. To catch up with the changes, it often becomes necessary to review the laws in force. Regardless of the need to formulate laws precisely, it is also necessary to

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[5] Owsiak Stanisław, 1999a *Finanse publiczne. Teoria i praktyka*. WN PWN Warszawa 1999, p. 72

[6] Owsiak Stanisław, 1999b, *Finanse publiczne. Teoria i praktyka*. WN PWN Warszawa1999, p. 72

pass them. This is where problems frequently appear, caused by administrative inefficiency that considerably delays amendments to the existing laws.

The last group of factors within the economic setting could be generally termed philosophical factors. It consists of elements falling into moral and ethical categories, which means that economic decisions are considered in terms of protection for the poorest or disabled groups, fair tax setup, etc.

It is out of the question that financial law and finance represent two fields of science. Formally, they constitute a branch of public law studying the norms applying to public monetary resources as well as their handling[7].

It is quite obvious, though, that in the same way that the development of financial science proves tight relations between finance and economics, financial legislation points to the importance of the legal aspects for solving financial problems. The position that modern financial policy gives to economic objectives is so important that lawyers frequently give up investigations into the mechanisms of financial phenomena and hand them over to economists. Economics has almost completely absorbed financial science[8].

It seems that the real problem lies not in gaining some advantage or drawing a line between the competencies that financial law and finance have been granted[9]. Nor should the discussion be reduced to definitional issues. As much as they are important from the cognitive point of view, they are distant from the core of the problem that comes down to the mutual relations between the two fields of science. As it has already been mentioned, the key question concerns the place where actions are initiated and whether the actions' effects and consequences are analysed.

Even if we assume that economics deals with the macro economic aspect of financial phenomena, analyses financial flows, explores the impacts of global tax collection on the economy, and studies the consequences of unbalanced budgets for the business cycle or the effects of public investment outlays on economic growth, while public finance focuses on the mechanisms of particular financial phenomena, seeks rules for levying taxes, determines how taxpayers can appeal against the decisions issued, as

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[7] M. Gaudemet, J. Molinier, Finanse publiczne, PWE Warszawa 2000, p. 17.

[8] .Ibidem, p. 17.

[9] See A. Skoczylas-Tylman, Definiowanie zjawisk finansowych przez naukę prawa finansów publicznych i naukę finansów w procesie oddziaływania na ustawodawcę w: Współczesne finanse. Stan i perspektywy rozwoju finansów publicznych ed. J. Głuchowski, Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2008 p. 87 and next.

well as refining the techniques for controlling expenditure[10], the relationships between finance and financial law are indisputable.

The scopes of interest the two disciplines have should be separated and their respective fields of research delimited, at least for the purposes of conferring scientific degrees. However, it is the specific tools that make the two disciplines separate and not the their fields. A question that is worth raising is whether legal analyses should be conducted ex post, after a law has been formulated and made effective, or perhaps ex ante, so that its impacts, including economic impacts, could be assessed.

In this context, the statement about finance utilizing legal definitions does not seem completely correct and the actual question boils down to the doubts whether financial science should affect the legislature[11]. Some also raise doubts whether financial law and finance are a science lying between law and economics, i.e. merging elements of both. It would be more appropriate to treat them as two separate, however strongly interrelated disciplines. Law provides a framework and arranges activities based on economic calculations or opportunity costs, if the first approach is not feasible. Therefore, rather than trying to define the scope of research that the two disciplines may share, the aim should be to define other functions that they should perform. In this context, it is risky for analyses to follow the institutional line alone.

„The main action should be an analysis aimed to find out and decide whether an entitlement to collecting public revenue is worth being introduced or maintained, when the assessment and collection costs are significant"[12].

There can be cases where a law, for instance a law introducing a flat-rate personal income tax, could substantially decrease budget revenues thus aggravating budget deficit. Because of that, laws should sanction an economically and financially sound situation and be made effective ex post, i.e. follow economic analyses and not precede them. So, laws should listen to economic arguments. In other words, while finance launches an initiative, it is the law that is responsible for its implementation.

The above points out that that draft laws need to be analysed before they are applied to financial processes and phenomena, which is the domain of financial law, taking into account the effects they may have on the economic setting.

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[10] P.M. Gaudemet, J. Molinier, op. cit. p. 17.

[11] A. Skoczylas-Tylman, op. cit. p. 88.

[12] Finanse publiczne i prawo finansowe op. cit. p. 177.

Literature:

- Finanse publiczne i prawo finansowe. C. Kosikowski i E. Ruśkowski (eds), collective work, Warszawa, Dom Wydawniczy ABC, 2003, ISBN 83-7284-953-6
- Rzeczpospolita daily, 3 Sept. 2010, no. 206.
- Rzeczpospolita daily, 29 Sept. 2010, no. 228.
- „Po biednej stronie świata" Polityka weekly, no. 42 (2778 p. V)
- Owsiak S., Finanse publiczne. Teoria i praktyka, Warszawa, WN PWN, 1999, ISBN83-01-12783-X
- Skoczylas-Tylman, Definiowanie zjawisk finansowych przez naukę prawa finansów publicznych i naukę finansów w procesie oddziaływania na ustawodawcę w: Współczesne finanse. Stan i perspektywy rozwoju finansów publicznych ed.. J. Głuchowski, Toruń, Wydawnictwo. Naukowe Uniwersytetu Mikołaja Kopernika, 2008, ISBN 978-83-231-2230-2

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