Annual Center Review '21 '22

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STABILISATION AND CHANGES IN THE PUBLIC FINANCE SYSTEM

▪

REGULATION OF FINANCIAL SUPERVISION IN THE EUROPEAN UNION

▪

BUDGET LAW OF THE REPUBLIC OF LITHUANIA UNDER THE INFLUENCE OF THE EUROPEAN UNION LAW

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REPORT ON THE XX INTERNATIONAL SCIENTIFIC CONFERENCE "FUNCTIONING OF INVESTMENTS FINANCED FROM STATE RESOURCES AND FROM OTHER SOURCES IN THE COUNTRIES OF CENTRAL AND EASTERN EUROPE"

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Introduction

This is the first issue of Annual Center Review which is published after prof. Eugeniusz Ruśkowski has passed away and it is dedicated to his memory. He was the originator and a "good spirit" of this annual journal published systematically since the International Center of Public Finance and Tax Law Research has been established also by him. This organisation in Professor's assumptions, which we often discussed, was to be a platform for the cooperation of scientists from the countries of Central and Eastern Europe working on financial and tax law. The need for such cooperation arose, among others, because in Poland we knew more about legal and financial regulations in the United States or the UK than at our closest neighbours. Generally, no one comprehensively analysed the changes in the financial systems of the countries of the Eastern bloc, although they all had very similar problems to solve. Professor Ruśkowski noticed it and decided to create an organisation which would focus on such issues. This proved to be a much-needed initiative and in a short period of time mainly lawyers and economists working on broadly understood public finance from 14 countries started their activity in the Center. Therefore, arose a genuine need to publish a journal in which, besides information on the functioning of the Center, scientific articles regarding the topics currently discussed within this organisation would be published. And thus ACR emerged in the form of an annual journal issued in English and Russian. It fulfilled its role and documented what in a given year substantially happened in the Center. The problems started to appear after diverse systems of scoring scientific publications were introduced in almost all countries from which scientists were members of the Center. ACR did not have such scoring, although Editorial Board in Poland has taken action to obtain it (at least in Poland) and to register the journal in databases. This however requires time and money. Additionally, problems with Russian aggression in Ukraine appeared. The Management Board of the Center decided to suspend cooperation with Russian universities, whose representatives actively participated in the activity of the Center. They are still our colleagues, friends but due to the war we cannot cooperate with them, hopefully only temporarily. This requires, at least at present, developing new principles of functioning of the Center and ACR. We are all thinking about how to do it but we do not have an established concept, yet. I believe that professor Eugeniusz Ruśkowski would have one. But he is not here anymore… And it is a great loss.

Leonard Etel
A disciple of Professor Eugeniusz Ruśkowski

Biography of Professor Eugeniusz Ruśkowski

Professor Eugeniusz Ruśkowski was born on 27 March 1951 in Mława. He passed the secondary school exam in Stanisław Wyspiański's Secondary School No 22 in Mława. In the same year, he started law studies at the Faculty of Law and Administration of the University of Warsaw. From his youth, he passionately played different sports and during his studies he trained football under the supervision of Jacek Gmoch and effectively defended the goal of Legia Warszawa. The defended his M.A. thesis entitled "Land tax and the productivity of agriculture during PRL" in 1972, getting multiple scientific achievements beforehand. They caused that professor Jerzy Harasimowicz, an outstanding expert in financial law, offered him to continue his scientific work as a junior assistant. Scientific master of professor Jerzy Harasimowicz was an outstanding scholar - professor Leon Kurowski, working on the issues of budget law, local finance and financial control. Therefore, having regard to the development of Professor Ruśkowski's scientific interest, professor Jerzy Harasimowicz should be treated as the scientific "father" and professor Leon Kurowski as the scientific "grandfather" of Professor Ruśkowski. On 8 March 1976, he obtained the PhD title on the basis of a scientific dissertation "The system of special-purpose funds of communes in PRL" written under the supervision of his master – professor Jerzy Harasimowicz. His habilitation colloquium took place in 1983 over the dissertation "Basic legal problems of local finances in France". In 1985 he obtained the degree of docent, and in 1991 he became an associate professor. In 1995 the obtained the title of professor and in 1998 was appointed a full professor by the Minister of Education.

Professor Eugeniusz Ruśkowski's scientific interest covered the issues of local authorities and local finance, foreign exchange law, financial control, interpretation of tax law, public finance discipline, international financial law and the theory of public finance. He also had multiple scientific achievements. It needs to be stressed that he was the author of over 400 publications, the majority of which are textbooks, monographs, articles and comments regarding issues essential for the state and public finance. They are focused on a new approach to such issues as: decentralisation of public funds, structure and general principles of local government finance, control of establishing and applying financial law, organisation of tax administration, the crisis of public finance and modern methods of mitigating it as well as the reforms of public finance with special reference to introducing the activity-based budget. A part of Professor Ruskowski's work was published in foreign languages (mainly French, English and Russian), what acknowledges his outstanding contribution to the development of Polish and European science. His publications are still often referred to and quoted in Polish and foreign scientific literature. Additionally, Professor ran a dozen of his own and supervised research projects financed by the National Science Centre, the then Ministry of Science and Higher Education and the State Committee for Scientific Research. His scholarly work has had a great impact on the development of science in the field of public finance and financial law, it has been also significant for university didactics and has played a key role in legislative activities as well as proper application of law, mainly financial law.

The second aspect of the scientific and organisational activity of Professor Eugeniusz Ruśkowski, and which deserves to be emphasized, are his outstanding achievements in the development of international cooperation.

From 1977 to 1978 he completed a scientific internship at the University Paris I as a fellow of the French Government, in the period 1979-1989 he participated in short foreign internships in France, Hungary and Yugoslavia, in 1990 he took an internship in Chambre Regionale des Camptes Regionu Ile–de–France and in 1993 an internship in the University in Madrid. He was a co-organiser and supervisor of the Alliance Française Centre in Bialystok and from 1983 a member of the Polish Committee for Cooperation with Alliance Française.

In 2002 on the Professor's initiative was created the Association Center for Information and Research Organisation in Public Finance and Tax Law in the Countries of Central and Eastern Europe which he was the President until his death. The Center initiates and develops research in the Countries of Central and Eastern Europe, and every year organises international conferences at higher education institutes in these countries (so far conferences were organised in Bialystok, Brno, Vilnius, Košice, Grodno, Voronezh, Paris, Lviv, Praha, Győr, Omsk, Mikulov, Štrbské Pleso, Almaty). On the initiative and with the participation of the Center have been published over a dozen of comparative books regarding public finance and tax law in the Countries of Central and Eastern Europe. Moreover, the Center issues its own journal in English (Annual Center Review) and since 2010 – Scientific Yearbook in English and Russian. The publisher of the Yearbook is Voronezh State University together with the Center. Professor Eugeniusz Ruśkowski was the Chairperson of the Scientific Council of this journal. The activity of the Association and especially the personal engagement of Professor allowed the signing of several bilateral agreements on cooperation between Polish higher education institutions and such institutions in the Countries of Central and Eastern Europe. Thus, owing to this organisation in the field of public finance and tax law has been developing great cooperation between scientists and institutions. Professor Eugeniusz Ruśkowski's essential contribution to science and international contacts was his active participation in scientific conferences. From his appointment to full professor (1998) he took part in over 60 scientific conferences as their organiser (co-organiser) or a speaker. Many of them were international and took place abroad.

From 1 September 1972 until his death, Professor Eugeniusz Ruśkowski was connected with Białystok and the Faculty of Law of the University of Bialystok. In parallel to his scientific and didactic work, he also held managerial positions and important functions in public life. From 1982 to 1985 he was a Vice Director of the Law Institute of the Białystok Branch of the University of Warsaw, Vice-Dean of the Law and Economics Faculty and in the years 1985-1987 Deputy Head of the Białystok Branch of the University of Warsaw. In the years 1988-1990, he was a councillor in the National Voivodship Council in Białystok, a member of the Presidium of the Voivodship National Council and a Chairperson of the Local Government Committee of the Voivodship National Council in Białystok. From 1999 to 2002 Professor Eugeniusz Ruśkowski was the Rector of the University of Finance and Management in Siedlce and in the period 2000-2002 he was Deputy Chairperson of the Rectors' Conference of Non-Public Higher Education Institutions and Vice Chairperson of the Rectors' Conference of Non-Public Vocational Higher Education Institutions. From 1994 to 1998 Professor Eugeniuesz Ruśkowski was a judge in the Supreme Administrative Court and in the period 2003-2008 was a member of the Commission in the System of Liability for Breach in Public Finance Discipline. From 30 November 2005 till the half of 2011 he was a member of the Supervisory Board of the European Anti-Fraud Office (OLAF). In the years 1997-2003, he was a member of the State Examination Commission for Tax Advisory Issues and between 2003-2010 he was a tax advisor (not conducting economic activity). From 1994 he was a professor at the University of Finance and Management in Bialystok and from 1998 a professor at the Bialystok School of Public Administration. From 1986 he was the Head of the Department of Financial Law in the Białystok Branch of the University of Warsaw and from 2003 he ran the Department of Public Finance and Financial Law at the Faculty of Law University of Bialystok.

Professor Eugeniusz Ruśkowki besides conducting his own broad scientific activity was also engaged in the organisation of scientific activity of other people. Apart from being a supervisor of a few hundred of M.A. and B.A. theses, he was also a supervisor and a reviewer of a few dozens of proceedings for the award of the title of Ph.D., habilitated doctor and the title of professor.

Eugeniusz Ruśkowski was a member of the European Association of Tax Law Professors and a member of the International Institute of Public Finance and from 2007 he was a member of the Scientific Council of Revue Française de Finances Publiques. He was also the President of the Center for Information and Research Organisation in Public Finance and Tax Law in the Countries

of Central and Eastern Europe since the first year of its activity.

Professor Eugeniusz Ruśkowski was a member or a chairperson of scientific or programme councils of many domestic and foreign journals and publishing houses. As examples may be indicated the following: "Tax Review", a monthly journal published by Wolters Kluwer Poland – the Chairperson of the Scientific Council; "Publicznyje Finansy i Nalogovoje Pravo", Jezhegodnik (yearbook) published by the Voronezh State University – the Chairperson of the Scientific Council; "Municipal Finance", a monthly journal published by Wolters Kluwer Poland – a member of the Scientific and Programme Council; "Bialystok Legal Studies", a quarterly journal published by the Faculty of Law University of Bialystok – a member of the Scientific Board; "Vesnik Pravaznaustva", a journal published by Yanka Kupala State University of Grodno (Belarus) – a member of the Editorial Board of the series; "Local Taxation and Local Government Finance Review", a monthly journal published by Taxpress – a member of the Programme Board (till the end of 2011); "Revue Française de Finances Publiques", a quarterly journal published by L.G.D.J., a member of the Scientific Board in the years 1998-2007 and Temida 2 Publishing House – a member of the Programme Council.

For his scientific, social and public activity Professor Eugeniusz Ruśkowski was honoured with multiple awards and distinctions, including the Second Degree Award of the Minister of Finance (1986); the Award of the Rector of the University of Warsaw and the Award of the Rector of the University of Lodz (1995); the Award of the Rector of the University of Bialystok (1998) and the Medal for Merit to the University of Bialystok (2007). On 9 August 2004 the President of the Republic of Poland awarded Professor Eugeniusz Ruśkowski with the Order of Polonia Restituta. Students of the Faculty of Law University of Bialystok honoured Professor with the "Student's Oscar" for lifetime achievement in the first edition of this award in 2008.

Professor Ruśkowski's passion, besides sport played less actively with time, was journalism. He was the author of 111 columns focusing on social and economic issues, published in "Tygodnik Siedlecki" in the years 2001-2003.

It should be mentioned that Professor's last completed work was a monograph published in 2021 entitled "Public finance control in Poland" (Temida 2 Publishing House), which was to be a starting point for broad and comprehensive research devoted to financial control.

Professor Eugeniusz Ruśkowski passed away on 13 August 2021 in Białystok at the age of 70.

Prof. Sławomir Presnarowicz
Dr Marcin Tyniewicki

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STABILISATION AND CHANGES IN THE PUBLIC FINANCE SYSTEM

Abstract

The subject of the deliberations is the public finance system, which is treated as an organised system consisting of a set of rules constituting a whole. The paper aims to present stability of the public finance system. It is emphasised that it cannot be equated with the invariability of its elements. This has led to a formulation of a hypothesis that changes that are made do not have to be contrary to the stability of the public finance system. Stability is characterised by striving for an arrangement that allows, in the long run, predicting the form it will take. It is assumed that this requires changes that are influenced by many factors. They are entangled with legal, organisational and instrumental arrangements. Public authorities make decisions on changes basing not only on financial premises, but also on those that secure their interests (political premises) of staying in power. In conclusion, seven factors that influence the scope of public finance are identified and discussed. Against this background, the factors determining changes are presented, distinguishing between monetary and non-monetary factors. In conclusion, it is stated that the changes introduced must be coordinated with each other.

Keywords: financial system, public finance, determinants of changes in the public finance system, system stability

The present discussion is devoted to the public finance system, which plays a crucial role in every state. Public finance is a tool used by the government to influence society (voters) and the economy (businesses). Numerous changes are characteristic features of the public finance system. This raises a question that needs to be answered: what are the factors that trigger these changes? Public finance is the part of finance that creates monetary phenomena and processes. However, this is not sufficient to consider public finance in a comprehensive and structured manner. It is necessary to introduce a notion of a financial system. In a dictionary definition, a system is 'a comparison, a comprehensive and organised arrangement, a set of objects, principles, statements, rules of conduct' [Kopaliński 1967, p. 732]. We can also assume, in a simplified manner, that a system is a whole unit consisting of inter-related elements. The financial system involves a set of principles, legal norms and financial institutions and some other elements that regulate monetary relations in the state. {Eventually we may quote Owsiak: '(...) as a set of logically interrelated organizational forms, legal acts, financial institutions and other elements that enable entities to establish financial relations in both the real sector and the financial one.'} [Owsiak 2015, p. 246]. The financial system is a derivative, effect, or reflection of the state's financial policy. The financial policy is divided into monetary (money) policy pursued by an independent central bank and fiscal policy. The latter is closely related to the public finance system, and it is the government (state) that is responsible for it. Therefore, a hypothesis has been put forward that changes in the system of public finance are induced by both monetary (financial) and non-monetary (non-financial - policy) factors.

As a derivative of the financial policy, the financial system is subject to changes and, in any case, such a situation is legitimate when a change in the financial policy occurs. Given the above, it is necessary to consider the thesis concerning the stability of the financial system. 'A stable

financial system constitutes a condition for effective monetary and fiscal policies, for the fulfilment of economic functions by enterprises and households. Only in the face of a stable financial system can the economic growth be achieved as the basis for the development of the society' [Owsiak 2015, p. 248]. Stabilisation cannot be equated with stagnation. Predictability is of great essence. The stabilisation of the financial system should encompass all its components. They should also be characterized by internal stabilization. The process of stabilization of the financial system is most strongly related to the public finance system, in which public authorities have public money at their disposal both in the process of its accumulation and redistribution. This justifies changes that most often affect the individual elements that the system is composed of. This feature is characteristic of public finance, which is formed by the elements in a subjective, organisational, legal, institutional and instrumental system [Owsiak 1999, p. 89], which takes a specific form.

The public finance system will remain stable if there are no changes in rules, legal norms and financial institutions. The destabilisation of the public finance system may have an impact on the stabilisation of the financial system. The factors causing changes can be various: internal (domestic), external (international), objective and subjective, permanent and transitory. Another classification of the factors allows distinguishing: economic (including financial), political, legal, organisational, and social ones.

In this context, the question arises: is the stabilising of the financial system and the public finance system subject to the same rules? If so, the monetary policy and the fiscal policy should be treated similarly. In practice, both are pursued on different principles. Therefore, a distinction should be made between the stabilisation of the financial system and the stabilisation of the public finance system. Treated differently, the stability of the public finance system does not necessarily undermine the stability of the financial system. In this case, certain conditions should be met. The public finance system will always be treated as a subsystem of the financial system. The stability of the financial system results from the stability of its components. Is the stability of the subsystems of the financial system the same? If we assume some standards of stability, this identity should be found. In other words, each system should be full. But one hundred per cent stability in each system will be expressed differently. The purpose of the deliberations is not to calculate the quantitative contribution of the individual subsystems, but to draw attention to the qualitative differences. They arise from the specific characteristics of each subsystem. In the present deliberations, the specificity of the public finance system will be subject to analysis.

A system can be considered from the theoretical and the practical perspective. The theoretical perspective allows for the shaping and organising of a particular system, which affects the activities that lie on the practical side. In the literature [Pietrzak, Wolański, Woźniak 2003, p. 17], the authors assume that 'the distinguishing feature of the financial system is that it is a mechanism through which services are provided that allow the circulation of purchasing power in the economy'. The basis for this process is money, which conducts many functions, including that of measuring the value of goods. This requires a finding '(...) whether money, to perform the functions of measurement, exchange, and representation of value, is itself and must be a value, or whether it is enough if it replaces that value as a numeral, as a pure sign and symbol, intrinsically devoid of its own substantive value.' [Simmel 2012, p. 133]. The answer to this question is unambiguous. Money has value because it forms a relationship with other values. The above reasoning is vital in defining the financial system '(...) as a set of logically interrelated organizational forms, legal acts, financial institutions and other elements that enable entities to establish financial relations in both the real and the financial sector'. The division of the financial system can be made using different criteria. One of them is the way in which money is disposed of. It introduces a division into public and private spheres and the type of ownership associated with it. [Pietrzak, Polański, Woźniak 2003, p. 19]. Another criterion, a subjective one, determines which institutions may dispose of money. In this case, the banking system, public finance system, corporate finance system or insurance financial system are distinguished [Owsiak 2015, pp. 248-276]. The problem related to the concepts of division of the financial system boils down not to which one is applicable in practice but whether these are subsystems making up a common whole or whether they are separate parts that have own identity. Without denying the links that connect the various elements that make up the financial system, one should pay attention to their separateness.

The grounds for creating a public finance system are public tasks [Wernik 2007, p. 13] performed by the state authority. The system of public finance has a complex

form. The question arises: what links connect individual elements of this system? It is vital here to state that 'Analysing the system of links between individual entities of the PFS [public finance system], it is necessary to notice that it is a network of links that significantly obscures a picture of resource allocation in the PFS. The system is not only extremely complicated but also not very transparent' [Kosek-Wojnar 2021, p. 186]. Despite these limiting conditions, the source of the money that comes from taxpayers combines the system.

As already stated, seeking stability in the system is difficult, and changes should consider the links with the social environment.

Changes to the system as a totality are not an option, as they usually concern taxation. However, any change requires reference to the law in force. The regulations contained in the Constitution are the most essential. Three principles should be obligatory for the authorities. The first principle is the principle of legalism. It means '(...) that the collection and disbursement of funds for public purposes may be conducted only as the law prescribes' [Zaborek 2012, p. 333]. The second principle is debt limitation. The third principle concerns the accumulation and spending of public budgetary funds and indicates the bilateralism of these processes, for which the council of ministers is responsible.

Apart from the Constitution, the other main piece of legislation is the Public Finance Act of 27 August 2009, which came into force on 1 January 2010. [Journal of Laws of 2013, item 885 later amended]. It defines who has powers to dispose of public funds and what powers they have. It is a kind of 'the constitution of public finance'.

In addition to rights, the rational management of public funds plays an essential role. Bad management can cause a 'collapse' of public finances. It may impede economic development and social welfare [Zaborek 2012, p. 329].

Deficiencies in the functioning of the public finance system lead to changes that require justification.

The factors that accompany changes take the form of monetary and non-monetary phenomena. Both involve the need for public money operations. 'Public monetary resources exhibit the characteristic of natural mobility. Their natural liquidity is limited only to the extent that legal norms impose specific procedures for their disposal. Still, even with this reservation, goods in the monetary form constituting public money resources are far more malleable than any other goods the administration have at their disposal.' [Gaudemet, Molinier 2000, p. 43]. The use of public monetary resources results from the necessity to perform tasks imposed on the public authority, which results in a constant movement of public funds. The discharge of public tasks is closely related to the state's performance of its functions [Strąk 2012, p. 38]. It is done with the help of entities with different organisational and legal forms. However, no mechanism obliges them to act efficiently [Strąk 2012, pp. 69, 81]. There are several models, which are a reference for public sector units, but 'these models even accept the need to measure the achievements of individuals. In this respect, the differences between the models concern only the hierarchy of individual measures, not the necessity of their application' [Strąk 2012, p. 89].It leads to discretion in decision-making, if it does not interfere with the applicable law.

We need to distinguish two levels in the management of public funds. The first one involves first-level decision-makers, e.g., the state or a local government. The second level concerns subjects pursuing public tasks, such as public schools. They are final decision-makers. The differences boil down to the fact that management at the first level is highly political, which results from the fact that decisions concerning e.g., the state budget are made by the parliament with a diversified political configuration [Piotrowska-Marczak, Uryszek 2009, p. 31].

When decentralising power into state and local government, the extent of financial autonomy of local self-government is essential. It means '(...) that the problem of decentralisation and adequacy should always be seen from the perspective of the entire system of public finance and other conditions' [Lubinska 2017, p. 89]. The changes designed or introduced by the state or local authorities should focus on the rational management of public funds. In this case, one should remember that '(...) rationality of public finance is not possible without a clear model concept of the state, its role and, consequently, the scope of public tasks.' [Szołno-Koguc 2017, p. 133]. Efforts to introduce changes in the system of public finance aimed at its rationalisation must answer the question: will they be consistent with a precisely formulated vision of the state? In this process, the analysis of public expenditure plays an essential role, which is because '(...) the assessment of the structure of public expenditure cannot be overestimated since it provides the basis for defining the type of political doctrine built in a country and the corresponding social and economic policies' [Lubińska

2005, p. 106]. However, it is not enough to analyse public expenditure. It is necessary to refer to income, the public income collected as taxes. The differentiation of sources of income is relevant to the structure of property divided into public and private. For this reason, it is necessary to point out that the collection of taxes is an interference with the property right. But 'Out of the obvious necessity of providing the State with the financial means for its functioning, the right to levy justified public tributes in specific cases arises. On the other hand, a potential taxpayer has the right to look for circumstances that allow them to avoid paying the levy' [Machowicz 2017, p. 99]. According to P.M. Gaudemet and J. Molinier [Gaudemet, Molinier 2000, p. 90-93], the use of public money is characterised by flexibility, comprehensiveness and efficiency. Flexible intervention is devoid of coercive elements and leaves entities freedom of action. It activates incentives that allow undertakings which are in line with the intentions of the public authority. In this case, it must be considered that there is a two-way action, which involves financial operations affecting the economy and, conversely, actions occurring in the economy affect financial operations. Economic objectives that are pursued using public funds should be undertaken with great distance and caution. As part of financial intervention, the state authorities may use various instruments, taxes and interest rates (the public authorities in Poland used such instruments in 2022). What occurs here is a situation in which 'The links between financial operations and policy are extensive and complex. Just as with economic activities, interactions between politics and finance appear here.' [Gaudemet, Molinier 2000, p. 104]. This relationship is of great significance, as changes in the system of public finance cannot be interpreted in economic terms without considering the political preferences of the public authorities. 'All political bodies equipped with financial competences will gain political power from it. It is greater than it would result from the legal rules defining their status' [Gaudemet, Molinier 2000, p. 106]. A statement must be added here that 'The predominance of a minister of economy and finance within the cabinet is sometimes so significant that it can lead to conflicts with the prime minister.' [Gaudemet, Molinier 2000, p. 109] This finds expression in fiscal policy. It is characterised by specific rules (the so-called fiscal rules) to safeguard public finances from a crisis. 'Fiscal rules become tools that are part of the characteristics of a transparent fiscal policy. It is vital to increase the predictability of actions conducted within public finances, limiting a possibility of irresponsible behaviour of politicians.' [Ciak 2014, p. 149]. The rules mentioned are quantitative and qualitative in nature. The quantitative rules set limits, e.g., on expenditure, while qualitative rules are concerned with such financial categories as revenue and expenditure and their relationship. 'Rules become a kind of obstacle to a possible inappropriate fiscal expansion of public authorities, especially spending, which could lead to a too deep imbalance between state obligations and a source of their coverage' [Ciak 2014, p. 149]. Despite these safeguards, public authorities, having public funds at their disposal, may dispose of them, disregarding the principles of rational, efficient management, including fiscal rules. It is because 'The balance of political forces of a given country in a given time is an essential element of the orientation of that country's finances. In fact, it has always been the case that the social group holding political power has used the financial powers at its disposal in its own interest" [Gaudemet, Molinier 2000, p. 149]. The problem of counteracting such practices boils down to setting and enforcing sanctions for violating financial discipline related to non-compliance with the rules governing the use of financial instruments. These matters intensify when a country joins international economic ties, such as the EU. It is worth noting here that '(...) this whole adjustment process takes place not only at the economic level but also the political and cultural (mental) levels. The process concerns not only elites that are subject to deserved criticism but also entire societies'. [Szomburg 2005, p. 7]. Under these conditions it is necessary to consider what the signal should be for changes in the system of public finance. In this case, it should be assumed that 'the basis for outlining proposals for changes in the PFS should be its assessment. In this respect, the selection of criteria is relevant.' [Kosek-Wojnar 2021, p. 192] A catalogue of qualities that play a role in evaluating changes and establishing an institution (council) that would conduct such evaluations is crucial. The system of evaluations relates to information on the condition of public finance communicated to the public, which is referred to as fiscal illusions. The problem in this regard boils down to the fact that 'The creation of fiscal illusions in the gathering and spending of public funds is a dangerous phenomenon for state finance.' [Kosek-Wojnar 2021, p. 201]. There is no doubt that a message not reflecting the truth causes a lack of trust in the authorities and, consequently, may lead to a change of the government, which results in authorities' making decisions on a development policy and triggering reactions from business entities [Sadowski

2000, p. 345]. The issue related to the need or necessity of making changes in the system of public finance requires an answer to the question: what factors determine these actions? Here, it is necessary to distinguish between the factors that have a financial, monetary expression and those that do not have a pecuniary form called non-financial. To do this, it is necessary to decide what factors determine the scope of the system of public finance, indicating only the most significant of them.

These include:

- the proportion between the private and public sectors, and the related form of ownership, of the means of production,
- the economic model,
- the scope of market economy,
- the functions of the public sector,
- the level of economic development of a particular country,
- the formal conditions for restricting the public sector,
- the results of cost-benefit analysis.

Each of the mentioned factors requires indicating what its content is in terms of its role in shaping public finances.

The division of the economy into public and private sectors is significant, and therefore the proportions between these sectors are crucial. They decide on the dominant type of ownership and determine how wide the scope of public finance is to be. That is influenced by the specific features of both sectors, which are on both the revenue collecting and the expenditure incurring sides. The state is the custodian of public funds, and it possesses the apparatus of coercion to collect income chiefly in the form of taxes. There is no obligation as regards the structure of expenditure. The resources collected are intended to satisfy the interests of the public. In contrast, private resources are characterised by partial coercion on the expenditure side, as taxes imposed on this sector are obligatory. On the other hand, there is no coercion in this case to collect the income. The mutual dependence of these two sectors assumes the following form: the broader is the scope of the private sector, the narrower is the scope of the public sector and, of course, the other way round. This division can be corrected by the institution of public-private partnership, which nowadays is slowly being integrated into financial processes. Under Polish law [Journal of Laws No. 180, item 1112, later amended], a public and private partnership is a commitment to implement a project in return for remuneration and to incur expenditure in whole or in part by a private partner. When deciding on the proportions between the public and private sectors, one should remember that 'If in the case of the private economy (private sector) the market mechanism affects the way it functions, the effects it achieves, etc., in the case of the public sector, the political mechanism and the closely related electoral system are of key relevance.' [Owsiak 1999, p. 72] That means that the proportions of both sectors may change. However, one should not forget that some actions are permanent, e.g., the process of privatisation takes place only one way.

The scope of public finance and the public sector is influenced by another factor which is a model of economy. That refers to market models. In literature [Gołębiowski, Szczepankowski 2008, p. 112], a division into liberal and coordination-based economies is proposed. Countries with liberal economy model include the USA, the UK, Australia, Canada, New Zealand and Ireland. In contrast, countries based on the coordination economy model are Germany, Japan, Sweden, the Netherlands, Belgium, Norway, Denmark, Finland and Austria. The first group is treated as countries with a strict market economy and for these countries the scope of public finance is limited to the collection of funds for the performance of necessary functions. In contrast, the countries constituting the second group, e.g.: Sweden, Norway, or Denmark are characterised by the development of social functions and a considerable extent of public finance, and their economy is described as social-democratic. Moreover, some countries, such as Germany, define their economic model as a social market economy where the scope of public finances is smaller than in the economy described as social-democratic but broader than in liberal economies.

The measure for determining the extent of public finances is the size of public resources in the long term. So, one can say that the scope of public finance does not depend on a country's level of development but on an economic model and a range of the market. If the market is dominant and its transactions take priority, the scope of public finance is narrower. On the other hand, if some transactions are non-equivalent, then the scope of public finance widens. That means that 'the public economy produces certain services and transfers them, also to some extent sells them.' [Kucharski 1986, p. 18]. The market cannot be an all-encompassing mechanism because some products

and services must be redistributed in a non-equivalent manner. It makes it necessary to separate the public sphere. The relationship in this area is the following: the better the substitution of the market by the public sphere, the greater the scope of public finance.

A factor that influences the scope of public finance is its functions. The most prominent of these are the intervention and social functions. In literature [Markowski 1992, pp. 20-21], in line with J. M. Keynes's approach, it is assumed that the market mechanism is imperfect and needs support, and free competition does not ensure a stable economy. The continuators of these views - neo-Keynesians, point out that the intervention function of the state results from the need to mitigate the effects of economic crises. The social function is closely related to the intervention function. 'Social infrastructure and its functioning play a specific role here, limiting how many diverse needs are met." [Frąckiewicz 1983, p. 7]. These needs are generated in several areas, such as: employment, social security, health care, education, etc. Satisfying these needs requires outlays from public funds referred to as 'investment in man', which require the expenditure in the following areas: education, health care, culture, sport and leisure. And the more extensive is the state's intervention function and, the broader is the scope of the social function, the larger is the area of public finance.

The next factor influencing the scope of public finance is a cost-benefit analysis. The specificity of this calculation lies in the fact that 'If precise measures can be used to determine costs, the measurement of benefits achieved because of public decisions is qualitative in nature.' [Owsiak 1999, p. 79]. The basis of an account kept in the economy is profit, while in the case of the public finance account, benefits mean securing the needs of the public.

Hence, the need to compulsorily collect revenue and allocate it to public purposes in the form of free benefits and services results. This is because part of the population would not be willing to spend their income on, for example, education or road building, justifying it by the fact that they do not need to use it. Such individual attitudes must be balanced by the action of public authorities, whose duty it is to safeguard the interests of society as a whole. Hence, the decisions resulting from this account affect scope of public finances.

Whatever account, one must take into consideration that '(...) public money resources exhibit a characteristic of natural mobility. Their natural liquidity is limited to the extent that legal norms impose specific procedures for their disposal' [Gaudemet, Molinier 2000, p. 43]. The quoted statement clearly indicates that the applicable law outlines the framework of public finance and acts either extending or limiting the scope of public finance. Here, the strong links between public finance and law come into play. Since the state is the creator of law, public finance must also be considered in the political dimension.

The presented factors affecting the scope of the public finance system are related to decisions on introducing changes in it. The factors determining changes have been divided into those expressed in money and those which are not monetary. The former factors include the need to raise an adequate amount of public revenue and changes in the structure of public expenditure. These two factors are overlaid by a desire to maintain a balanced budget or reduce a deficit and, consequently, public debt, for example, by an increase in taxes of certain types or adjustments to changes in the structure of public expenditure. On the other hand, non-monetary factors include, e.g., the aim to reduce social inequalities. Moreover, the political structure of the public power determines the changes in the system of public finances. 'This is because the mechanism of decision-making as to the allocation of public funds is vested representatives of the society, i.e., MPs, senators or town councillors at the local level. An additional complication is that the various parties, both those in power and those in opposition, compete and promote different choices as to the use of public funds." [Piotrowska-Marczak, Uryszek 2009, p. 32]. Another factor that influences the process of the decision-making on changes is a model of the state and economy.

In the light of the arguments made, we may conclude that the public finance system is characterised by stability, understood in a specified way, which promotes changes influenced by monetary and non-monetary factors.

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REGULATION OF FINANCIAL SUPERVISION IN THE EUROPEAN UNION

Abstract
This contribution offers a broad theory on the regulation of the financial supervisory architecture in the European Union. It discusses the macro- and micro-prudential competences of the specialised agencies that are now ranging from direct supervision of individual financial institutions to the ability to impose market-wide restrictions on financial activities. The regulatory response to the financial crisis of 2007/08 centralised and strengthened the EU competences of monitoring financial markets and enforcing cooperation between the national competent authorities, especially in cross-border situations. It is however observed that – with some notable exceptions – the supervisory model in the European Union remains fragmented. Lack of direct supervisory powers – especially in the securities and payments markets – means that many international institutions remain without appropriate supervision. This results not only in weaker consumer protection and increased systemic risk, but also in jurisdictional arbitrage and, ultimately, damaged competitiveness of the European financial sector.

Keywords: financial supervision, supervision models in the EU, effectiveness of supervision

Introduction

The purpose of this contribution is to present and discuss legal sources governing financial supervision in the European Union. The research hypothesis examined in this article aims to determine the extent to which these provisions contribute to the proper functioning of the financial market. In the legal sense, financial supervision is defined as a set of rules and standards that allow authorities to oversee and control activities of the participants of the financial markets [Wielka Encyklopedia PWN 2003, p. 285]. The question of financial control was one of the main research topics of Professor Eugeniusz Ruśkowski, to whom this issue of the Annual Center Review is dedicated. In his last book he distinguished four main elements of financial control analysis. Firstly, it is concerned with finding of the facts applicable in financial matters. Secondly, it determines the actual state of play and, thirdly, it compares results with initial recommendations and best practices to establish their (lack of) conformity. Finally, it explains reasons for the observed conformity or non-compliance [Ruśkowski 2001, pp. 135-136]. Thus, Professor Ruśkowski's work became integral part of the Polish scientific culture in the field of financial oversight [Rybarski 1937, pp. 47-51; Kurowski 1968; Kurowski 1990; Ruśkowski 2021].

Purpose of Financial Supervision

The rules, objectives, and limitations of financial supervision in the European Union are defined in a series of applicable legal acts [Głuchowski 2010, p. 143]. Accordingly, the purpose of this oversight is to ensure the proper functioning of the financial market, its stability, security,

transparency, trust and the protection of the interests of the participants, both retail and professional.

It can be observed, from the point of view that is particularly interesting to us, that financial supervision in a given country can be internal (national) and external (international). An example of the latter is the financial supervision exercised within the single market of the European Union. In the wake of the 2007/08 global financial crisis, the cross-border interconnectedness of individual financial institutions had serious negative impact on macro-savings structures. The regulatory response attempting to remedy existing shortcomings in external (international) oversight led to a series of legal acts that reshaped the supervisory architecture in the EU.

The stage-setting report by de Larosière placed great emphasis on the need to coordinate financial supervision across national borders. The report drew attention to the fact that the lack of consistent supervisory practices and uniform prudential requirements, especially at the international macro-economic level, was one of the main reasons for inadequate response to the financial crisis in 2008 [de Larosière et al. 2009, p. 10]. The national regulators were accused of devoting too much attention to micro-prudential supervision to allow them to respond in a timely and appropriate manner to a number of cross-border links between individual financial institutions that had, unsurprisingly, serious macro-prudential implications [de Larosière et al. 2009, p. 10].

Until the financial crisis of 2007/08, Member States' supervisory authorities have coordinated their policies through three committees that did not exercise directly any supervisory powers: the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR) [Ringe, Morais, Muñoz 2019, p. 5]. In 2011, the three *Committees* were transformed into three *Authorities* with a task to ensure proper implementation of the rules throughout the European Union: the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). In literature, the European Union represents thus the-so called sectoral supervisory model, which means that there are three different competent authorities for each sector: banking, insurance and securities markets [Wymeersch 2007, p. 251]. The topic of supervision of the insurance market will be omitted in the remaining part of this article.

Specialised Authorities

The new authorities became independent institutions acting solely in the interest of the European Union, even though accountable to the European Parliament and the Council [Regulation 1093/2010, art. 1(5), art. 3; Regulation 1095/2010, art. 1(5), art. 3]. It should be however mentioned that in the case of credit institutions, the EBA shares many competences with the all-powerful European Central Bank (ECB), which has been given extensive supervisory powers within the Single Supervisory Mechanism (SSM) [Ferran, Babis 2013, pp. 255-260]. The additional competences of the ECB are centred around the licensing and prudential supervision of credit institutions [Treaty on the Functioning of the European Union (TFEU) 2012, art. 127(7); Council Regulation 1024/2013, art. 4(1)(a); European Central Bank 2019, p. 2].

At the macro-prudential level, the chairs of the three sectoral supervisors as well as of the ECB meet together at the European Systemic Risk Board (ESRB) [Regulation 2019/2176, art. 1, art. 3]. The ESRB is responsible for issuing recommendations related to the macro-prudential supervision of all financial institutions in the EU. To complete the picture, as part of banking supervision, the Single Resolution Board (SRB), through its management of the Single Resolution Mechanism (SRM), sets standards for the rules and procedures for the orderly resolution of credit institutions [Regulation 806/201, art. 1, art. 42]. Noteworthy, the competences of direct supervision of the ECB and the SRB are limited to the participating Member States (i.e. those that adopted the single currency – Euro). Although other Member States could join the SSM by virtue of an agreement with the ECB [Council Regulation 1024/2013, art. 7; European Commission 2017, p. 2], only Croatia and Bulgaria did so in 2020 [European Central Bank 2020]. In other Member States, including Poland, the national supervisory authorities remain competent in all matters related to the direct supervision of financial institutions [Darvas, Wolff 2013, p. 141].

It is necessary to observe that neither of the EU Treaties provide for specific supervisory competences of the three sectoral supervisors: the EBA, the EIOPA, the ESMA. Since their establishment, the European Commission assumed that the role of the specialised agencies will always be limited to the implementation of the European laws, but they will not become part of the legislative process *per se*. Therefore, such bodies can be established within the framework of the existing EU Treaties [Commission

of the European Communities 2002, p. 3; Howell 2019, p. 327]. In practice, the usefulness of specialized bodies was hardly ever controversial and widely used in the Community since its inception, even in the absence of uniform foundations at the level of primary law [Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community (Meroni) 1958, pp. 151-154]. As a result, the general article 114 of the TFEU, which deals with the approximation of laws, became the legal basis for the functioning of the three sectoral authorities. Although the possibility of setting up supervisory authorities does not stem directly from that article, the European Court of Justice generally agreed with the reasoning of the European Commission as long as the tasks entrusted to the three sectoral authorities are "contributing to the implementation of a process of harmonisation [and are] closely linked to the subject-matter of the acts approximating the laws, regulations and administrative provisions of the Member States" [United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union 2006, par. 44-45]. Consequently, the three sectoral authorities may take decisions on specific legal bases, but they are not authorised to adopt new European laws. In other words, the powers of the supervisory authorities cannot contradict or limit the powers of the European legislators [European Commission 2001, p. 20].

We have examined below the legal bases that confer upon ESMA competences of financial supervision in the securities market:

a) ESMA has the task of ensuring consistent, efficient and effective supervision of firms providing investment services, collective investment undertakings and markets of financial products and services marketed based on the following legal bases [Regulation 1095/2010, art. 1(2), art. 8-9, art. 1(5)]: Directive 2014/65/EU, Regulation 600/2014 [art. 1(1)(e)], Directive 2009/65/EC [art. 4(1)(4)], Directive 2011/61/EU [recitals 73-74] as well as Regulation 1095/2010 [art. 1(2), art. 5]. ESMA can publish best practices for the conduct of financial activities and develop draft regulatory technical standards [Regulation 1095/2010, art. 8(1)(aa), art. 10, art. 15, art. 16, art. 17(3), art. 29a] as the second and third levels of the so-called Lamfalussy procedure [Lamfalussy et al. 2001, pp. 6-7, p. 24]. ESMA is also empowered to issue warnings in the event of overreaching threat to public interest [Regulation 1095/2010, art. 9(3)] and may "temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union" [Regulation 1095/2010, art. 9(5), art. 17(6), art. 18(4), art. 19(4)].

ESMA has two core competences related to the interpretation and enforcement of the European financial law. First, in the event of an alleged breach of the European law by national competent authorities, it may make recommendations and requests for information to such an authority [Regulation 1095/2010, art. 17(2), art. 17(2a), art. 17(3), art. 17(4); ESMA 2020, pp. 1-16]. In the event of an unsatisfactory response, ESMA may request the European Commission to issue a formal opinion "requiring the competent authority to take the action necessary to comply with Union law" [Regulation 1095/2010, art. 17(4)]. Where a national competent authority fails to comply with a formal opinion issued by the European Commission, ESMA may adopt a binding decision addressed directly to a financial institution [Simoncini 2015, p. 324]. However, this is only possible "where urgent remedying is necessary to restore the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union" [Regulation 1095/2010, art. 17(6), art. 18(4)]. Second, ESMA can settle disputes between national competent authorities related to the financial institutions providing financial services on a cross-border basis in the single market [Regulation 1095/2010, art. 8(1)(b), art. 19; ESMA 2021]. On this basis, ESMA may issue binding decisions "requiring [national competent authorities] to take specific action or to refrain from action in order to settle the matter" [Regulation 1095/2010, art. 19(3)]. Where the national competent authority does not comply with the ESMA's decision, the ESMA may directly issue an individual decision addressed to the financial institution. However, it is only possible if the provisions applicable to the financial institution in question are not subject to interpretation and are hence directly applicable [Regulation 1095/2010, art. 19(4), art. 39].

While ESMA may adopt individual decisions requiring national competent authorities to take certain actions when financial stability is at stake [Regulation 1095/2010, art. 18(3)], its competence in the micro-prudential supervision of individual institutions

remains severely limited. The lack of this competence is particularly visible in the case of the so-called key financial market participants, for which it can only draw up guidelines and recommendations [Regulation 1095/2010, art. 4(2), art. 22(3)]. The only institutions that are directly supervised by ESMA are credit rating agencies and trade repositories [Spendzharova 2017, p. 4; European Commission 2014, pp. 3-4].

The above analysis leaves no doubt that ESMA's remit goes beyond coordinating the activities of national competent authorities. It is particularly noticeable in ESMA's power to intervene by imposing restrictions on the marketing of financial products and activities. In addition to the ban on the marketing of binary options, ESMA also introduced short selling restrictions in 2012 [Regulation 236/2012, art. 28; Regulation 1095/2010, art. 9(5)]. Not without a pushback from the Member States. The British opposition argued that the competence that allows ESMA to impose restrictions when they threaten the proper "functioning and integrity of financial markets" constitutes too broad discretionary power allowing the authority to make political choices that affect the economy at large [United Kingdom of Great Britain and Northern Ireland v European Parliament and Council of the European Union (UK v EP and the Council) 2014, par. 28-34]. However, the European Court of Justice ruled that introduction of these restrictions does not constitute an abuse of power since ESMA can only impose restrictive measures on condition that "no competent national authority has taken measures to address the threat or one or more of those authorities have taken measures which have proven not to address the threat adequately" [UK v EP and the Council 2014, par. 46]. Moreover, the Court drew attention to the fact that the market-wide restrictions always stem from specific legal basis and relate to specific financial instruments. ESMA is therefore not exercising a legislative power but an executive one as it only implements the existing European laws [UK v EP and the Council 2014, par. 63]. On that basis, the European Court of Justice held that the normative measures adopted by ESMA did not go beyond the framework of the EU Treaties, since they were a harmonising tool aimed at improving the internal market [UK v EP and the Council 2014, par. 103, 113-114].

Consequently, the delegation of supervisory competences to the three sectoral authorities appears to be in line with the existing EU Treaties. However, the limits of the provisions of article 114 of the TFEU will remain controversial as long as the subject is not regulated more specifically at the level of primary law, as it was done with respect to the European Central Bank's competences. To illustrate, article 127(6) of the TFEU conferred general competences of prudential supervision of financial institutions upon the ECB [Ringe, Morais, Muñoz 2019, p. 24]. In addition to the ECB's accountability to the European Parliament and the Council [Memorandum of Understanding between the Council of the European Union and the ECB 2013, pp. 2-4], it had to ensure that its direct involvement in the European monetary policy [TFEU, art. 282(3)] is not creating conflicts of interests with the newly granted supervisory powers [Interinstitutional Agreement between the European Parliament and the European Central Bank 2013, pp. 1-6; Jurkowska-Zeidler 2015, p. 515]. As a consequence, without a dramatic change in the EU Treaties, supervision by the three sectoral authorities at the level of individual financial institutions does not seem to be possible [Kálman 2014, pp. 212-213]. This is particularly striking when considering financial institutions (other than banks) that are systematically important. At the moment, the supervision of such institutions by ESMA is limited to the preparation of EU supervisory manuals and stress tests [Regulation 1095/2010, recital 37, art. 22, art. 27]. The only elements of direct supervision are only allowed in emergency situations and require the Council's approval [Regulation 1095/2010, art. 18(2)], which significantly limits ESMA's ability to act [Moloney 2011, p. 45].

The situation looks different with respect to the banking sector. We have discussed below the legal bases that confer upon the EBA and the ECB competences of financial supervision:

b) The task of the EBA is to ensure consistent, efficient and effective supervision of credit institutions, financial conglomerates, investment firms, payment institutions and electronic money institutions that operate on the basis of the following legal acts [Regulation 1093/2010, art. 1(2), art. 1(3), art. 8, art. 10-16, art. 34]: Regulation 1093/2010 [art. 1(1)(e)], Directive 2013/36/EU, Regulation 575/2013, Directive 2009/110/EC and Directive 2015/2366. The basic competences of the EBA are equal to those set out above for ESMA. It can publish best practices, develop draft regulatory technical standards and issue warnings in the event of a threat to the public interest [Regulation 1093/2010, art. 1(5), art. 9(3), art. 10, art. 15, art. 8(1)(aa), art. 16, art. 16a, art. 16b]. The EBA

may also adopt decisions against national competent authorities and individual financial institutions [Regulation 1093/2010, art. 17, art. 19, art. 39] and "temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union" [Regulation 1093/2010, art. 9(5), art. 17(6), art. 18(4), art. 19(4)].

The key difference between the supervision of the securities sector and the banking sector lies in the centralisation of micro-prudential supervisory powers at the European level. An example of this is the conferral of specific supervisory powers to the ECB by the Single Supervisory Mechanism (SSM) [Council Regulation 1024/2013, art. 1, art. 3, art. 7]. In this respect, the ECB has exclusive competence to issue and revoke authorisations for credit institutions under the EU law and the national legislation transposing the EU law [Council Regulation 1024/2013, art. 4(3), art. 14]. In addition, the ECB conducts direct supervision of credit institutions of "systemic importance" (among others, if the value of the assets exceeds EUR 30 billion or "subsidiaries in more than one participating Member States and its cross-border assets or liabilities represent a significant part of its total assets or liabilities" [Council Regulation 1024/2013, art. 6(4); European Central Bank 2018, pp. 61-110]).

The ECB also takes an active role in cross-border situations. Where a credit institution licensed in a participating Member State intends to provide banking services in the territory of a non-participating Member State, the ECB shall act as the "home competent authority" for all the procedural aspects [Council Regulation 1024/2013, art. 4(1)]. On the other hand, where a credit institution established in a non-participating Member State intends to provide services within the territory of a participating Member State, the ECB shall act as the "host competent authority" [Council Regulation 1024/2013, art. 4(2)]. In addition, the ECB enjoys a number of investigative and controlling powers [Council Regulation 1024/2013, art. 10-14] allowing it to impose additional prudential requirements on any credit institution provided that there are reasons for doing so dictated by the institution's failure to comply with the existing prudential requirements [Council Regulation 1024/2013, art. 16]. It must be reiterated that the power of direct supervision over financial institutions can be in conflict with the competences connected to the monetary policy. For this reason, ECB is legally bound to ensure [Council Regulation 1024/2013, art. 25] that management of both aspects – prudential supervision and monetary policy – are operationally separate [Gortsos 2016, pp. 285-295].

The banking sector in the European Union has therefore two authorities exercising formal supervision. In contrast to ESMA's clear position in the securities market, EBA's position in the banking sector is largely dependent on the decisions taken by the ECB, especially with regard to the interpretation of the rules for credit institutions and the development of European banking policy [Farran, Babis 2013, p. 23]. Moreover, although the overall competence of the EBA has not been formally limited [Regulation 1022/2013, recital 4], some competences (e.g. related to the preparation of EU supervisory manuals and stress tests) are among the competences of both authorities, which may lead to duplication of certain activities and unclear responsibility for supervision [European Commission 2014, p. 35].

The most important missing competence of the European supervisory authorities is the ability to exercise direct supervision over key market participants (e.g. investment funds for ESMA and payment institutions for EBA). These are increasingly large-scale international institutions and can have a significant impact on the stability of financial markets, equal to the influence of credit institutions in the banking sector [Jenkins 2020].

The three sectoral authorities have also very limited powers with respect to financial institutions providing services across borders on the basis of freedom to provide services (the so-called "European passport"). Although they can intervene and require national competent authorities to ensure that a financial institution meets all the requirements related to doing business in the EU [Regulation 1093/2010, art. 17(6), art. 19(4); Regulation 1095/2010, art. 17(6), art. 19(4)], there is no legal basis for the sectoral authorities, with the exception of the credit institutions described in the section on EBA/ECB, to require national competent authorities to recognise a "European passport". Such a solution, which does not require prior initiation of proceedings before the European courts would be particularly useful in a situation where the three sectoral supervisors consider that the requirements imposed by a Member State in the context of reliance on a "European passport" are manifestly incompatible with the EU law.

Conclusion

In conclusion, it should be noted that effective and consistent supervision of financial institutions is a necessary step in the creation of an internal market for financial services. Harmonisation of supervisory practices and rules – as well as ensuring uniform interpretations of the law in the EU – aims to ensure a high level of security and financial stability, especially in the cross-border situations. Nevertheless, there are many inconsistencies in the EU related to the obligation to cooperate and exchange information between national competent authorities. Moreover, the three sectoral authorities do not have sufficient competences to enforce cooperation or to initiate direct supervision of financial institutions, especially those active in more than one Member State. This can lead to jurisdictional arbitrage, as the supervisory authorities in the home Member State currently enjoy a privileged position in conducting day-to-day supervision.

The lack of consistent and uniform supervision in cross-border situations can also lead to errors and gaps in supervision. This is dictated by the fact that the practices of innovative financial institutions that make full use of cyberspace to operate across the geographical borders of the Member States may be overlooked or misinterpreted by the authorities of the home/host Member State. Consequently, although the principle of "same activity, same risk, same rules" is of great importance to the question of fairness and neutrality of the law, some situations require tailor-made (i.e. international) supervision. On the basis of the observed regulatory obstacles and shortcomings, it can be concluded that only a stronger obligation to cooperate – consisting primarily in the automatic exchange of information – between national competent authorities and the centralisation of supervisory powers at the European level, can solve the problem of fragmentation of European financial markets. The effect of the said fragmentation currently leaves many international financial institutions without effective supervision and creates an unlevel playing field between the EU Member States.

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BUDGET LAW OF THE REPUBLIC OF LITHUANIA UNDER THE INFLUENCE OF THE EUROPEAN UNION LAW

Abstract
The article deals with the question of the impact of the European Union law on budget regulation in the law of the Republic of Lithuania after its accession to the European Union in 2004. The influence of the European Union law on the Lithuanian budget law is twofold - direct when the requirements of the relevant European Union legislation are transposed into national budget law, and indirect, when national budget law is changed during the harmonization of national tax laws with the requirements of the European Union law. As the article deals only with the aspects of direct impact, such questions, as harmonization of annual and medium-term budget planning, changes in the budget planning process, strengthening of fiscal discipline, the requirements of the Stability and Growth Pact and their implementation in national law are analysed in the article.

Keywords: budget, budgetary framework, budget law, budget planning, fiscal discipline, Lithuania

Introduction

Probably it would not be surprising to say that for the Republic of Lithuania (hereinafter "Lithuania") the date 1 May 2004 was and still is a date that marked essential changes in its legal framework. Similarly to other states, within the context of the European Union (hereinafter "EU") accession Lithuania changed whole spheres of the national law framework with a view to harmonising them with the EU law. The present article sees the sphere of public finance as most important, while budget law in particular and changes in it are the result of the EU accession, too. For the sake of objectivity, it must be noted that changes in the Lithuanian budgetary framework were determined not so much or not only by the EU membership, but rather by an urgent need for reforming the budgetary framework to enable it to meet the most important financial needs of the State and the needs of financing public functions [Sudavičius, Vasiliauskas 2014, p. 470]. It should be noted that at the time of the EU accession the relation of the amendments to the budget laws with EU laws was minimal since it is common knowledge that the budgetary framework is not part of *EU Acquis*. It must be stressed within the context of this paper, however, that in 2004 the Lithuanian national budget was the first Euro-integration budget that merged Lithuanian state and the EU cash flows.

Although the budget of the State is the main centralised fund of financial resources through which a considerable share of the created Gross Domestic Product (hereinafter "GDP") is distributed and the establishment of which is provided for already in the Constitution of the Republic of Lithuania (hereinafter "the Constitution"), Lithuanian legal theorists have not analysed in principle either the budget process problem in general or the issues of the influence of the EU law on budgeting. During the whole period of independent Lithuania, there have been just a few scientific articles on these problems [Birmontienė 2012; Sudavičius 2013, 2014, 2017, 2019; Sudavičius, Vasiliauskas 2014].

It should be noted that the influence of the EU law on the Lithuanian budgetary law is twofold:

1. direct when the requirements of the relevant EU legislation are transposed into national budgetary law,
2. indirect, when national budgetary law is changed during the harmonization of national tax laws with the requirements of the EU law[1].

The article, based on the analysis of existing laws and usage of the systemic, logical, comparative, critical, analytical and other methods of analysis, is aimed not only at explaining the gist of the principles of budget planning in Lithuania but also at disclosing the influence of the EU law on these phenomena (their legal framework).

Harmonisation of Annual and Medium-Term Budget Planning in Lithuania

The problem of the introduction of long-term planning in the sphere of budget planning is not new. For many years discussion has been going on with regard to the question of extending the budgetary period. It has been noted, inter alia, that a one-year period is too short, especially when addressing the planning and funding of investments; that an annual budget fails to meet long-term, forward-looking economic development plans, and that budgets for a longer period must be drawn up in addition to annual budgets [Sudavičius 2013, p. 7]. Therefore, a gradual transition to the implementation of the principles of long-term budget planning must take place. One has to admit, however, that in practice priority, for a long time, was granted exclusively to annual planning of public finance, which only resulted in the establishment and approval of annual budgets at different levels. Essential changes in the review of the principles of budget planning occurred in the second half of and late 20th century when the principle of long-term planning began gaining a strong foothold in the public finance planning practice of most states (including Lithuania). In some cases this principle is implemented in conjunction with the principle of annual budget planning, while in other cases it even replaces annual budget planning. In any case it is evident that the governments of most countries have been looking, more or less actively, for ways to achieve a better distribution of financial resources.

Generally it can be stated that almost throughout the 20th century the one-year budget planning was a universally accepted rule enshrined in national law, even at Constitutional level, - Art.129 of the Constitution stipulates: 'The budget year shall start on the 1st of January and shall end on the 31st of December'. Although the legal doctrine quite often featured criticism of this principle and there were proposals to replace (supplement) it with the principle of long-term planning of revenues and appropriations. Essential changes only came around in the late 20th century when both the EU and its Member States began to apply the principle of long-term planning in their public finance planning practice.

As for the establishment of the principle of long-term budget planning in Europe, the main reason that deserves mentioning is the positive experience of the EU in public finance planning and the toughening requirements for the EU Member States in this sphere. Such long-term financial plans (called an *EU multiannual budget* in some contexts and *financial perspectives* in other cases) have been drawn up in the EU since 1988. Under the Treaty of Lisbon, the multiannual financial framework has become a legally binding act. Moreover, Art. 312 of the Treaty on the Functioning of the European Union (hereinafter "TFEU") stipulates that 'the multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources' and 'the annual budget of the Union shall comply with the multiannual financial framework', thus establishing a basis for financial discipline. Drawing up long-term financial plans in the whole EU allows the Member States to plan their long-term finances in a more efficient manner, with account of the expected financial support from the Structural Funds on the basis of the multiannual EU budget. It should be mentioned that the Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States stimulates medium-term budget planning in the Member States.

The practice of different states allows distinguishing the following organisational/legal forms of the implementation of the principle of public finance planning for a certain period:

1. short-term planning: the planning of a budget for a period of one year,

[1] See more on the harmonization of Lithuanian tax law with EU law [Lukas, Medelienė. Paulauskas 2014].

2. long-term planning: the planning for a period longer than one year,
3. short-term planning based on long-term fiscal projections,
4. short-term planning based on the general long-term plan of the whole public finance sector,
5. annual planning based on the determination of medium-term objectives.

In accordance with the legal framework in force before 2000, Lithuania was in the first group of states where budgeting was based exclusively on a one-year period.

To achieve more effective governance of financial resources, on 22 October 1998 the Seimas passed a resolution on the concept of the budget structure that initiated reform of the budget structure and specified the key principles of its implementation, such as:

1. "To plan the state budget for three years and to approve the same for one year",
2. "To establish the state budget by programmes drawn up by respective appropriation managers",
3. "From 2000, to establish municipal budgets also by programmes",
4. "To introduce a transitional five-year period for the establishment of a consolidated budget during which all resources of the state and municipal budgets and funds will be combined".

The legal basis for the implementation of multiannual planning in budgeting was a law amending the Law on the Budget Structure of 11 July 2000. Art. 17(2) of the Law on the Budget Structure in force stipulates: "A draft of forecasted indicators of the totality of the state budget and municipal budgets for a period of three budget years shall be prepared on the basis of the Government Programme, the Stability Programme of Lithuania, the State Progress Strategy, the National Programme for the Advancement of Lithuania, [...], this Law, the Law on Fiscal Discipline, other laws and other legal acts, the country's medium-term economic development scenario, EU financial support strategic documents, strategic plans of activities of appropriation managers and preliminary basic indicators of the state budget and municipal budgets as approved by the Government, also the programmes submitted by managers of state budget appropriations and draft estimates of the programmes". It is obvious that from this moment Lithuanian legislation has enshrined a transition from annual budgeting to medium-term planning based on long-term objectives [Sudavičius 2014, pp. 66-67].

Important changes in further improvement of budget planning took place after Lithuania's accession to the EU and the preparation of the first Convergence Programme in 2004. Point 3.1.1 of the Programme stated that "The key medium-term objective of the fiscal policy is to achieve a cyclically-balanced government budget by ensuring the implementation of the economic policy objectives. Today's objective is to keep the government deficit below 3 percent of the GDP, and create conditions for this deficit to consistently decline by a percentage point of GDP during later years, as required by the Law on Fiscal Discipline". According to the Art. 1 of this Law "Finances of the general government sector shall be managed to adhere to the medium-term objective of the general government sector being in surplus or close to balance".

Thus, it can be maintained that the model of medium-term budgeting based on the application of the programme method (as required by the EU legislation) is gaining dominance in Lithuania as the laws establish that a draft state budget is prepared for three budget years (medium-term budget) but is approved for one budget year (annual budget) [Sudavičius, Vasiliauskas 2014, pp. 480-481].

The budget planning procedure is as follows: after the Government approves the three-year preliminary key budgetary targets and the draft general principles for determining maximum appropriations, the Ministry of Finance informs the appropriation managers of the estimated limits of the appropriations that could be allocated to them for three years. On receiving this information, the state budget appropriation managers draw up their strategic action plans and programmes, prepare preliminary draft programme estimates without exceeding the maximum limits for financing expenditure as indicated by the Ministry of Finance, and submit them to the Ministry of Finance. The limits of appropriations for the expenditure of budgetary institutions for respective years are determined on the basis of the previous year plan and the use of appropriations for the following two years and their differentiation by separate state functions, with account of an upward bias in macroeconomic indicators and national budget revenue, as well as the criteria set out in the Stability Programme of Lithuania, and the priority programmes and measures approved by the Government. It is evident that medium-term budgeting

at present has a sufficient legal basis in Lithuania, and its shortcomings (officially identified by the National Audit Office) are in principle related to the activities of entities involved in budget planning [Sudavičius 2013, p. 16].

Strengthening of Budgetary (Fiscal) Discipline

With regard to the influence of the EU law on the budget planning of Lithuania, attention should be drawn to the provisions of the so-called fiscal surveillance which establish an EU framework aimed at protecting the stability of the Economic and Monetary Union. This framework has its source in the so-called Stability and Growth Pact which consists of the Resolution of the Amsterdam European Council of 17 June 1997 on the stability and growth pact, and two Council Regulations: Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, and Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure.

The first document enshrining budgetary surveillance of the Member States was the 1992 Treaty on European Union (Maastricht Treaty). Accordingly, Art. 121 and 126 of the TFEU of 1997 lay down the principles of budgetary surveillance for the Member States establishing the so-called 'preventive' and 'corrective' arms. The preventive arm aims to ensure sound public finance of all EU Member States over the medium term, i.e. compliance with the so-called medium-term budgetary objective, which is expressed as a balanced budget over a medium-term with budget deficits close to zero or excessive. In accordance with the preventive arm, budgetary surveillance is conducted by supervising compliance of the Member States with the three-year convergence (for non-euro area Member States) or stability programmes (for euro area Member States) submitted by them to the European Commission[2]. These programmes must specify how the Member States intend to attain or safeguard the achieved fiscal position over the medium term, taking into account the impact of the ageing population on the budget. The stability and convergence programmes contain the following information covering the previous and current year and at least three following years:

1. A medium-term objective representing a budgetary position of a state that safeguards against the risk of breaching the 3% of GDP threshold and ensures the long-term sustainability of public finances and the adjustment path towards the medium-term objective and the expected path of the debt ratio;
2. The underlying economic assumptions (economic growth, employment, inflation and other important economic variables);
3. A description and assessment of policy measures to achieve the programme objectives;
4. An analysis of how changes in the main economic assumptions would affect the budgetary and debt position;
5. Medium-term fiscal policy objectives and their relationship with price and exchange rate stability (for non-euro area Member States).

The Council examines the programmes and issues its opinion on them, based on the assessments of the European Commission and the Economic and Financial Committee. The greatest attention is devoted to the following issues:

1. Whether the economic assumptions are plausible,
2. Whether the medium-term budgetary objective contains a threshold safeguarding against excessive deficit, and the adjustment path for attaining the objective is appropriate,
3. Whether the political measures are adequate for achieving the medium-term budgetary objective,
4. What the risks of the ageing population for the long-term sustainability of public finances are,
5. Whether the economic policy strategies are in line with the broad economic policy guidelines.

On noticing any inconsistencies with or deviations from these programmes, the Council may issue country-specific recommendations on the economic policy pursued by a Member State. Meanwhile, the corrective arm requires the Member States to avoid excessive deficits and observe a certain public debt limit: the government deficit may not exceed 3% of GDP and public debt may not be more than 60% of the GDP. If these rules are ignored, the European Commission determines whether the excessive deficit is of an accidental and temporary or regular nature. On finding that the excess of the deficit indicator is not accidental, the Excessive Deficit Procedure is

[2] In 2015 Lithuania joined euro area and since then has been submitting Stability programmes.

launched, during which a Member State must take steps to balance its budget. EU continued to enhance budgetary surveillance and in 2011 adopted the six-pack of five European Parliament and Council regulations and one directive. This legislation introduced corrections to both the preventive and corrective arms but with a greater focus on prevention. The key modifications relating to prevention were as follows:

1. Member States were required to present national reform programmes along with the convergence and stability programmes to the European Commission,
2. A new government expenditure growth rule was introduced, according to which government expenditure growth should not exceed the potential GDP growth of a Member State concerned,
3. If a Member State fails to justify deviation from the medium-term objective, a sanction equal to 0.2% of GDP may be applied,
4. Minimum standards for Member States' budget governance were introduced, i.e. instruments were determined that must be implemented in a Member State (compulsory macroeconomic projections of the Fiscal Council and independent sources, reliability of statistical data, etc.).

Amendments relating to the corrective arm were as follows:

1. The concept of "debt brake" was defined, according to which a debt brake is a situation where the average reduction of the debt/GDP ratio is 1/20 over three years,
2. The list of economic circumstances was extended for the Member States to allow deviation from the medium-term objective,
3. A possibility was provided to impose sanctions at any stage of the Excessive Deficit Procedure,
4. The voting system for the imposition of sanctions was modified to make it more difficult for the Member States to agree while voting and this way avoid sanctions.

The reform was not limited to these modifications and the budgetary framework instruments were improved further. Here one should mention an intergovernmental agreement signed on 2 March 2012 – a Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. The essence of this Treaty is expressed through a commitment to transpose the provisions of the so-called Fiscal Compact into national law. The provisions of the Fiscal Compact to be enshrined in national law are as follows:

1. a medium-term objective,
2. establishment of an automatic correction mechanism in case of deviation from the medium-term objective,
3. establishment of an independent Fiscal Council that would monitor compliance with the rules of the Fiscal Compact,
4. restatement of the debt brake rule,
5. establishment of coordination between the Member States in issuing government securities, i.e. borrowing, obliging Member States to notify both the European Commission, the EU and the Council of any planned issues in advance.

The purpose pursued when signing this Treaty was to ensure that the provisions of the Fiscal Compact are transposed into national law of the Member States by laws that have primacy over ordinary laws. Lithuania had transposed the provisions of the Fiscal Compact into national law by a special Constitutional law on the implementation of the fiscal treaty. The purpose of the Law shall be "to ensure the sustainability of general government finances and stable development of the economy and to implement the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union" (Art. 1).

The budgetary governance framework for the whole EU is completed by the so-called Two-Pack which entered into force in May 2013 and consists of two regulations of the European Parliament and of the Council which apply exclusively to euro area Member States. The key purpose of these two regulations is to enhance the budgetary surveillance mechanism in the euro area. The main provisions of this legislation are as follows:

1. The European Commission gains the right to carry out an annual review of the draft budget for the following year of each euro area Member State. Member States are obligated to present their draft budgets for the following year to the Commission by 15 October of the current year. The Commission assesses compliance of a draft budget with the Stability Programmes approved by the Member States,
2. A more stringent surveillance mechanism is established for those euro area Member States which are subject to the Excessive Deficit Procedure; each three to six months such Member States

must submit detailed reports to the Commission on the progress made,
3. Additional surveillance measures are introduced for euro area Member States in economic difficulty.

An assessment of all the above budgetary surveillance provisions on the EU scale makes it obvious that the budget process is increasingly regulated by the EU law, and with respect to euro area Member States one can speak in principle of a centralised budgetary surveillance policy. Therefore, from this aspect, the influence of the EU legal provisions on national law is of sufficient importance.

Conclusions

For Lithuania 1 May 2004 is a date that marked essential changes in its legal framework. Similarly to other states, within the context of the EU accession Lithuania changed whole spheres of the national law framework with a view to harmonising them with the EU law, including budgetary law.

As regards budget planning in terms of time, different models are possible, ranging from annual to medium-term or even long-term planning. A specific model is chosen by each subject independently, with account of its needs (in case of the EU Member States, they must also take the requirements of the EU legislation into consideration when solving budget planning issues). In accordance with the legal framework in force before 2000, the Republic of Lithuania was a state where budget planning was based exclusively on a one-year period. Essential changes in the transition to long-term budget planning occurred following the adoption of the Seimas Resolution on the Concept of the Budget Structure and, to implement this concept, the adoption of a Law amending the Law on the Budgetary Structure which enshrined programme-based draft state budget preparation for three budget years. Beginning with the budget year 2014 Lithuania has introduced a new budget planning model based on the provisions of Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States. The essential feature of the new model is that starting from 2014 forecasted indicators of a totality of the state budget and municipal budgets for a period of three budget years were approved, and also the requirement of Art. 9 of the above Directive to adopt ‘a fiscal planning horizon of at least 3 years’ is implemented. Also stricter requirements for compliance with three-year budgetary targets are introduced.

It seems to follow that these and other measures provided for in the Law on the Budget Structure will not only allow extending the limits of medium-term budget planning but will also ensure transparency in budget planning, improve the quality of macroeconomic and budget projections required for fiscal planning and enhance compliance of budget planning with the requirements of the EU legislation.

The influence of the EU legislation on the legal framework of the budgetary procedures of Lithuania is increasing steadily and allows acknowledging the existence of centralised surveillance of the Member States’ budgets on the EU scale, especially with respect to euro area Member States. The trends of enhancing budgetary surveillance carried out by the EU institutions are expected to continue into the future.

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SEVERAL REMARKS ON THE MONETARY POLICY OF EU RELATED TO THE POSITION OF NATIONAL BANK OF SLOVAKIA AND A VISION FOR THE EUROPEAN BANKING UNION

Abstract [1]

This article is divided into three parts – each concerning the monetary policy of EU. First part deals with relationships between monetary policy of EU and economic policy of EU. Second part is central to the research goal of this article. In this part the similarities and differences between the status of National bank of Slovakia and European Central Bank are compared according to their respective roles and functions. Last part of the article describes legal framework of European banking union as a corner stone of future development of monetary policy of EU.

Keywords: monetary policy, European central bank, National bank of Slovakia, European bank union

Introduction

The article deals with monetary policy of EU. This subject is addressed from the three points of view. Firstly, the place of monetary policy in EU legal order is analysed – specifically the relation between monetary policy and economic policy as is enshrined in founding treaties of EU.

Secondly, the institutional framework of monetary policy is explained. This explanation is based on the legal interpretation of set of rules governing institutions having power in the are of monetary policy – specifically rules provided for in the Art. 130 and 131 of Treaty on the Functioning of the European Union (TFEU).

Third final part of the article concerns with next important phase of development of EU monetary policy – that is with European banking union. This part deals primarily with the reasons that led to creation of the banking union. Finally, the list of the most important legal acts that form the foundation of the banking union is presented.

Regarding scientific methodology, the article employs mainly the scientific methods of analysis and synthesis. The hypothesis of this article is that "*the legal status of National bank of Slovakia should be strengthened in national*

[1] This work was supported by the Slovak Research and Development Agency under the Contract no. APVV-19-0124 and has been written as a part of the grant project VEGA no. 1/0485/21: „Simultaneity and possibilities of reforming the system of own resources of the EU budget (legal and economic aspects also in the context of the consequences of the COVID-19 pandemic)".

legal order of Slovak republic (SR) especially in the matters of its independence and consulting powers due to the important role that it fulfils for the monetary policy of EU." Besides aforementioned scientific methods, the article employs the method of horizontal comparation of authentic language mutations of EU legal acts. Based on this methos, several discrepancies between versions of legal acts in Slovak language and other official languages will be addressed in the article.

Economic and Monetary Policy of EU

Legal bases of economic and monetary policy of EU are provided for in title VIIII, part III of TFEU with corresponding name: "Economic and monetary policy." Two different notions forms name of this title specifically: "*economic policy*" and "*monetary policy*." According to art. 119 (1) TFEU *the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market.* Economic policy of the EU is realized by coordination of general economic policies of Member states. In this regard, monetary policy and economic policy are close intertwined. According to arg. 119 (2) TFEU *Concurrently with the foregoing, and as provided in the Treaties and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.* The realization of the monetary and foreign exchange policy should not be viewed as something concerning exclusively euro. Monetary policy serves several distinct roles, and it should always seek to help with implementation of the economic policies of EU.

Monetary and economic policies are connected also through the objectives that thar are sought to be attained by both policies. Goals with respect to economic policy are stated in ar. 120 TFEU as follows: *Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union, as defined in Article 3 of the Treaty on European Union, and in the context of the broad guidelines referred to in Article 121(2*). Economic policy should always seek to attain objectives stated in art. 3TE – mainly *to promote peace, its values and the well-being of its peoples*. Besides, *the Council shall, on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Union* (121(2) TFEU). The current recommendation is Council Recommendation on broad guidelines for the economic policies of the Member States and of the Union (COM/2015/099 final – 2015).[2]

Objectives of monetary policy are directly stated in art. 127 (1) TFEU. Primary objective of the monetary policy is to maintain price stability. All other objectives of the monetary policy are secondary as follows from the text of the article: *Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119.* Monetary policy similarly to the economic policy shall be contributing to the achievement of the objectives of the Union as laid down in Article 3 (these are essential and represents character of EU as a whole).

In the article 127 (1) TFEU, the requirement for monetary policy to support economic policy is reaffirmed. The achievements of the objectives of both policies shall **be in accordance with the principle of an open market economy with free competition.** This principle - principle of an open market economy with free competition is one of the general principles of legal order of EU. Role of this principle is important in various areas other from monetary policy. Importance of this principle in defining the principle of contractual freedom was emphasized by general advocate Maciej Szpunar. In his opinion delivered on 15 July 2021 in case Case C-261/20 Thelen Technopark Berlin GmbH the general advocate stated (paragraph 76): *One can sometimes get the impression that freedom of contract is the elephant in the room. In my opinion, it has not yet found its rightful place in the system of EU law.*

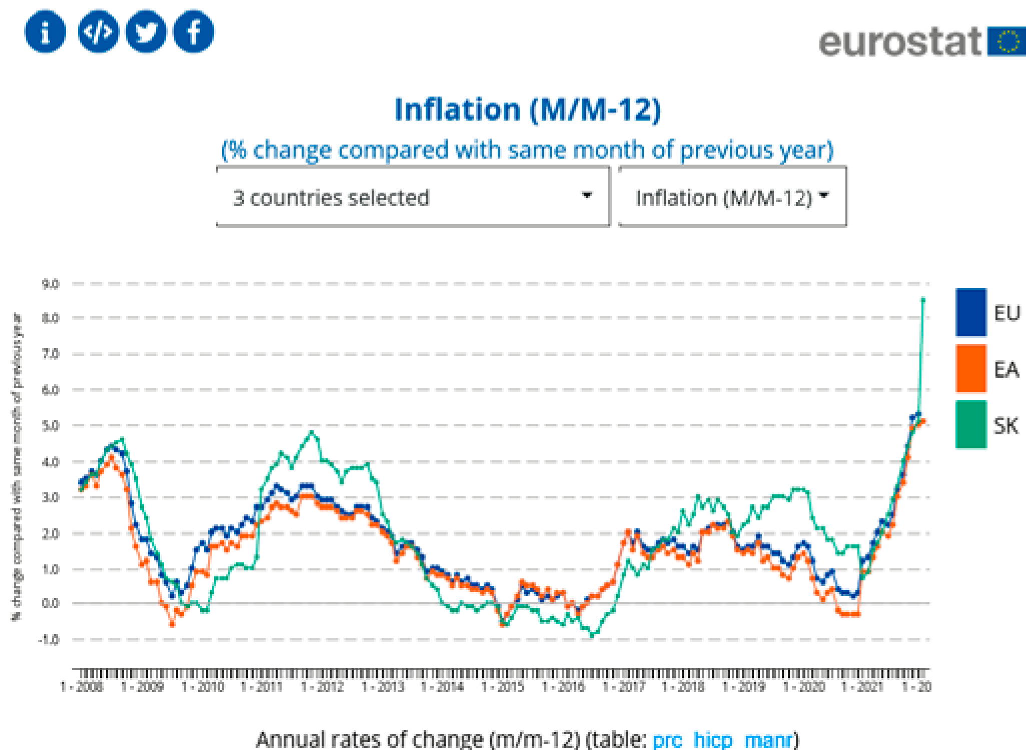
[2] This recommendation includes following guidelines: Guideline 1: Boosting investment; Guideline 2: Enhancing growth by the implementation of structural reforms; Guideline 3: Removing key barriers to growth and jobs at EU level; Guideline 4: Improving the sustainability and growth-friendliness of public finances; Guideline 5: Boosting demand for labour; Guideline 6: Enhancing labour supply and skills; Guideline 7: Enhancing the functioning of labour markets; Guideline 8: Ensuring fairness, combatting poverty and promoting equal opportunities.

However, it underpins its framework, above all in the context of the operation of fundamental freedoms. (60) The internal market and a highly competitive social market economy, as referred to in Article 3(3) TEU, as well as the adoption of an economic policy which is conducted in accordance with the principle of an open market economy with free competition, as referred to in Article 119 TFEU, would be inconceivable without it. Yet, it remains hidden behind the entire system of other EU principles and laws.

Notion "prize stability" is not defined in TFEU. This notion is based on "quantitative target" set by ECB's Governing Council as follows: "*The ECB's Governing Council, after concluding its strategy review in July 2021, considers that price stability is best maintained by aiming for 2% inflation over the medium term. We consider the Harmonised Index of Consumer Prices (HICP) to be the appropriate measure for assessing the achievement of the price stability objective.*" Harmonised Index of Consumer Prices (HICP) was introduced by Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices. This regulation is no longer in force and it was replaced by Regulation (EU) 2016/792 of the European Parliament and the Council of 11 May 2016 on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95. HCIP (henceforth "Regulation on HCIP") is defined in art. 2(6) in connection with art. 3(3) Regulation on HCIP as follows: "*'harmonised index of consumer prices' or 'HICP' means the comparable index of consumer prices produced by each Member State*" and "*The HICP and the HICP-CT shall be based on the price changes and weights of products included in the household final monetary consumption expenditure.*" Importance of the HCIP is expressed in para 4 of recital of Regulation on HCIP stating: "*The European System of Central Banks (ESCB) uses the HICP as an index in order to measure the achievement of the ESCB's price stability objective under Article 127(1) TFEU, which is of particular relevance for the definition and implementation of the monetary policy of the Union under Article 127(2) TFEU. Pursuant to Articles 127(4) and 282(5) TFEU, the ECB is to be consulted on any proposed Union act in its fields of competence.*"

Data aggregated by Eurostat offers information about the HCIP development (Graph no. 1):

Graph no. 1.



Description of the Graph

The graph described comparison of the monthly change in consumer prizes HCIP since 2008. The blue line represents change in consumer prizes HCIP in EU member countries. The orange line represents change in consumer prizes HCIP in exclusively for eurozone. These two lines show strong correlation. The green line represents change in consumer prizes in SR. There has been increase in HCIP of 3,2 % in Slovakia for the year 2021[3]. As it is evident from the Graph, the monetary policy of EU was successful in keeping the consumer prizes HCIP below 2,0 % threshold until 2021. There was an increase of HCIP in all indicators in the year 2021. The year 2021 was a year in which the negative economic impact of COIVD-19 pandemics had started to be apparent. It is troubling, from Slovak perspective, that great increase in HCIP, was observed in hanuary of 2022.

Institutional Framework of EU Monetary Policy and National Bank of Slovakia

Monetary policy is realized by institutional framework under the name **European System of Central Banks** (henceforth „ESCB").'' According to art. 282 TFEU "*The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB).*" The Eurosystem was created alongside ESCB for member states that adopted euro as their currency (art. 282 TFEU). This creates system of two concentrated circles – an broader circle (all EU member states) and narrower circle within the broader circle (only member states whose currency is euro). The ECB is institution that is in the middle of both these circles. The ECB is an part of institutional framework of EU. The aim of EU institutional framework is expressed as follows: *Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and action* (art. 13 (1) EU).

The completion of currency union (as was intended by EU) has not been achieved. Therefore there are differences in delegation of powers between member states and EU in the area of monetary union. According to art. 3 (1) letter c) TFEU "*The Union shall have exclusive competence in the following areas: (…) monetary policy for the Member States whose currency is the euro.*" EU has only shared competence in monetary policy with relation to other member states. In this case, the EU may execute its powers only in accordance with a principle of subsidiarity and proportionality. Such situation is by same regarded as asymmetrical integration [Amtenbrink, Herrmann 2020, p. 55].

Member states that have not euro as their currency are addressed in art. 139 (1) TFEU as: *Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as "Member States with a derogation*". The denotation of "*Member States with a derogation*" led some authors to the conclusion, that the introduction of euro currency in all member states is to be regarded as one of objectives of EU integration [Amtenbrink, Herrmann 2020, p. 55].

The rule provided in the art 131 TFEU is especially important for national central banks of EU member states. According to art. 131 TFEU "*Each Member State shall ensure that its national legislation including the statutes of its national central bank is compatible with the Treaties and the Statute of the ESCB and of the ECB.*" Primary law of EU imposes on each member state and obligation of compatibility of national legislation concerning its central bank with EU treaties and Statute of the ESCB and of the ECB [Ruśkowski 2019] (henceforth "Statute"). The Statute is as a Protocol no. 4 attached to the TFEU.

With respect to the art. 131 TFEU the meaning of a word "compatible" (in Slovak "zlučiteľný") is important. The English language mutation of the article we can compare with German translation. In German the art. 131 TFEU says *Jeder Mitgliedstaat stellt sicher, dass seine innerstaatlichen Rechtsvorschriften einschließlich der Satzung seiner nationalen Zentralbank mit den Verträgen sowie mit der Satzung des ESZB und der EZB im Einklang stehen.* The phrase „*im Einklang stehen*" can be translated as "to be in harmony". English version of the rule express the condition that national legislation concerning national banks must not to contain any contradiction of EU law. The German expression evokes somehow broader interpretation – namely that besides the prohibition of contradicting rules, the national legislation is to pursue the achievement of common goals with EU legislation in the regulation of national central banks.

One of the most important requirements for the national legislation of the member states is the principle of the independence of the national central banks. This

[3] As follows from The Confirmation on inflation in the SR by Statistical office of the Slovak Republic from 14.01.2022.

requirement are expressed in art. 130 TFEY as follows: "*When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks*." Thus, this rule is is formed by two distinct requirements.

The first requirement concerns the performing of their functions by ECB, national central banks, and members of their decision bodies. It prohibits to seek (from one's own initiative) or to take (as a result caused by other) "*instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body*." This prohibition does not concern the taking of the instruction from ECB within powers conferred upon it by treaties. These are enshrined in the art. 132 (1) and following TFEU including the powers to impose sanctions (for example art. 132(3) TFEU states: "*Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 129(4), the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decision*").

The second requirement is addressed towards the *institutions, bodies, offices or agencies and the governments of the Member States.* As follows from art. 130 TFEU they are *to respect this principle and to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.* We are of the opinion that this second requirement has broad application impact. Firstly, the formal aspect is expressed in wording "*to respect this principle.*" This imposes a positive obligation upon a member state to adopt such legislative framework for national central banks, that would offer enough "space" for decision-making bodies of central bank to independently fulfil their obligations. The wording not "*to seek to influence the members of the decision-making bodies*" prohibits the member state from exerting of the influence upon working of the decision-making bodies and their members. For a comparison we are citing the art. 7 of the Statute, which goes as follows: "*In accordance with Article 130 of the Treaty on the Functioning of the European Union, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and this Statute, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks*." The wording of the art. 7 of the Statute is identical with art. 130 TFEU in English. Slovak language version of the art. 7 use a little different wording: "*ani národné centrálne banky pri plnení ich úloh*" which translates as "*nor national banks in the performance of their tasks*". This discrepancy is due to the difference in language translations of this article 7 of the Statute. Although the meaning of the art. 7 of Statute in Slovak is different, the Slovak wording is fully compatible with the wording of art. 130 TFEU**.**

The requirement for the independent status of the NBS is expressly stated in art. 56 (1) of the Constitution of SR as follows: "*The National bank of Slovakia is <u>an independent central bank</u> of Slovak republic.*" Further provisions on the independence of NBS are contained in § 12 (1) of the Law no. 566/1992 Coll on National bank of Slovakia (henceforth "LoNBS"). According to § 12 (1) LoNBS "*NBS fulfils its duties regardless of the instructions from the state agencies, agencies of municipalities, other bodies of public authority or any or all natural or legal persons.*" The § 12 (1) LoNBS use phrase "*regardless of the instructions.*" This wording implies that there may be some *instructions* addressed towards NBS and that NBS is obliged to ignore these instructions. Such reading of the § 12 (1) LoNBS is obviously falls. The § 12 (1) LoNBS should be interpreted in connection with art. 130 TFEU. From this interpretation clearly follows that the state agencies and other persons are prohibited from issuing any instructions for NBS. The prohibition for the members of the board of NBS to seek or to take instructions from others is provided for in separate § 7 (7) LoNBS. Based on these observations, we may conclude that national legislation concerning independence of NBS is in accordance with TFEU and the Statute. Certain reservation we have with regards to the requirements for the persons to become an member of the Board of NBS [Babčák, Štrkolec, Prievozníková 2012, p. 50]. According to the § 7 (7) LoNBS

"*Member of the Board of NBS may become natural person that have sufficient knowledge and experience in the area of monetary policy or finance, with full legal capacity and one that is to whole extent without any criminal record.*" Between those is lacking requirement to be person "whose independence is beyond doubt." Therefore, must be viewed with strong criticism situation in which politically exposed person may become a member of the Board of NBS. Situation of this kind occurred repeatedly in the past. Therefore we propose de lege ferenda to extend § 7 (7) LoNBS as to include the requirement for the member of the Board of NBS to be a person "**whose independence is beyond doubt.**"

NBS plays an important role in monetary policy through its consultation competence. According to the art. 4 (1) letter a) of the Statute *in accordance with Article 127(4) of the Treaty on the Functioning of the European Union: the ECB shall be consulted: on any proposed Union act in its fields of competence; by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41*. Slovak version of the cited art. 4 (1) uses different wording: "*porady s ECB sa vedú.*" This could be translated as "*consultation with NBS are held.*" Literal interpretation of Slovak version of this article misleadingly implies that member states may choose whether to held consultation with ECB or not. This error in interpretation is evident based on the systematic comparison with art. 127 (4) TFEU which unequivocally stated that consultation with ECB is in this respect mandatory. Rules for consultations are provided for in Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions no. 98/415/EC [Siekmann 2021, p. 356] (henceforth "Decision on consultations"). The consultations are mandatory with regards to the any draft legislation within the field of competence of ECB – for example: *currency matters, means of payment, national central banks, the collection, compilation and distribution of monetary, financial, banking, payment systems and balance of payments statistics, payment and settlement systems, rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets* (2.1. Decision on Consultations). The Slovak version of Decision on consultations contain misleading wording of the first sentence of the para 2.1. of the Decision on Consultations. According to Slovak version: "*Orgány členských štátov sa poradia s ECB o akomkoľvek návrhu právneho prepisu v rámci svojej oblasti právomoci na základe zmluvy, a najmä: (…).*" This could be translated as "*the authorities of the Member States shall consult the ECB on any draft legislative provision within their field of competence pursuant to the Treaty and in particular on:*" The Slovak version of the wording thus falsely offers to the member states the decision to choose "their field of competence" for which to conduct consultation with ECB. The Slovak language mutation of Decision on consultation is wrong in this regard. This conclusion is evident from comparison with English and German wording of the para 2.1. of Decision on Consultations. The English version uses wording "its" which clearly as singular points to the competence of ECB and not to the competence of plurality of member states. The German version of para 2.1. of the Decision on Consultations explicitly states *Die Behörden der Mitgliedstaaten hören die EZB zu allen nach dem Vertrag in die Zuständigkeit der EZB fallenden Entwürfen für Rechtsvorschriften*.

From obligation to be submitted under consultations are excluded the draft provisions *the exclusive purpose of which is the transposition of Community directives into the law of Member States* (para 1.2. of the Decision on Consultations). The fact that these provisions follows from the EU law is sufficient for their direct implementation without the requirement to submit them firstly under consultation. In all cases in which the member state request the consultation, the NBS has to *immediately on receipt of any draft legislative provision, notify the consulting authority whether, in its opinion, such provision is within its field of competence* (para 2.3 of the Decision on Consultations).

"*In the OLAF judgment, the Court of Justice of the European Union (the 'Court') clarified the objectives of Article 127(4) of the Treaty in terms of the obligation to consult the ECB on any proposed Union act within its fields of competence.*"[4] In the Olaf case, the Court offered its decision concerning action of Commission of the European Communities (henceforth "Commission") for annulment of Decision 1999/726/EC of the European Central Bank of 7 October 1999 on fraud prevention. The art. 2 of the contested decision stated that the anti-fraud committee had sole competence for administrative investigations within the ECB so far as combating fraud is concerned. The Commission viewed such provision led to negation of the powers conferred upon OLAF by Regulation (EC) No 1073/1999 of the European Parliament and of the Council

[4] *Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions* (online: https://www.ecb.europa.eu/pub/pdf/other/consultationguide201510.en.pdf).

of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).[5] In its defence the ECB also stated that it had not been consulted before the adoption of the OLAF regulation although OLAF regulation falls in its field of competence. The Court offered its interpretation of the obligations under 127(4) TFEU (para 110; 111): "*In that regard, the Court observes that Article 105(4) EC is placed in Chapter 2, devoted to monetary policy, of Title VII of Part Three of the EC Treaty and that the obligation laid down in that provision to consult the ECB on any proposed act in its field of competence is intended, as the Advocate General points out at paragraph 140 of his Opinion, essentially to ensure that the legislature adopts the act only when the body has been heard, which, by virtue of the specific functions that it exercises in the Community framework in the area concerned and by virtue of the high degree of expertise that it enjoys, is particularly well placed to play a useful role in the legislative process envisaged. That is not the case as regards the prevention of fraud detrimental to the financial interests of the Community, an area in which the ECB has not been assigned any specific tasks. Furthermore, the fact that Regulation No 1073/1999 may affect the ECB's internal organisation does not mean that the ECB should be treated differently from the other institutions, bodies, offices and agencies established by the Treaties*" From these considerations clearly follows that duty to consult the ECB does not concern all draft legislation on monetary policy. Only when the draft legislation is related to the specific functions that ECB exercises in Community framework the consultation with ECB about the draft legislation must be held.

Also, NBS has power to be consulted on upon draft legislation within its competence. This follows from § 13 (2) LoNBS according to which: "*NBS shall offer its opinion on the draft legislation submitted to the Government, within the field of competence of NBS and such that are not submitted by NBS (…).*" This provision is speaking only about legislation submitted to the Government, but other phases of legislative procedure are omitted from § 13 (2) LoNBS. An obligation to ask the consultation from NBS on draft legislation is not prescribed for draft legislation submitted by members of the parliament. This obligation is lacking also from the Law no. 350/1996 Coll. on proceedings of the National Council of the Slovak republic (henceforth "LoP"). The § 20 ods 2 LoP only states that Governor of Národná banka Slovenska could not be expelled from the meeting of the National Council of the Slovak republic. Firstly, we propose that this ban of expulsion should be extended towards all members of the Board of NBS. We also consider necessary to introduce the mandatory consultation with NBS also for draft legislation proposed by members of the parliament.

From the fact that NBS were not consulted on draft legislation does not follow that after its adoption the law affected by such error ought to be deemed as unconstitutional. Thus, Slovak legal order does not contain sufficient constitutional protection in a case of a violation of the § 13 (2) LoNBS.

European Banking Union

Changes in EU legislation concerning the bank sector are closely connected with financial crisis of 2007-2008. There are several reasons that led to the creation of this financial crisis. Some authors points to the abandonment form the requirement for the specialization and separation of functions of financial institutions especially credit institutions. This specialization originally was meant as to protect the deposits and to prevent the risk of systematic failure of capital markets. "*Nowadays, under the model of "universal bank", credit institutions are generally allowed to trade in financial products, whilst previously this activity was restricted to other financial operators, such as securities firms and insurance companies*" [Lasagni 2019, p. 15].

The definition of bank in Slovak law contains in § 2 (1) Law no. 483/2001 Coll. on banks which states: "*A bank is a legal person with seat in Slovak republic in the legal form of joint stock company, which is an credit institution according to special regulation and which has bank licence. Other legal forms are excluded.*" The definition of credit institution contains Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012. Besides accepting of accepting deposits and offering loans, the banks is Slovakia are allowed to perform various others business activities. These activities include performing of investment activities and investment services according to § 6 (1) c); f) Law no. 566/2001 Coll. on securities and investment services. Furthermore the banks are according to § 2 (2) 1 – 3 Law on Banks allowed to: *perform business with financial instruments; with gold*

[5] This regulation is currently repealed and replaced by Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999.

and with instruments of capital markets. Banks are therefore permitted to conduct variety of activities within financial markets. Therefore, Slovak banks have status of "universal bank" and they are not only credit institutions.

Second reason that led to the financial crisis of 2007-2008 in eurozone countries was close link between state financial operations and national banking sector. This interconnection was referred to also as a vicious circle. Euro Area Summit Statement from 29th June 2012 addresses this as follows: "*We affirm that it is imperative to break the vicious circle between banks and sovereigns. The Commission will present Proposals on the basis of Article 127(6) for a single supervisory mechanism shortly. We ask the Council to consider these Proposals as a matter of urgency by the end of 2012.*" This statement proposed aim to establish new regulatory framework for banks and financial institution by means of EU law. The so called "Bank union" is based on several legal instruments also called "pillars of bank union" [Busch, Ferrarini 2020, p. 93] including:

- SSM (single supervisory mechanism) – introduced by: Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions,
- SRM (single resolution mechanism) – introduced by: Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC,
- Package CRD IV – introduced by: Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance,
- CRR – introduced by aforementioned Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance,
- Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes Text with EEA relevance.

European Supervisory Authority (European Banking Authority) was established by SRM regulation. European Banking Authority is a part of European System of Financial Supervision (ESFS). ESFS contains: the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No 1092/2010 and this Regulation; the Authority; the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (38); the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (39); the Joint Committee of the European Supervisory Authorities (Joint Committee) for the purposes of carrying out the tasks as specified in Articles 54 to 57 of this Regulation, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010; the competent or supervisory authorities in the Member States as specified in the Union acts referred to in Article 1(2) of this Regulation, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010. According to art. 2 (2) SRM regulation: *The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.*

Common rules contained in legal acts concerning policies relating to the prudential supervision of credit institution form so called "Single Rulebook". The Banking union is one of the most important steps in monetary policy of EU. The importance of the Banking union was emphasized in Draft COUNCIL RECOMMENDATION on the economic policy of the euro area of 11th January 2022. The draft states that "*The deepening of EMU remains essential. The Banking Union and the Capital Markets Union are mutually reinforcing projects to promote growth, safeguard financial stability and support a genuine Economic and Monetary Union.* " We assume that future development of monetary policy of EU will be determined based on the completion and strengthening of the Banking union.

Conclusion

We identified several wrong or misleading translations of legal provisions of EU law concerning EU monetary policy to Slovak language. These deficiencies could be overcome

by interpretation of affected legal acts according to English and German language versions these legal provisions. Especially Slovak version of Council Decision of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions no. 98/415/EC contains provisions which stand in stark conflict with English and German language version of the decisions as well as with aims of this legal act.

The comparison between powers conferred upon ECB and NBS led us to the conclusion, that improvements in certain legal rules concerning NBS could be made. We are of the opinion that criteria for membership in Board of NBS should be strengthened. We proposed that requirement of "whose independence is beyond doubt" should be include in § 7 ods. 4 ZoNBS.

We are of the opinion that consultation powers of NBS should be broadened. We propose that mandatory consultation with NBS should be introduced for draft legislation proposed by members of the parliament. We also proposed that the violation of obligation to consult draft legislation with NBS should have constitutional consequences – e.g. that adopted in such wrong manner would be deemed unconstitutional.

We consider banking union as an important stage in the development of the EU's monetary policy. The impact of banking union will increase with time, and it will serve as an important safeguard for future stability in EU.

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TAX NOT CLEAR ON WHAT?

Abstract

Property tax is the second, after VAT, most contested issue to administrative courts. The reason for such a situation is wrongly determined subject of tax. This paper presents basic weaknesses of the regulations regarding buildings, structures and land. These problems may be eliminated only by radical changes in the binding law. Without them, this tax will still cause difficulties in its practical implementation.

Keywords: real estate tax, building, structure, land

Introduction

The direct cause to write this paper was the information given by the media that cases regarding real estate tax, after value added tax, are the most commonly examined by administrative courts [Zalewski 2021, https://www.rp.pl/prawo-w-firmie/art288311-w-2020-roku-znow-najwiecej-sporow-o-podatki-dotyczylo-vat].

This is not a new situation, because for many years taxation on real estate has been leading in the statistics of cases brought before the courts. Perhaps that is why we are all used to the situation in which this uncomplicated wealth tax, regulated in seven articles of the Act on local taxes and charges (u.p.o.l.) [Journal of Laws of 2019, item 1170], is the cause of so many tax disputes. If one divided the number of articles by the number of court cases, real estate tax would be in the first place. Why is it so and what can be done to change it? This paper is devoted to answering these questions.

It should be stated at the beginning that establishing III Division of the Administrative Chamber in the Supreme Administrative Court (SAC), which, among others, deals with cases regarding real estate taxation, is not a solution to the problem mentioned above. This is a normal reaction of the court to an abnormal number of these cases. It does not, however, eliminate the causes of such a high amount of appeals against decisions regarding real estate tax. In my opinion, the basic cause of this state is an obsolete structure of the tax based on the surface area and not on the value of the property. This is a wealth tax, in which the assets for taxation purposes is measured in metres (except structures). And that is one of the major problems regarding whether a given object is a structure (taxed upon depreciation value) or a building (taxed upon surface area expressed in metres). If the real estate tax was calculated on their value and this value resulted from cadastre, in which every real estate with its components would be described, then this and other problems connected with the taxation of real estate would disappear. But there is no social acceptance to introduce cadastral tax (tax on value), even though it has been suggested in the professional literature for many years [Etel 1998, p. 209 and following pages]. The focus should be put on binding regulations which are far from being perfect. And poorly written provisions which regulate this tax, what has been widely known since u.p.o.l. was adopted 30 years ago, are commonly indicated as the main cause of such a huge amount of cases on real estate taxation in courts.[1]

[1] A similar view was expressed by SAC in the so-called signalling resolution of 22 October 2018 (II FSK 2983/17). In the resolution of 15 December 2020 (S 3/20) the Constitutional Tribunal (TK) decided to “signal the Sejm and the Senate as well as the Minister of Finance that there are weaknesses in the law which need to be addressed to ensure the coherence of the legal system of the Republic of Poland, in Art. 1a(1)(2) of the Act of 12 January 1991 on local taxes and charges (J of Laws of 2019, item 1170), consisting in inclusion in this provision a reference to the provisions of construction law, what does not allow to reconstruct the subject of taxation with the real estate tax exclusively on the basis of the provisions of the Act of 12 January 1991 on local taxes and charges.”

These are not new cases, they take years and are well described in the subject literature [Etel, Dowgier 2013, p.113 and following pages]. Due to the limited volume of this paper, they cannot all be discussed comprehensively. I believe, the basic cause of confusion in real estate tax is the mediocre quality of provisions regulating its subject. This is a tax not clear on what, and this will be justified below.

What is a Structure?

There should not be a situation when a taxable person reading the act on tax does not know what they are to pay a tax on. This is the case of taxation of structures. First of all, it is unacceptable that the subject of tax – a structure – should be determined by reading a non-tax act, namely the Act Construction law (u.p.b.) [Journal of Laws of 2021, item 2351]. In this Act the most significant is Art. 3(3), in which are indicated only examples of building objects which are structures. It is the Act on tax, what is required by the Constitution, that should determine, among others, the subject of tax. And that is not the case since u.p.o.l. has been adopted. At first, there was no definition of a structure, then it was introduced (in 2003) but, assessing it with the benefit of hindsight, it is absolutely unsuccessful. It implies that a structure is a building object which in the understanding of the construction law is not a building. The problem lies in the fact that in the construction law, created for other needs, there is no clear definition of a building object and a structure. And in my opinion, this is the main cause of thousands of costly disputes between authorities and taxable persons, i.e. how to tax a structure. The result of these many-year disputes are the resolutions not only of administrative courts but also of the Constitutional Tribunal (TK). As a result, it is still unclear what a structure is for real estate taxation purposes. Such a flagship ruling of the TK regarding a structure was the judgement of 13 September 2011 (P 33/09) on taxation of mining excavations. TK, considering the constitutionality of the u.p.o.l. provisions regulating the definition of a structure, stated that, among others, a structure is a building object mentioned by name in u.p.b. However, in this act, and what has been mentioned above, the definition of a structure consists of examples of random types of objects. There is no need to prove that the subject of taxation should be precisely defined in the act, and not stated as an open catalogue of examples of objects considered as structures. This may be the case in construction law but not in tax law.

Unfortunately, TK suggested such an interpretation of the definition of a structure from Art. 1a(1)(2) of u.p.o.l. and its consequences continue to this day. If in 2011 TK had unambiguously stated that the way of defining a structure in u.p.o.l. was unconstitutional, what I believe is obvious, the legislator would have had to redefine what a structure was, and thus, it may be assumed, there would not be problems with taxation. This however did not happen and still, there is an effort in the jurisdiction to decipher what a structure is. But this brings weak results. In 2017 TK again addressed the issue of a structure in the context of differentiating it from a building [SK 48/15]. In the judgement, TK stated that if a given building object has all the features of a building determined in its definition included in u.p.o.l. then it cannot be taxed as a structure. However, this judgement, in my opinion correct, caused a number of disputes on what differentiates a building from a structure. This case had to be considered by SAC with a seven-judge panel, which in the resolution of 29 September 2021 (III FPS 1/21) once again tried to indicate the features unambiguously differentiating buildings from structures. A distinguishing feature of a building, according to SAC, is its surface area and in the case of a structure (reservoir) – its capacity. Unfortunately, also this resolution, although thoroughly justified and thoughtful, will not cause that it will be obvious what a structure and a building is as a subject of the real estate tax. Still, there will be disputes and new rulings in this case. This lasts over 30 years and therefore a quick reaction from the legislator is needed because these disputes take too long and cost too much.

Difficulties in identifying a structure as a subject of real estate tax are only one problem from the whole list of issues connected with its taxation. There are long-lasting and problematic matters regarding: building parts and technical parts, determining depreciation and market value, network structures, cables in technical and suspended infrastructure, technical installations, billboards not permanently connected with the ground, structures in buildings, construction parts of stadiums, etc., to name just a few. The importance and the number of these cases indicate the need to start work and change the principles for taxation of structures as quickly as possible. It would be unrealistic to think that these cases will be “dealt with” by the courts, since the latter do not have the possibility to create new law, which is a necessity in this case.

A Building

Despite the fact that in u.p.o.l. there is a definition of a building, what has been mentioned above, it is unknown what differentiates it from a structure, especially since construction law classifies an object which has all the features of a building as a structure. Another shortcoming of this definition, causing interpretation problems from the very beginning, is the permanent connection of the building with the ground. There is a dominating view in the jurisdiction that this connection means a "strong" connection with the foundation in a physical and not legal aspect. In the resolution of 29 September 2021 (III FPS 1/21) SAC when analysing this term emphasised two elements, namely: the fact that a building needs to have a foundation and its construction has to be "strongly" connected to this foundation. At the same time, a civil law understanding of this connection resulting from the definition of real estate and its components was rejected. Such an approach, created mainly for the needs of a particular object, gives freedom in interpreting what a permanent connection is. Here also other judgements will not make a change – there are already plenty of them. In my opinion, this problem may be solved not by a statutory definition of a permanent connection with the ground but by adopting clear principles of establishing what a building is for taxation purposes.

No smaller problems arise when establishing whether a building has a foundation, what only seemingly seems to be a simple case. The best example is the so-called garage barrack set on concrete paving. Taxable persons – natural persons indicate that such a garage has no foundation and therefore is not a building but a structure. They indicate so because a structure is subject to taxation only when it is bound to conducting economic activity. Thus, there will be no tax on such a garage if its owner is not an entrepreneur. In practice, such disputes may be resolved only in one way – a court expert prepares an opinion whether e.g. a garage has the foundation (then it is a building) or not (then it is a structure).

The participation of court experts in the proceedings regarding sometimes huge amounts of tax on building (structure) is another problem causing the case to be difficult and costly. Generally, in the majority of cases concerning taxation of building objects, special information is needed, and in consequence, it is the court experts – builders who settle tax matters. It arises from a reference to construction law included in the definition of a building. In fact, it is the construction law which decides if and how a building object should be taxed. It is not a weakness of the construction law but of the tax act. Tax provisions cannot refer to unprecise terms created for the needs of a building process. As long as this remains the case, courts will be flooded with complaints on the decision regarding taxation of buildings.

Difficulties arise also during determining the type of building (residential - chalet – service). Residential buildings are taxed according to the lowest rates, what encourages classifying buildings having no connection to residential aims (e.g. prison buildings or barracks) as such [Etel 1999].

The main problem arises from the fact that until recently in the jurisdiction there was understanding of a residential building as a place serving residential purposes[2].

As a result, taxable persons started to "live" in service buildings. The willingness to avoid taxation decides also about the fact that taxable persons consider chalets as residential buildings. This problem became visible after the change of the classification of residential buildings in the Land and Building Register, where now there is no identification of the main function of the building, allowing until recently to differentiate a chalet from a residential building.

Another problematic issue is the case of garage taxation. Currently, a garage in a residential building is taxed according to lower rates, so-called residential; a garage which is a separate building – according to other rates; a garage which is a separate property in the residential building – according to other rates; and a garage belonging to a flat – according to residential rates.[3]

Additionally, the highest rates appear when a garage is owned by an entrepreneur. Not all possibilities to tax a garage are presented here- there are more. Therefore, there should not be a situation in which an owner of such an uncomplicated subject of tax as a garage does not know what tax they should pay and courts resolve their doubts for decades.

Also, other problematic regulations may be indicated and they concern such issues as: determining useful floor area, taxation of a building occupied in a small part,

[2] The resolution of SAC of 1 July 2002 (FPK 3/02) stated that to classify a chalet to the category of residential buildings decides the criterion of fulfilling basic residential needs of the owner and people close to them.

[3] SAC resolution of 27 February 2021 (II FPS 4/11) concerned the problems of garage taxation.

temporary building objects, residential buildings occupied to conduct business activity, telecommunication containers, understanding of building partition, exclusion of newly built buildings, taxation of usable attics and storeys, area of stairwells, etc. They all are the result of unprecise regulation of u.p.o.l. Yet still, they are binding, what causes a further overload of courts with such cases.

Land

A lot of problems, but less than in the case of buildings and structures, are connected with taxation of land. Fortunately, there is no doubt what land is as the subject of taxation. Crucial importance here has the Land and Building Register, where land is classified. Problems arise, and they arise massively, due to the lack of current updates of its entries and changes in references of particular types of land. Owing to various reasons, the classification of land included in the Register is very often obsolete, what causes situations in which within the administrative boundaries of cities is still land classified as an agricultural area and thus it is taxed (or more often exempt from tax) as land used for farms. For the same reasons, built-up land where for many years are no trees is to be considered forests for taxation purposes. It is classified as "Ls" in the Register and taxed with a very low forestry tax. It needs to be emphasised that in this case, that it is the lack of updates in the Register and not the weaknesses of the tax provisions that cause these problems. Connecting the principles of land taxation with the Land and Building Register is a good solution provided that the heads of district administration will enter changes into the Register on an ongoing basis.

With land (as well as with a building and a structure) is related a constantly discussed problem of its connection to business activity. In this case, TK expressed it views twice in a short period of time. In the first judgement of 12 December 2017 (SK 13/15), TK stated that the sole fact of conducting business activity by one co-owner does not mean that the real estate is connected with conducting business activity, and thus taxed with the highest rates. This view has been commonly accepted [Dowgier 2018], what allowed to think that after many years of disputes the problem of real estate included in the personal assets of natural persons conducting economic activity seemed to reach a solution [Dowgier, Etel, Liszewski 2020, p. 167].

And this would be the case if there was no judgment of TK of 24 February 2021 (SK 39/19). It is not clear why TK decided to address the same case again. The problem in both cases was identical and it came down to decide whether real estate acquired to personal assets of natural persons might be treated as connected with conducting business activity pursuant to Art. 1a(1)(3) of u.p.o.l. In its first judgement, TK stated no because it is not in the possession of an entrepreneur, and in its second judgement, TK stated that it is in the possession of an entrepreneur but to tax it with the highest rates not only the possession but also its usage (actual or potential) to conduct business activity needs to be indicated. The dispute about how to understand the connection of real estate with business activity started all over, what will negatively affect courts which will receive complaints of taxable persons encouraged by the incomprehensible judgement of TK from which arises that sole possession by an entrepreneur is not enough to tax real estate with the highest rates of real estate tax.

The tax on land is connected to a whole range of unsolved interpretation problems regarding the taxation of: land occupied to conduct economic activity, land under power lines, rehabilitated land, agricultural area under service buildings, land in a protection zone, land connected with residential buildings, etc. As in the case of buildings and structures, the issues related to the taxation of land require legislative changes. It is the only way of really eliminating them and thus decreasing the number of cases on taxation of land in the courts.

Conclusions

It has been indicated above that real estate tax must have a precisely defined subject. Currently, this issue is excessively complicated and unclear for taxable persons, tax authorities and courts due to the fact that it is not obvious what building objects and land are subject to taxation. Legislative changes are required and they have been requested for a long time. I believe, the reform of real estate taxation should be directed towards introducing a tax on value (ad valorem) functioning in the majority of European countries. Every real estate subject to taxation together with its components and value would be indicated in the fiscal cadastre. This would solve most problems enumerated above. This proposal is, however, difficult to implement, which I do realize. Therefore, what remains is further "improvement" of a wrong structure of tax on

the immovable property based on the surface area of the assets and not on the value. This does not bring results but currently, there is no other way. What needs to be changed in the provisions regulating the subject of tax? Detailed suggestions for changes were already presented in 2013 and have been waiting to be introduced since then [Etel, Dowgier 2013, p. 113 and following pages]. Here, due to the problem included in the title of this paper, are presented suggestions of organising the regulations with respect to the subject of real estate tax. In my opinion, it is necessary to:

- stop using in u.p.o.l. the term "real estate" and "building object" in favour of "the subject of taxation";
- indicate in u.p.o.l. that the subject of tax besides land is also a building (a part thereof) in the meaning of the Land and Building Register (and the Classification of Fixed Assets) and to indicate in u.p.o.l. civil and hydrological engineering facilities with their symbols in the Classification of Fixed Assets.

Introduction of these changes will bring effects only if the Land and Building Register will operate properly, preferably covering also structures subject to taxation. This Register will fulfil the role of a register of subjects taxed with real estate tax. In the future, it will be possible to transform it into a fiscal cadastre, what also results from the binding provisions of the Act on real estate management.[4]

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[4] See: Chapter IV of the Act of 21 August 1997 on real estate management (unified text of 2021, item 1899)

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PRACTICAL EXPERIENCE AND THE SIGNIFICANCE OF THE SETTLEMENT TAX IN HUNGARY

Abstract

The study deals with the theoretical and practical issues of settlement taxes as a special type of local taxes. The settlement tax is a unique type of local tax introduced in 2015, which can be levied on anything that is not subject to any other public or local tax. Municipalities, therefore, have a relatively large margin of discretion in setting the settlement tax. Within the framework of the present research, the significance of this type of tax within the Hungarian municipalities was examined from both a regulatory-theoretical and a practical perspective. It can be concluded that while from a theoretical-regulatory point of view a workable model for the implementation of this type of tax has emerged, the fiscal significance of this tax and its practical application is less popular. This study evaluates and analyses the period since the introduction of the settlement tax in the Hungarian legal system.

Keywords: local taxes, system of local taxes, settlement tax, Hungary

Introduction

For the existence and operation of the state and local governments, adequate financial resources and assets are needed, which can be used to perform state and local government tasks (public tasks), but also to set up and operate the necessary organizational system. The resources needed to achieve this and the expenditure financed from these resources must be organized, planned, and monitored, and this requires a complex system. Today, most sources and authors refer to this system as public finance, or, because of its somewhat different content in Anglo-Saxon law and economics, it is referred to by a separate name, 'public finance', which is often also translated as public finances.

From a structural point of view, the current Article 3 of the Act CXCV of 2011 on public finances [https://net.jogtar.hu/jogszabaly?docid=a1100195.tv, access 30 May 2022] only recognizes two subsystems, the central and the local government subsystems. The first includes the State, the central budgetary body, the public body which is classified by law as part of the central subsystem of public finances, and the public budgetary body managed by this public body. The local government sub-system comprises the local self-government, the local national minority self-government, and the national national national minority self-government, the association established under Act CLXXXIX of 2011 on Local Self-Governments of Hungary [https://net.jogtar.

hu/jogszabaly?docid=a1100189.tv, access 30 May 2022] and Act CLXXIX of 2011 on the Rights of Nationalities [https://net.jogtar.hu/jogszabaly?docid=a1100179.tv, access 30 May 2022], the association of local governments for territorial development established under the Act XXI of 1996 on spatial development and planning [https://net.jogtar.hu/jogszabaly?docid=99600021.tv, access 30 May 2022], the regional development council[1] and the budgetary bodies administered by the bodies of the local government sub-system. Thus, social security funds and earmarked public funds are now elements of the central sub-system of public finances.

From an economic point of view, the functional approach can be described by the now classic and well-known triad of allocation, stabilization, and redistribution, based on the works of Musgrave R. According to these, these are three rather separate, albeit interrelated, functions that require different solutions [Musgrave 1959, pp. 6-8, 38-41] The allocative function provides allocable resources for the provision by the state of public needs that are for some reason unmet by the market. The redistributive function of public finances is the redistribution of resources and income using the potential of income taxation, consumption-related taxes, and state subsidies. The stabilization function of public finances is aimed at improving the country's economy, promoting growth, and achieving and maintaining equilibrium, primarily through economic and fiscal policy instruments [Bende-Szabó 2003, pp. 76-78].

Theories of the local level of public finance are based on Charles Tiebout's "A Pure Theory of Local Expenditures" (1956) and Wallece E. Oates' "The Theory of Public Finance in a Federal System" (1968). Among other things, Tiebout formulated the necessity of an economically efficient analysis of public goods; while Oates, examining the stabilizing, redistributive, and allocative functions of local government, concluded that the provision of local activities and the supply of local public needs are among the functions of local government. Differences in redistributive programs or in the level of satisfaction of public needs may result in population migration or immigration [Blankart, Borck 2004, pp. 443-444].

[1] So called *térségi fejlesztési tanács.*

Current Budgetary Challenges for Local Governments

The data published by the Hungarian State Treasury for March 2021 [http://www.allamkincstar.gov.hu/hu/koltsegvetesi-informaciok/koltsegvetes_merleg_1/222/, access 30 May 2022] show how each taxpayer group shares in the public charges that are considered revenues of the central budget. According to these data, in March 2021, central budget revenues amounted to HUF 1,324,835 million. Of this, HUF 147,235 million came from contributions from business entities and HUF 233,307 million from the general public. From these figures, it can be calculated that the 11.11% burden on business entities is offset by the 17.61% contribution of the population. The balance of HUF 549,295 million in consumption-related taxes cannot be ignored, where the payers of these taxes (except for registration tax) are business entities, but the tax burden passed on is borne more by individuals.

If we look at this aspect of the distribution of the tax burden among local government taxes, we find that according to the data of the Hungarian Central Statistical Office [https://www.ksh.hu/stadat_files/gdp/hu/gdp0022.htm, access 30 May 2022], in 2019 the revenues of local governments in Hungary from taxes amounted to HUF 1,006,066 million, of which HUF 171,195 million was other taxes on production (business tax), another HUF 181,689 million was taxes on land, buildings or other structures and HUF 19,224 million was taxes on the use of fixed assets (motor vehicle tax). These figures, in turn, show a relative proportionality with central taxes, but it is more than likely that, in addition to business tax, businesses also bear the bulk of the building tax.

The relatively stable situation outlined above has been disrupted by the introduction of the COVID-19 virus into Hungary in spring 2020 and the series of measures taken in relation to it. Government Decree No. 535/2020 (XII. 1.) on local tax measures necessary to mitigate the impact of the coronavirus pandemic on the national economy [http://www.kozlonyok.hu/nkonline/index.php?menuindex=200&pageindex=kozltart&ev=2020&szam=265, access 30 May 2022], still in force at the time of writing, stipulated that the rates of local taxes and settlement taxes could not be increased in the 2021 tax year, that tax exemptions existing in 2020 must be guaranteed in 2021 and that municipal governments are not entitled to introduce new local taxes and municipal taxes for 2021.

Since 2013, 40% (previously 100%) of the revenue from the motor vehicle tax (as a devolved central tax), which can only be classified as a local tax in terms of the use to which it is put, has been paid to local authorities. As part of the governmental epidemic action plan, this 40% was diverted from the local budgets by the government in 2020 [http://www.kozlonyok.hu/nkonline/index.php?menuindex=200&pageindex=kozltart&ev=2020&szam=66, access 30 May 2022], resulting in the transfer of some HUF 34.4 billion, HUF 87 billion for the whole budget year in 2021, and HUF 90.5 billion in 2022 as operating revenue to the Epidemic Control Fund [https://koronavirus.gov.hu/cikkek/megjelent-jarvany-ellen-vedekezesi-alaprol-es-gazdasagvedelmi-alaprol-szolo-rendelet, access 30 May 2022].

The measure affecting the budgets of municipalities is the imposition of a solidarity contribution depending on the per capita business tax capacity of a municipality with a per capita business tax capacity of over HUF 34,000 in 2020 and HUF 22,000 from 2021. This solidarity contribution is not an institution introduced in the context of an epidemic, but the increase from 0.55% to 0.65%, and the introduction of a gross calculation method instead of the previously applied reduced basis of assessment, which is modified by the introduction of a gross calculation method, has increased the burden on local authorities.

Municipalities may also be forced for other reasons to redesign their tax revenues and introduce a settlement tax. Article 1 of Act LIX of 2020 on Special Economic Zones and the Amendment of Certain Related Acts [https://njt.hu/jogszabaly/2020-59-00-00, access 30 May 2022, https://magyarkozlony.hu/dokumentumok/0f3e5ec670c02ca736f3dc2b01e65c4857f8cd77/letoltes, access 30 May 2022] authorizes the Government to declare the location of investments of major national economic importance - except for the capital and the areas of cities with county rights - as special economic zones by decree. Under the Act, there are several reasons for reclassification. The most specific condition is that the case concerned must be a new investment or expansion with a cost of at least HUF 5 billion. However, the other two conditions for reclassification are less specific but easily met: they must be aimed at avoiding massive job losses or creating new jobs, and they must demonstrate an economic impact on a significant part of the county's territory.

One of the consequences of this is that, with the entry into force of the relevant government decree, the area will become the property of the county municipality of the county in which the special economic zone is located, and from this and pursuant to Article 1 (1) paragraph 1 of Act C of 1990 on Local Taxes [https://net.jogtar.hu/jogszabaly?docid=99000100.tv, access 30 May 2022] (hereinafter as Local Taxes Act), the county municipality's representative body may levy local taxes on the area and the buildings and economic activities carried out there. The second consequence could be that local authorities could become disinterested in planned investments in their area, as they would not be interested in supporting investments of up to HUF 5 billion, as the area could be reclassified, resulting in the loss of business tax revenue from the area.

With regard to local taxes, it can be stated that the constitutional principles of taxation and the rules of the functioning of the economy must be taken into account in the same way as in the case of central taxes. Decisions on local taxes have economic and social consequences and effects, not legal ones. If neighboring or surrounding municipalities offer the same or almost the same economic environment as the municipality in question, the introduction of local and settlement taxes may lead to adverse economic consequences for the municipality in question, even if revenues temporarily increase. Businesses or workers who are not linked to a municipality may easily change their place of residence or establishment as a result of the introduction of new taxes or the increase in existing taxes. This in turn leads to a reduction in the number of taxpayers and hence in tax revenues. A further consequence is that the reduction in tax revenue may also lead to a reduction in the quality and quantity of services provided by the municipality, which in turn may lead to an increase in the willingness of residents and businesses to relocate, which in turn reduces tax revenue. Of course, local businesses can assess what new niche markets and business opportunities the reduction in local government services can offer them, and if they take advantage of this, the range and quality of public services may not decrease and may even increase. It is also worth noting that a deterioration (and of course improvement) in the level of public services may have an impact on parliamentary and local elections. At the same time, local authorities may decide to reduce or even abolish some of their taxes for economic, political, social, or other reasons. This phenomenon can easily be compared to the international tax competition between states, a kind of 'settlement tax competition'. The reduction or abolition of taxes can be a way of giving a municipality an advantage

over other municipalities in the area, by encouraging businesses to relocate and residents to immigrate, thus creating a prosperous local environment. But the risks of tax reductions and abolition are also easy to identify. Local government revenues will fall[2] and this may again be accompanied (even temporarily) by a decline in public services, triggering a renewed trend for businesses and residents to move away. The situation may be different for municipalities that are not in competition with each other. This may be due to the greater distance, the different sizes of the settlements, the resulting differences in the quantity and quality of services, or even the different cultural communities and standards. The absence or limited competition may also result in greater freedom of choice for local authorities, in the sense that they do not have to fear that businesses and residents will move away from them if new taxes are introduced, or tax rates are raised. Moreover, the lack of competition may also lead to a relative 'impoverishment' of the municipalities concerned, in particular, because they will not have an interest in planning or deciding to raise new revenue in a situation where their funding seems adequate. This situation could easily lead to political and electoral stability and security, in addition to economic stability [Stiglitz 2000, pp. 675-677].

Regulatory Issues of Settlement Taxes

When there is a division of responsibilities between the central and local subsystems of public finances, and this involves a division of power between the revenue-raising and expenditure-setting powers, we can talk of fiscal federalism. The consequence of this for local government budget revenue is that fiscal federalism, also known as decentralization, involves the sharing of taxing powers. This sharing cannot be unlimited or, if you like, absolute, as unlimitedness could cause severe fiscal and other systemic (e.g. emigration) disruptions to the country's economy. This limitation is also present in the case of local taxes in Hungary, which is characterized by the authorization granted by the central law and the restriction that goes with it, i.e. local governments may only introduce local taxes as defined by the Local Taxes Act [Vigvári 2002, pp. 163-170].

[2] Temporary difficulties and could, of course, be financed by short- or long-term loans taken out by municipalities, provided that they are not restricted by public regulations.

Pursuant to the authorization granted of the Local Taxes Act, a local government may, by decree, introduce in its jurisdiction a settlement tax or settlement taxes that are not prohibited by any other law, provided that the subject of the settlement tax is not subject to a public tax regulated by law [Local Taxes Act, § 1/A (1)]. This authorization is called the open-list version of the local tax assessment, since the local government may introduce any tax that does not contravene the limits set by the Local Taxes Act. (In contrast to the previous closed-list local tax assessment system, which only allowed local governments to introduce local taxes specified in the Local Taxes Act.) [Kecső 2016, pp. 19-25] We have also seen that few local governments, relative to the number of local governments, have made use of the legislative authorization granted by the Local Taxes Act. In the following section, I will examine the practice of judicial review and judicial review of the legality of the ordinances adopted.

Pursuant to the Local Taxes Act, the power of local governments to decide on the type and amount of local taxes in the context of the management of local public affairs under Section 32 (1) (h) of the Fundamental Law [https://net.jogtar.hu/jogszabaly?docid=a1100425.atv, access 30 May 2022], gives the power to the local (municipal, city, metropolitan and district) self-government and the body of representatives of the county self-government (hereinafter collectively referred to as the "self-government") to introduce local taxes by decree in the area of jurisdiction of the self-government and, with the exception of the county self-government, to introduce local taxes.

The right to impose taxes is vested in the district municipality in the case of the capital city in the case of building tax, land tax, a local tax on individuals and tourism tax, and in the case of local business tax in the case of the capital municipality, and the capital municipality may also introduce taxes that would otherwise be the responsibility of the district municipality if the representative body of the district municipality concerned gives its prior consent to this annually before the tax year, and the metropolitan municipality is entitled to introduce the tax which the district municipality may introduce in respect of the area directly administered by the metropolitan municipality.

The categories and types of local taxes are defined in detail in the Local Taxes Act, so local taxes can be property taxes, which include building taxes and land taxes. There may be taxes of a municipal nature, which currently include only the settlement tax on individuals and the

tourist tax, and last but certainly not least, local business tax is defined in the Local Taxes Act.

In the case of settlement taxes, however, no such type of requirement can be found. Pursuant to § 1/A section (1) of the Local Taxes Act, the local government of a municipality may introduce by decree in its jurisdiction such settlement taxes and settlement taxes that are not prohibited by other laws. In fact, a municipal government may impose a settlement tax on any taxable subject, provided that it is not subject to a public tax already regulated by law. Settlement taxes may not be levied by the State, by municipalities, by organizations, or, in view of their capacity as such, by entrepreneurs.

The municipal tax authority is responsible for the settlement tax. In procedural matters relating to the settlement tax, the provisions of Act CL of 2017 on Tax Procedure [https://net.jogtar.hu/jogszabaly?docid=a1700150.tv, access 30 May 2022] shall apply, with the exception that the local government may also introduce a settlement tax as a self-assessed tax. The revenue from the settlement tax is the revenue of the local government levying it, which may be used for development purposes and for financing social benefits falling within the competence of the body of representatives of the local government.

Thus, the rules of the Local Taxes Act provide local governments with considerable regulatory autonomy and freedom in the area of settlement taxes.

Settlement Tax in Numbers

According to the State Audit Office of Hungary's current analysis for 2021, 99.3% of municipalities introduced some form of local tax in 2019 (only 22 municipalities did not do so) [https://www.asz.hu/storage/files/files/elemzesek/2021/helyi_onkormanyzatok_adoztatasi_tevekenysege_20210323.pdf, access 30 May 2022], and almost one-third of municipalities' budget revenues came from local taxes [SAO analysis 2021, p. 5]. The most important local tax is the local business tax, which was introduced by 91.2% of municipalities [SAO analysis 2021, p. 12]. The local business tax accounted for 78.3% of the total tax revenue of local governments in 2019 [SAO analysis 2021, p. 12] (although 90% of the total business tax revenue came from only 8.5% of local governments, mainly from the capital and its districts and the cities with county status). Land tax was introduced by 16.2% of local governments and building tax by almost one-third of local governments, mainly larger municipalities. settlement taxes on individuals were popular among smaller municipalities, with almost three-quarters of municipalities introducing them. A quarter of municipalities opted to introduce a tourist tax, mainly in the more tourist-oriented municipalities.

According to the national statement prepared by the State Audit Office, as summarized in the table below, settlement taxes account for only a very small share of municipal revenues.

Tax name		**Amount of tax revenue (in current prices, million HUF)**				
		Year 2015	**Year 2016**	**Year 2017**	**Year 2018**	**Year 2019**
Local taxes	Building tax	*111963*	*117521*	*123130*	*126277*	*127594*
	Land tax	*19102*	*22112*	*24018*	*23165*	*24095*
	Local tax for private individuals	*13451*	*14589*	*14765*	*14621*	*14566*
	Tourist tax	*10475*	*11676*	*13602*	*14863*	*16249*
	Local business tax	*584380*	*608982*	*638731*	*711276*	*788308*
	Total local taxes	***739371***	***774880***	***814246***	***890202***	***970812***
Settlement tax	Income type settlement tax	*14*	*5*	*6*	*0*	*0*
	Property type settlement tax	*217*	*269*	*273*	*281*	*224*
	Other types of settlement tax	*227*	*743*	*816*	*534*	*453*
	Total settlement taxes	***458***	***1017***	***1095***	***815***	***677***

Table 1.: Local tax and settlement tax revenues of local governments in Hungary (2015-2019); average HUF to EUR exchange rate in 2021: 364,95 HUF to 1 EUR. [http://www.mnbkozeparfolyam.hu/arfolyam-2021.html, access 30 May 2022] Source: own ed. [https://www.ksh.hu/stadat_files/gdp/hu/gdp0028.html, access 30 May 2022].

In concrete HUF amounts: in 2015, 458 million HUF, in 2016 1017 million HUF, in 2017 1095 million HUF, in 2018 815 million HUF, and in 2019 677 million HUF were collected from settlement taxes for the benefit of local governments. In percentage terms, this means that settlement taxes accounted for 0.06% of municipal revenues in 2015, 0.12% in 2016, 0.13% in 2017, 0.09% in 2018 and 0.07% in 2019. We can therefore observe a doubling of municipalities' revenue from settlement taxes in the year following its introduction, followed by a year of stagnation and then a decrease. These figures, therefore, show that municipalities have looked for other sources of revenue rather than applying settlement taxes [https://www.ksh.hu/stadat_files/gdp/hu/gdp0028.html, access 30 May 2022].

If we look at the table in more detail and further classify the settlement taxes, we can see that municipalities had a stable revenue of HUF 220-280 million from property-type settlement taxes between 2015 and 2019. From income type settlement taxes, the municipalities generated only HUF 14 million in 2015, but by 2018 this amount had dropped to zero. From other types of settlement taxes (mainly capital tax on property assets and other property taxes), the municipalities generated HUF 227 million in the year of introduction, which increased to HUF 816 million in 2017 and then dropped to HUF 453 million in 2019. As can be seen from the data, municipalities have effectively abandoned the concept of income-type settlement taxes and have instead introduced property-type settlement taxes; however, as noted above, overall municipal tax revenues have started to decline after a short period of increase [https://www.ksh.hu/stadat_files/gdp/hu/gdp0028.html, access 30 May 2022].

According to the statistics of the State Audit Office of Hungary, as of 1 January 2018, municipalities applied settlement taxes in a total of 96 of Hungary's 3178 settlements (including the capital and its districts). This represented 3.02% of all municipalities in Hungary at that time, a 3% share that has not changed significantly since then. In comparison, 910 municipalities applied building taxes, 513 municipalities applied land taxes, 2304 municipalities applied settlement taxes on individuals, 859 municipalities applied tourism taxes and 2852 municipalities applied local business taxes in 2018. This represents 28.63% of the municipalities in Hungary for building tax; 16.1% for land tax; 72.5% for settlement tax on individuals; 27.03% for tourism tax; and 89.74% for local business tax. The share of settlement taxes is thus far outweighed by the share of other local taxes. Even the next type of local tax with the lowest number of municipalities, the land tax, has been introduced in five times as many municipalities as the settlement tax [https://hakka.allamkincstar.gov.hu/,access 30 May 2022].

Conclusions

Under § 1/A of the Local Taxes Act effective from 1 January 2015, the municipal government may introduce in its jurisdiction by decree such settlement taxes and settlement taxes that are not prohibited by other laws.

The figures showed that a very small proportion of local governments in Hungary, only 3% on average per year, applied settlement taxes, preferring to look for other sources of revenue. In other words, after the initial enthusiasm (2015-2016), there has been a stagnation in the number of settlement tax ordinances today.

As regards the taxable subject, the municipalities have primarily decided to introduce a special type of land tax (levied on land, which is otherwise not taxed); which is primarily tax based on the area (ha, m^2), with a smaller share based on profitability (ad valorem taxation). In addition, there are some other special tax categories (e.g. vehicles, works of art, tall buildings).

The tax situation of municipalities was also significantly influenced by the epidemiological and emergency regulatory environment, as at the time of the study there was a legal prohibition on raising local and settlement taxes, introducing new local taxes, settlement taxes, and municipalities were obliged to maintain tax exemptions and tax reliefs under existing tax ordinances.

Overall, it can be said that the expectations of the settlement tax, especially in terms of increasing municipal revenues and increasing municipal autonomy, have not been met to a high degree. Unfortunately, this has resulted - despite the regulatory creativity of the settlement tax - in the introduction of only one localized and not very significant type of the system of local taxes in Hungary.

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DIGITAL ASSETS: KAZAKHSTAN'S EXPERIENCE

Abstract
This article is devoted to the study of digital assets in the Republic of Kazakhstan. The purpose of the article is to explore Kazakhstan's experience in the legal regulation of digital assets and to identify further areas for legislative improvements. It is noted that Kazakhstan's legislation does not regulate digital money, but the term "digital asset" is used. It is spoken in detail about secured and unsecured digital assets, as well as the procedure for their issuance and circulation in the financial market. The article gives a detailed analysis of the norms of the RoK Laws "On Payments and Payment Systems", and "On Informatization". Much attention is given to the history of cryptocurrencies and the attempts of individual states to introduce their own electronic payment systems in digital currency. In this regard, the main provisions of the draft Model Law of the Commonwealth of Independent States "On Digital Financial Assets" are analysed and some comments are made on the establishment of a single regime for secured and unsecured digital assets and on the distinction between corporate (investment) and obligation (credit) digital assets. As a result of this study, the Author concludes that digital assets have now become widely used and for this reason states need to change their attitude towards them, that is stop ignoring them, and it is necessary to define their legal regime.

Keywords: digital assets, cryptocurrencies, Kazakhstan's legislation, digital money, electronic money

Non-cash money includes electronic and digital money. As follows from paragraph 67 of Article 1 of the Law of the Republic of Kazakhstan dated July 26, 2016, No. 11-VI "On Payments and Payment Systems", electronic money is an unconditional and irrevocable monetary obligation of the issuer of electronic money that is stored in the electronic form and accepted as a means of payment in the electronic money system by other participants of the system [Bulletin of the Parliament of the Republic of Kazakhstan, 2016, No. 12]. However, unlike electronic money, digital money is not regulated in the legislation of the Republic of Kazakhstan, but such a category as a "digital asset" has been included. Therefore, according to paragraph 55-1 of Article 1 of the Law of the Republic of Kazakhstan dated November 24, 2015, No. 418-V "On Informatization" (hereinafter referred to as the Law on Informatization), a digital asset is a property created in the electronic and digital form with the application of cryptographic means and computer calculations, which is not a financial instrument, as well as the electronic and digital form of certifying property rights [Bulletin of the Parliament of the Republic of Kazakhstan, 2015, No. 22-V]. In accordance with paragraph 1 of Article 33-1 of the Law on Informatization, digital assets are not means of payment.

At the same time, digital assets can be secured or unsecured. Secured digital assets include a digital token and other digital assets serving as a digital means of certifying property rights to goods and (or) services issued (provided) by a person that issued a secured digital asset. A digital token is a type of digital asset that is a digital means of accounting, exchanging and certifying property rights (paragraph 56-1 of Article 1 of the Law on Informatization).

At the same time, a digital asset, as well as a secured digital asset, does not secure the rights to financial instruments and does not give relevant rights to its owner or

proprietor with respect to a legal entity (rights to a profit share or management rights in relation to a legal entity).

The Information Security Committee under the Ministry of Digital Development, Innovations and Aerospace Industry of Kazakhstan, as an authorized body, determines the procedure for the issue and circulation of secured digital assets. A secured digital asset shall be issued by making a record of the rights (which are certified by the secured digital asset) in the information system by its owner or proprietor, in accordance with an agreement between the owner or proprietor of the information system and the user, who is the issuer of the secured digital asset. The person issuing the secured digital asset is the owner of the property or another person who owns the rights certified by the secured digital asset [https://adilet.zan.kz/rus/docs/V2000021546, access 27 January 2021, Paragraph 3].

In turn, the circulation of a secured digital asset shall be carried out by certifying and transferring rights to secured digital assets, as well as their encumbrance with the rights of third parties, including alienation, acquisition, exchange of digital assets for electronic money, values and other property, by entering data into the information system, in accordance with an agreement between users of the information system [https://adilet.zan.kz/rus/docs/V2000021546, access 27 January 2021, Paragraph 4(1)].

The right to a digital asset is certified by a record in the blockchain by a person issuing a digital asset on a distributed data platform, in the manner prescribed by the legislation of the Republic of Kazakhstan.

Inclusion of data on the transfer of a digital asset or rights to it into the information system shall be allowed under the following conditions:

1. the person who has entered the data has access to the information system of the person who issues the digital asset on the distributed data platform, in the manner determined by the authorized body in the field of information security;
2. the information system of a person issuing the digital asset on the distributed data platform meets the requirements established by the Law on Informatization (paragraph 6 of Article 33-1) [https://adilet.zan.kz/rus/docs/V2000021546, access 27 January 2021, Paragraph 4(2)].

The proprietor, owner and user, who have access to the information system of the person issuing the digital asset, have equal rights to make changes in accordance with the specified validation algorithm. In this case, the changes are synchronized for all users of the information system.

A person engaged in digital mining becomes the owner of digital assets that have arisen as a result of digital mining.

Persons engaged in digital mining shall inform the authorised body in the field of information security about the activities of digital mining in the manner determined by the authorised body in the field of information security.

Unsecured digital assets include digital tokens received as a reward for participating in maintaining consensus in the blockchain in the manner prescribed by the legislation of the Republic of Kazakhstan. It should be borne in mind that the issue and circulation of unsecured digital assets in Kazakhstan is prohibited, except in cases provided for by the laws of Kazakhstan (paragraph 3 of Article 33-1 of the Law on Informatization). Unsecured digital assets include digital currencies, as well as cryptocurrencies. The term "cryptocurrency" itself is spreading after the publication of Andy Greenberg's article "Crypto Currency" in Forbes on April 20, 2011 [https://www.forbes.com/forbes/2011/0509/technology-psilocybin-bitcoins-gavin-andresen-crypto-currency.html?sh=c050a01353ee, access 27 January 2021]. The specificity of this category is that it is not electronic or digital money, but a type of digital currency. Cryptocurrency is an asset that is used as a medium of exchange and is considered reliable because it is based on cryptography [Suleimenov 2021, p. 21].

Since 2009, Bitcoins have been appearing and developing [https://bitnovosti.com/2014/01/06/bitcoin-eto-finansovaya-platforma-s-raznymi-api/, access 27 January 2021]. Bitcoins exist only as records in a replicated distributed database, in which all transactions are stored in a publicly accessible open (unencrypted) form, indicating the bitcoin addresses of senders/recipients, but without information about the real owner of these addresses [https://www.wired.com/images_blogs/threatlevel/2012/05/Bitcoin-FBI.pdf, access 27 January 2021]. In addition to Bitcoin, Altcoin, Namecoin, Litecoin, PPCoin, Novacoin, etc. have also become widespread. The circulation of cryptocurrencies is not directly prohibited in most countries, but almost no country is in a hurry to officially recognize them either. In China, for example, citizens are not prohibited from making transactions with cryptocurrencies, and the People's Bank of China has established such a ban for financial organizations [https://bitcoinmagazine.com/business/big-picture-behind-news-chinas-bitcoin-bans,

access 27 January 2021]. Therefore, making transactions with cryptocurrencies is a rather risky activity, since it is not regulated in the legislation of most countries, including the Republic of Kazakhstan, and consequently there is no legal protection in case of possible violations or any other negative consequences for the participants in such transactions.

Regarding the legal nature of money, it should be recognised that money is an unconditional obligation of a state to all those persons (and each of them individually) who hold and use money issued by that state within the jurisdiction of that state (regardless of the form of money, whether it is bank notes, non-cash money or, as now it is widely discussed, digital currency) [Karagussov, Baisheva 2021, p. 106-107]. Recently, attempts by individual states to introduce their own digital currency electronic payment systems have been widely discussed. For example, the PRC is introducing the DCEP, i.e. the digital yuan, which will circulate and convert in the same way as ordinary Chinese banknotes and coins, and "China stands a good chance of becoming the first country to launch a sovereign cryptocurrency" [https://www.profinance.ru/news/2020/10/30/bzut-kitaj-pochti-gotov-k-zapusku-tsifrovogo-yuanya.html, access 27 January 2021]. The idea of introducing a digital euro has also spread in the EU. It is believed that this "could support the Eurosystem's objectives by providing citizens with access to a safe form of money in the fast-changing digital world", as well as "a digital euro could constitute a possible contingency mechanism for electronic retail payments that could remain in use even when private solutions are not available" [https://www.profinance.ru/news/2020/10/05/bzmv-etsb-dumaet-o-zapuske-tsifrovogo-evro.html, access 27 January 2021]. The initiative of the Central Bank of Russia to introduce a digital ruble is also widely discussed in the Russian Federation [Tsindeliani 2021, pp. 45-52]. Proposals to introduce a digital tenge are also being voiced in Kazakhstan. Thus, F.S. Karagussov and G.K. Baisheva note that if electronic money is issued by the National Bank of Kazakhstan, it will automatically turn into a digital equivalent of the national currency (digital tenge) and will perform the same functions of money as cash and non-cash tenge; at the same time, it may be acceptable to circulate digital tenge in parallel with cash and non-cash tenge as another form of money in the national currency [2021, pp. 113-114].

In this regard, I would like to dwell on the main provisions of the draft Model Law of the Commonwealth of Independent States "On Digital Financial Assets", initiated and developed by the CIS Interparliamentary Assembly [www.iacis.ru, access 27 January 2021] (hereinafter referred to as the Draft). As follows from paragraph 2 of Article 4 of the Draft, this Model Law defines:

1. general principles of the participants' legal status in the digital financial assets market in the CIS economic space;
2. relations related to the use of digital financial assets in activities based in two or more CIS member states and (or) persons whose personal laws are the laws of different CIS member states;
3. conditions and procedure for applying the legislation on digital financial assets of one CIS member state in the territory of another CIS member state [www.iacis.ru, access 27 January 2021].

While generally supporting the idea and the main provisions of the Draft, there are a number of comments to be made. Firstly, although the Draft makes a distinction between secured and unsecured digital assets in paragraphs 1) and 3) of Article 3, it subsequently establishes a single legal regime for secured and unsecured digital assets. In our view, this is hardly the right thing to do. Primarily, this concerns cryptocurrencies, which are unsecured digital assets. Here we would like to draw attention once again to the fact that the issue and circulation of unsecured digital assets ***in Kazakhstan is prohibited***, except in cases provided for by the laws of Kazakhstan (paragraph 3 of Article 33-1 of the Law on Informatization).

As already noted, in accordance with the legislative concept of the Republic of Kazakhstan, digital assets are not a means of payment. However, it should be borne in mind that, a digital asset ***does not secure the rights to financial instruments and does not give relevant rights to its owner or proprietor with respect to a legal entity.***

At the same time, Article 12 of the Draft states that "*Depending on the purpose and functions performed by a digital financial asset as a financial market instrument, it is allowed to issue and circulate two types of digital financial assets:*

1. *Corporate (investment) digital financial asset – a digital financial asset that certifies corporate rights (rights to participate in a corporate legal entity).*
2. *Obligation (credit) digital financial asset – a digital financial asset that certifies a monetary claim or a claim for the transfer of securities or the performance of obligations from securities*" [www.iacis.ru, access 27 January 2021].

In our view, these provisions need to be adjusted, especially taking into account that, not all CIS member countries may have corporate or obligation digital assets.

Further, although the Draft distinguishes between digital assets and digital financial assets, which are a type of digital assets, there is no such distinction in the legislation of the Republic of Kazakhstan and it is expressly stated that a digital asset does not secure the rights to financial instruments. Therefore, the use of a term such as "digital financial asset" in the Draft seems somewhat premature; therefore, it may be necessary to adjust both the title of the Draft and the content of its articles.

We believe that the Draft should make a clear distinction between secured and unsecured digital assets, especially where holders and purchasers of digital assets are concerned - Articles 9-11 of the Draft. It does not seem appropriate to equally protect the rights of holders and purchasers of secured and unsecured digital assets. On the contrary, they should be distinguished and it should be established that the owners/holders and purchasers of unsecured digital assets are not entitled to judicial protection. Therefore, it is necessary to extend the legal consequences of in-kind obligations to unsecured digital assets, and, above all, to cryptocurrencies. In this regard, the provisions of Articles 17-21 of the Draft need to be adjusted accordingly.

Thus, digital assets, and, above all, unsecured ones, are now becoming increasingly popular and therefore it is necessary to develop appropriate approaches to regulating their circulation. Today, it is no longer possible to simply ignore them, as has been the case in the practice of most states in the last decade, it is necessary to legislatively determine what kind of property it is and what its legal regime is.

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DEVELOPMENT OF BUDGETARY RULES IN THE CZECH REPUBLIC

Abstract

At a time when more and more demands are made on public budgets, it is appropriate to evaluate the rules governing the institutes of budget management and consider strengthening the instruments that ensure efficient, economy and effective management of public funds. For this reason, the contribution is devoted to the analysis of the development of budgetary rules in the Czech Republic, especially to the analysis of breach of budgetary discipline, which is an important part of the financial management and control of public budgets. This article also follows the outputs of the Ministry of Finance project, co-financed by the he EEA and Norway grants 2014-2021, which is dedicated to strengthening public financial management and control[1].

Keywords: budget, budgetary discipline, financial management and control

Introduction

In modern history, the budgetary rules for the territory of the Czech Republic were adopted into legislation during the era of the First Republic. Subsequently, the established trend was interrupted and suppressed as a result of the World War II and subsequent new social and political arrangement. Therefore, the development of budgetary rules over the last 30 years can be described as a revolution, as it responded to changes that took place in the field of public administration and followed the changes in the overall society. This article is based on the basic premise that the regulation of budget rules as a tool of financial management always lags behind the legal regulation of the organization of the public administration, the activity of which is connected to. On the basis of this premise, a hypothesis was established, the verification of which is the goal of this contribution: The development of individual institutes of management of public funds is not balanced, gradual nor connected to each other. Conversely, in the course of time, respective institutes have the tendency of distancing while, on the contrary, they should follow and complement each other. The main method used is the system analysis method through the examination of individual parts of the system of public funds management, the analysis of its respective parts and their mutual relations. This article also includes the interim results of the analysis of violations of budgetary discipline, processed within the project of the Ministry of Finance of the Czech Republic: Strengthening the management and control of public finances.[2] In view of the fact that the article is focused mainly on violations of budgetary discipline, its content is based on the analysis of related budgetary rules, i.e. budget rules after 1970, even though the rules for managing public funds on the territory of the Czech Republic have always been modified in a relatively comprehensive manner. When Czechoslovakia was created, it was a legal arrangement taken over from Austria-Hungary. This was followed by the reform carried out in 1927, which lasted in a cer-

[1] Strengthening public financial management and control, co-financed by the he EEA and Norway grants 2014-2021. More information available at: https://www.mfcr.cz/cs/verejny-sektor/kontrola-verejnych-financi/posileni-rizeni-a-kontroly-verejnych-fin; https://www.mfcr.cz/en/themes/strengthening-public-financial-managemen.

[2] For more information see research of Czudek (2022).

tain form even in the first years after the Second World War, until 1947. Fundamental changes were made to the budget rules, following the societal changes in 1959 and especially following the establishment of the federation in 1968.[3]

Analysis

The management of public funds was regulated in the Budget Rules Act of 1971[4]. This legislation was later adopted and substantially slimmed down in the Budget Rules Act of 1989[5] and subsequently used in the Budget Rules Act of 1990[6]. All three laws regulating budget regulated also the general control powers of the government as the highest executive body responsible for the management of public funds and the Ministry of Finance, or Ministry of Finance, Prices and Wages[7] respectively, as well as local financial authorities. In contrast, the legislation from 1989 and 1990 contained only a brief definition of the scope of control. At the same time, the Act on Budgetary Rules from 1971[8] described the content of the audits performed as well as the rights and obligations of both the auditing and audited bodies in more detail. Despite the fact that in the 1970s, when the principles of the modern rule of law were fundamentally suppressed, the legal regulation of control activities was relatively detailed and, in terms of scope, it resembled today's legislation more closely than the regulation from the transitory period, i.e. in the beginning of the 1990s. The purpose of the legislation from the 1970s was to define the competence of state authorities sufficiently broadly so that they could fulfil their function in protecting socialist interests and strengthening state discipline[9], or so that control activity could serve the ruling political party to promote its interests. Since 1989, the main reason has been more extensive legislation in the area of protection of the rights and legally protected interests of citizens against unreasonable interference by state authorities and abuse of state power. On the contrary, in the case of the institute of violation of budgetary discipline, or consequences of unauthorized use of public funds, a completely different trend in the development of legislation can be seen. The act No. 137/1970 Coll., on the rules for the national budget of the Czechoslovak Federation and on the management principles for budget resources of the national budgets of the federation and republics was regulated by the "predecessor" of the current institute of violation of budget discipline. Until it came into effect, the unauthorized use of public funds was dealt with primarily through compensation for damages, potentially in the area of criminal law and, in the case of subordinate organizations, in the form of mandatory deduction, ordered by the founder, the Ministry of Finance or the government. However, the legal regulation of the violation of budgetary discipline vested in act No. 137/1970 Coll. was quite brief. The provisions of sec. 22 paragraph 1 of Act No. 137/1970 Coll. only stated that in cases of serious breach of budgetary discipline, i.e., violation of budget regulations, the government, or the Minister of Finance may reduce the funds provided from the national budget or determine the levy of illegally used funds to the national budget or the federal fund. In the case of provided subsidies, the provisions of sec. 22, paragraph 2 of act No. 137/1970 Coll., explicitly stated that in case of non-compliance with the purpose for which the subsidy was provided, the government may impose an obligation to return any public funds used illegally. The consequences of the unauthorized use of public funds were also stated in sec. 16 of act No. 137/1970 Coll., according to which, for any unauthorized use of public funds, relevant organizations depending on the national budget must, in addition to the mandatory levy, pay also a fine of 1 per mill from the amount withheld or illegally used. The relevant superior authority had the right to decide on the levy. The law did not provide further details on the imposition of levies or fines. Furthermore, the violation of budgetary discipline was regulated in act No. 163/1989 Coll., on the rules for managing budget funds of the Czech Socialist Republic

[3] For more details see interdisciplinary publication of Marková and Boháč (2007).

[4] Act of the Czech National Assembly No. 60/1971 Coll., on the budgetary rules for national budget of the Czech Socialist Republic and on the management of budget funds (budgetary rules of the republic).

[5] Act of the Czech National Assembly No. 163/1989 Coll., on the rules for managing budget funds of the Czech Socialist Republic (budgetary rules of the republic).

[6] Act No. 576/1990 Coll., on the rules for managing budget funds of the Czech Republic and municipalities in the Czech Republic (budgetary rules of the republic).

[7] Change in the name as a result of the expansion of the Ministry of Finance's competence based on Act No. 60/1988 Coll., on changes in the organization of ministries and other central bodies of the state administration of the Czech Socialist Republic.

[8] Act of the Czech National Assembly No. 60/1971 Coll., on the budgetary rules for national budget of the Czech Socialist Republic and on the management of budget funds (budgetary rules of the republic).

[9] Sec. 1 par. 1 of act No. 103/1971 Coll., on the National Control.

(budgetary rules of the republic) and subsequently in act No. 576/1990 Coll., on the rules for managing budget funds of the Czech Republic and municipalities in the Czech Republic (budgetary rules of the Republic). In both cases, a violation of budget discipline was defined as an unauthorized use or withholding of funds from the national budget of the state fund. In the case of the applicability of act No. 163/1989 Coll., the violation of budgetary discipline also applied to funds entrusted to national committees, and in the case of act No. 576/1990 Coll., to funds entrusted to municipalities and district authorities, i.e., the successors of national committees. Before the act No. 163/1989 Coll. entered into force and effect, the institute of breach of budgetary discipline was not defined, even though the then valid and effective act No. 60/1971 Coll., on the budgetary rules for national budget of the Czech Socialist Republic and on the management of budget funds (budgetary rules of the republic) regulated the consequences of non-compliance with financial and budgetary regulations or principles for the provision of subsidies and subsidies in sec. 17 of the act. Consequences of the violation could be the following: a reduction of the provided funds or a reduction of the overall financial relationship in the event that the national committee committed a violation of the regulations or principles, withholding of the provided funds and an order to return the provided funds. The government or the finance minister, if authorized to do so, decided on the consequences. The consequences were related to funds provided from the national budget and from the state fund. Furthermore, according to the provisions of sec. 33 paragraph 4 of act No. 60/1971 Coll., in the event that the control of the Ministry of Finance revealed a violation of financial or budgetary discipline, it issued an incentive to remedy any identified defects. In this case, however, the breach of financial or budgetary discipline was not specified. The provisions of sec. 16, paragraph 1 of act No. 163/1989 Coll., stipulated that the consequence of a breach of budgetary discipline is the levy of illegally used funds and a penalty for each day of delay in levy or for each day of unauthorized use of funds, in the amount of 1 per mill from the amount withheld or used without authorization, but not exceeding such amount. The penalty was not paid if it did not exceed the amount of CZK 100 in individual cases. Pursuant to the provisions of sec. 16 paragraph 4 of act No. 163/1989 Coll., in the event that a violation of budgetary discipline was identified within an internal control of the body, or organization that committed it, the penalty was halved. The levy for breach of budgetary discipline and related penalties were imposed by several different state administration bodies depending on who committed the breach of budgetary discipline. In the case of funds from the national budget or state funds, the Ministry of Finance, Prices and Wages had the authority to grant concessions for the purpose of avoiding excessive harshness. In the event that funds from the national committee's budget were involved, the relevant national committee had this authority. The amount of the penalty and its halving in case of detection of a violation of budgetary discipline by internal control remained unchanged even in the case of regulation pursuant to act No. 576/1990 Coll. The amendment was seen in relation to the authorities competent to impose levies and penalties. In all cases, the competent authority was the territorial financial authority, regardless on the fact who committed the breach of budgetary discipline. The Ministry of Finance, on the other hand, remained the body that had the power to prevent the harshness of the law and could grant concessions.

For the funds that previously belonged to the national committees, the authority was transferred to the municipalities, as the related public funds were also transferred to them. The regulation of breach of budgetary discipline contained in act No. 576/1990 Coll. was effective without change until the act No. 218/2000 Coll. came into force.[10]

The trend where the legislation on the management of public funds is adopted with a considerable delay behind the regulation bringing fundamental changes in the functioning of public administration can also be traced in the adopted legislation in the area of financial management in general, with the only exception being the adoption of act No. 320 /2001 Coll., on financial control in public administration and on the amendment of certain legal rules (Financial Control Act). This law was adopted as a fulfilment of the pre-accession conditions for the entry of the Czech Republic into the European Union, i.e., two years in advance, regulating financial control according to the best known international good practice at the time, including international standards. However, it must be noted that the regulation of financial control has so far remained almost unchanged, which means that today it hardly corresponds to the latest findings and trends, even considering the significant changes in public administration that have been implemented in the Czech Republic in the meantime, its delay remains fundamental

[10] For more information see research of Czudek (2022).

in such scale that legislative changes are more than desirable. Although the frequent amendments of legal rules can generally be considered as problematic because the legal certainty of its addressees is significantly reduced, cases where the legislation does not reflect changes in the scope of regulation are at least equally problematic from the legal certainty point of view.

The legal regulation of financial management in the late 1980s underwent significant amendments following the changes in society. In this period, the former regulation from the socialist era is gradually replaced by transitional institutions and institutes, which made subsequent formation of the foundations of the modern institutional and functional arrangement of financial management possible, persisting to these days. The so-called "post-November" legal regulations, i.e., regulations adopted after 1989, have also another characteristic element in common, namely the fact that significant interventions to the legislation occurred only during proceedings in the Parliament of the Czech Republic, i.e., that they are often the result of political compromise rather than professional discourse. This is also the reason why the development of budget rules, as well as every specific legislative change made in the last 30 years, resembles a revolution rather than an evolution.

At the turn of the millennium, a general trend of expanding financial management legislation could be seen, including budget management and control rules [see act No. 218/2000 Coll., on budget rules and on the amendment of certain laws (budget rules), amending the Act on budget rules from of 1990 and act No. 320/2001 Coll., on financial control in public administration and on the amendment of certain laws (Financial Control Act) subsequently]. This development was natural with regard to the fact that an activity that represents a significant intervention in the management of public funds needs clearly defined rules and limits in a modern rule of law, within which it can act as a manifestation of state power. In accordance with the principles of the rule of law and the principle of legality, public administration as well as the rules of management and control, must be implemented only on the basis of the law and within its limits, i.e., the specific authority of respective public body to dispose public funds and also to exercise control must be included in the law.

In accordance with these rules, the current budget rules were established in the form of act No. 218/2000 Coll., on budget rules and on the amendment of certain laws (budget rules), coming into effect on January 1, 2001. In addition to preparations for joining the European Union there were fundamental changes in the system of public funds management caused by the abolition of district authorities at the end of 2002. District authorities were created by the transformation of district national committees at the end of 1990 (act No. 425/1990 Coll., on district authorities, the adjustment of their powers and some other related measures with effect from November 24, 1990). As the district authorities were established in 1990, they carried out state administration in the assigned section, which was followed by the legal regulation of public funds management and related control activities. Control authority in the area of financial control was entrusted to them only by act No. 147/2000 Coll., on district authorities, which came into effect on November 12, 2000. Originally, it was a matter of financial control in the terms of act No. 218/2000 Coll. (in particular sec. 41), which were supplemented by the financial control legislation according to Act No. 320/2001 Coll. from January 1, 2002. This law also extended the authority of district authorities to carry out financial control of their organizational components and state-financed organizations.

From the perspective of the analyzed violation of budgetary discipline, the current budget rules stipulate that the violation of budgetary discipline includes a whole range of diverse situations, which the lawmaker decided to punish with a levy for a violation of budgetary discipline and a related penalty. It follows from the definition of a violation of budgetary discipline that not all violations of budgetary rules or rules established by other legal regulations are to be punished. This was also confirmed by the decision of the Supreme Administrative Court, stating the following conclusion in its decision: "(p)when evaluating the indefinite concept of unauthorized use or withholding of funds [sec. 44 para. 1 letter b) of act No. 218/2000 Coll., on budgetary rules] it is necessary, among other things, to consider also the purpose of the provided public funds and its fulfillment. Based on this, not every violation of the relevant obligation is at the same time an unauthorized use of funds and as such must be returned to the public budget." On the other hand, the legislator decided to sanction minor violations, based in the failure to meet pre-set deadlines, through a levy for the breach of budgetary discipline. In these cases, the levy is used to implement an obligation that was not fulfilled by the deadline, and the assessed penalty represents a penalty for delay. In addition to these insignificant deficiencies,

serious deficiencies consisting, for example, of non-compliance with the purpose for which the funds of the national budget were intended to be provided, are penalized through a violation of budgetary discipline.

Conclusion

The system analysis demonstrates that the hypothesis that was established at the beginning of this article was confirmed. The development of individual institutes of managing public funds is not balanced, gradual or connected to each other. On the contrary, in the course of time, there is a constant distancing of institutes, which, on the contrary, should follow and complement each other. This is illustrated by the example of the regulation of the control activity, the aim of which is to verify the fulfillment of budgetary rules and other rules for handling public funds, and the regulation of the institute of violation of budgetary discipline, which is supposed to be a way of solving the deficiencies identified in the control process. Regarding the legal regulation of control, we can see that even though the lawmakers were motivated to do so based on different reasons, the regulation was more detailed in the past than in the case of a breach of budgetary discipline, the legal regulation of which, on the contrary, has been extending in the last two decades. The future of the legal regulation of both budgetary rules and the control and violation of budgetary discipline in the Czech Republic is, to say the least, debatable. To cover this topic in full it should be noted that the application of legislation, in particular of the institute of breach of budgetary discipline, is significantly influenced by the jurisprudence of the Supreme Administrative Court as well. However, an analysis of the decisions would significantly exceed the scope of this article.

List of legal acts

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Act of the Czech National Assembly No. 60/1971 Coll., on the budgetary rules for national budget of the Czech Socialist Republic and on the management of budget funds (budgetary rules of the republic), *(repealed)*.

Act No. 103/1971 Coll., on the National Control, *(repealed)*.

Act No. 60/1988 Coll., on changes in the organization of ministries and other central bodies of the state administration of the Czech Socialist Republic.

Act of the Czech National Assembly No. 163/1989 Coll., on the rules for managing budget funds of the Czech Socialist Republic (budgetary rules of the republic), *(repealed)*.

Act No. 425/1990 Coll., on district authorities, the adjustment of their powers and some other related measures, *(repealed)*.

Act No. 576/1990 Coll., on the rules for managing budget funds of the Czech Republic and municipalities in the Czech Republic (budgetary rules of the republic), *(repealed)*.

Act No. 147/2000 Coll., on district authorities, *(repealed)*.

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PRIVATE AND PUBLIC FINANCES DURING THE RUSSIAN-UKRAINIAN WAR: COSTS, LOSSES, AND REIMBURSEMENTS

Abstract

The article is devoted to financial, material, and legislative problems in Ukraine caused by the Russian-Ukrainian war. The issues of budget expenditures, financial losses, material losses and their compensation are considered.

It is emphasized that the war is an extremely costly event for any country, which has an extremely negative impact primarily on public finances. When talking about Ukraine, we can single out budget expenditures and budget, resource, and material losses. And most importantly, it is about lost human lives that have no financial measurement.

Every day, Ukrainian budgets receive less planned revenues than due because of reduced tax revenues, in particular, VAT revenues (for example, in March, VAT revenues amounted to approximately 60% of the target financial performance), personal income tax, single social security tax, customs duty (currently only the western border is open; the northern, southern, and eastern borders are closed or blocked, in connection with which the export-import operations and their payments decreased), and state duty revenues, etc. This is because the purchasing power of citizens has decreased, and the purchasing needs themselves have changed significantly.

It is emphasized, that the infrastructural, material, and property losses of Ukraine during the war are enormous (in the worst sense). Losses are calculated and estimated daily. Of course, the figures are still approximate. Also, as long as the war is going on, losses will increase, and after its end, there will be a question of compensation. Compensation payments will be made at the expense of the budget funds, and most of all at the expense of the funds received from the seized or confiscated property of the russian federation and its citizens. There is great doubt that the leadership of the country that started this senseless war, as well as the citizens who support and approve it, will voluntarily agree to make payments or enforce the decisions of any international courts and organizations. Therefore, we must already actively form a real financial basis and basis for compensation for damages. Here, Ukrainian politicians and government officials work closely with their foreign counterparts. After all, it is necessary to determine which property and belonging to which individuals can be transferred to the needs of Ukraine, and in what way.

The fact of creating the Trust Fund for the Reconstruction of Ukraine After the War should be noted positively. Its creation was supported in March 2022 in Brussels at the summits of NATO, the Group of Seven and the EU,

which discussed Russia's war against Ukraine. The World Bank, Sweden, the Netherlands, Austria and other countries have joined the initiative to create such a fund. From May 2022, the Trust Fund is going to start its work.

Economic recovery will largely depend on business recovery. However, the work of many powerful companies — large taxpayers — during martial law has been suspended indefinitely or suspended temporarily and resumed after the transfer of their technical capacities to other regions. Some businesses have lost their property complexes during air strikes and other hostilities (they are destroyed). And for them to become involved in economic recovery, they must be rebuilt first (where possible).

The problems of financial and budgetary expenses for the war are considered separately. According to rough estimates, the daily budget costs of fighting cost Ukraine about USD 66 million. If we add additional funding from private funds of individuals and legal entities, the total costs increase significantly. Given the need for increasing funds, government officials are in constant talks with foreign partners, with business representatives about the possibility of obtaining additional financial assistance, new grants and loans, and more.

It is noted that in difficult conditions of the war, the state needs additional funding. For this purpose, such financial instruments as borrowing — internal and external — are actively used.

Ukraine is actively cooperating with the World Bank. In this context borrowings, loans and financial assistance as special financial resources are analysed.

Features of public procurement in the war period are considered. Yes, there occurred problems with suppliers (because some of them remained in the occupied territories, some lost their production capacities, some lost workers, etc.), logistical problems (delay or inability to deliver goods, services), growing demand for previously less popular goods. In order to optimize procurement during the war and meet the urgent needs of the state and restore Ukrainian business, the Prozorro State Enterprise, Professional Procurement State Institution and electronic platforms (E-Tender, Zakupki.prom.ua, SmartTender, Public Procurement. Online and Tender-Online) have developed the Prozorro+ Platform.

Keywords: war, financial losses, material losses, property losses, compensation, borrowings, loans, financial assistance, public procurement

Introduction

We would like to dedicate the article to honour the memory of professor Eugeniusz Ruskowski who usually addressed the issues of local finances and local self-government. The professor paid the biggest attention to these issues in his research. His scientific achievements will still be relevant in decades to come.

However, since 2014, and especially since 24 February 2022, our scientific interests have undergone significant changes. Unfortunately. In this article, the present problems have forced us to discuss private and public finances in the context of the russian-Ukrainian war.

Financial Losses of Ukraine

Every day Ukrainian budgets receive less planned revenues than due because of reduced tax revenues, in particular, VAT revenues (for example, in March 2022 VAT revenues amounted to approximately 60% of the target financial performance), personal income tax, single social security tax, customs duty (currently only the western border is open; the northern, southern, and eastern borders are closed or blocked, in connection with which the export-import operations and their payments decreased), and state duty revenues, etc. This is because the purchasing power of citizens has decreased, and the purchasing needs themselves have changed significantly. The Ministry of Finance planned to collect in 2022 UAH 405 billion in VAT revenues, UAH 76 billion in excise duty (alcohol, cigarettes, and energy products), and UAH 37.5 billion in customs duties. In general, only indirect taxes on imported goods were to amount to almost UAH 520 billion — 40% of all budget revenues. However, currently, the customs manage to collect only a fifth of the planned revenues. Instead of the expected UAH 39 billion in March, the budget received UAH 7 billion [https://www.epravda.com.ua/publications/2022/04/5/685230/]. Although, according to the State Treasury Service of Ukraine, in March 2022 the general fund of the state budget received UAH 103.4 billion, namely the monthly plan was fulfilled by almost 93% [https://www.ukrinform.ua/rubric-ato/3451214-za-kozen-den-vijni-budzet-vtracae-blizko-2-milardiv-minfin.html]. And this result, in general, is not just satisfactory, but even quite good. In April, the situation was not so positive, and yet the state budget was executed as planned as possible, even by half. So how did this become possible? The answer is hidden in the fact that some entities transferred their

taxes in advance. To compensate for budget losses, the government appealed to state-owned enterprises and the National Bank of Ukraine with a request to transfer the revenues of 2021 to the state budget ahead of schedule (according to the plan, this was to happen in April-June 2022). On the second day of the war, UAH 19 billion were received from the National Bank of Ukraine, UAH 28 billion were received from PrivatBank in early March, and UAH 2.3 billion were received from Naftogaz at the end of March. In general, in March, state-owned enterprises transferred UAH 32.5 billion in dividends. Without them, the budget revenues in March would be 37% lower than planned [https://www.epravda.com.ua/publications/2022/04/5/685230/]. The downside of such actions is the additional risks for the implementation of the state budget in the future periods (more precisely, it is a question of obvious underfulfillment of the state budget).

Material and Property Losses, and their Compensation

Infrastructural, material, and property losses of Ukraine during the war are enormous (in the worst sense). According to the Kyiv School of Economics and the Ministry of Economy of Ukraine, as of May 19, 2022 (namely after almost three months of the war), the total amount of direct documented infrastructure damage (based on public sources) has reached almost USD 100 billion. In just two months of the war, the total losses of Ukraine's economy due to the war, including both direct losses (including infrastructure) and indirect losses (GDP decline, investment cessation, labour outflows, additional defence and social support costs, etc.), range from USD 564 billion to USD 600 billion.

Losses are calculated and estimated daily. Thus, during the three months of Russia's war against Ukraine, at least 12 civilian airports, 295 bridges and bridge crossings, 591 kindergartens, 574 medical facilities, 108 religious and 179 cultural facilities, 169 warehouses and 20 shopping centres were damaged, destroyed or seized [https://kse.ua/ua/russia-will-pay/]. As of the beginning of May 2022, about 400 hospitals were damaged, and another 40 were destroyed. Such destruction is especially difficult to understand because we know how many financial resources were spent in the process of implementing the presidential program Large Construction, when hospitals, clinics, primary care facilities and more were built and furnished with state-of-the-art equipment.

Of course, the figures are still approximate. Also, as long as the war is going on, losses will increase, and after its end, there will be a question of compensation. Compensation payments will be made at the expense of the budget funds, and most of all at the expense of the funds received from the seized or confiscated property of the Russian Federation and its citizens. There is great doubt that the leadership of the country that started this senseless war, as well as the citizens who support and approve it, will voluntarily agree to make payments or enforce the decisions of any international courts and organizations. Therefore, we must already actively form a real financial basis and basis for compensation for damages. Here, Ukrainian politicians and government officials work closely with their foreign counterparts. After all, it is necessary to determine which property and belonging to which individuals can be transferred to the needs of Ukraine, and in what way.

The fact of creating the Trust Fund for the Reconstruction of Ukraine After the War should be noted positively. Its creation was supported in March 2022 in Brussels at the summits of NATO, the Group of Seven and the EU, which discussed Russia's war against Ukraine. The World Bank, Sweden, the Netherlands, Austria and other countries have joined the initiative to create such a fund. From May 2022, the Trust Fund is going to start its work.

Economic recovery will largely depend on business recovery. However, the work of many powerful companies — large taxpayers — during martial law has been suspended indefinitely or suspended temporarily and resumed after the transfer of their technical capacities to other regions. Some businesses have lost their property complexes during air strikes and other hostilities (they are destroyed). And for them to become involved in economic recovery, they must be rebuilt first (where possible).

At one time, the Ukrainian government also considered the possibility of recovering the part of the property lost in Crimea by alienating property and funds, in particular, of russian banks and companies in Ukraine. In early June 2014, the Ministry of Justice proposed to the Prosecutor General's Office of Ukraine to consider the seizure and alienation of russian state property in favour of Ukraine as compensation for losses from Russia's annexation of Crimea. Among the assets that Ukraine could seize on its territory are, in particular, such enterprises as Enerhostandart, Donetskstal, Zaporizhstal, the Mykolaiv Alumina Plant, the Southern Mining and Processing Plant,

Kyivstar and MTS-Ukraine mobile operators, as well as Sberbank of Russia, Alfa-Bank, and Prominvestbank. In total, almost every tenth of the 200 largest companies in Ukraine has a share of russian capital [http://www.radiosvoboda.org/content/article/27051870.html]. In Ukraine, the share of russian banks in the banking system at the end of 2014 was about 12% [http://delo.ua/finance/dolja-bankov-rossii-v-bankovskoj-sisteme-ukrainy-vyrosla-do-12-294854/].

And while Ukraine was thinking, russia was acting. On April 2, 2014, Vladimir Putin signed the Law on Protection of Interests of Individuals Who Have Deposits in Banks and Separate Structural Subdivisions of Banks Registered and (or) Operating in the Republic of Crimea and in the City of Sevastopol [http://pravo.gov.ru/proxy/ips/?docbody=&nd=102348704&rdk=&backlink=1]. In particular, this act provides for the possibility of compensation of deposits of Crimean residents, which they made in Ukrainian banks, through the sale of state property of Ukraine, which is located in Crimea.

Currently, this issue has been resolved positively at the level of the Law of Ukraine on Basic Principles of Compulsory Seizure of Objects of Property of the Russian Federation and Its Residents in the territory of Ukraine, as of March 3, 2022 [https://zakon.rada.gov.ua/laws/show/2116-20#Text].

This law was adopted to protect the sovereignty and territorial integrity of Ukraine, its national interests, national security, ensuring its economic independence, rights, wills and legitimate interests of the citizens of Ukraine, society and the state, given the full-scale aggressive war waged by Russia against Ukraine and the Ukrainian people, violating the international law, committing crimes against humanity, based on the Constitution of Ukraine, the Declaration of State Sovereignty of Ukraine and universally recognized international norms and rules, including the sovereign right of Ukraine to protection, taking into account the Decree of the President of Ukraine on the Imposition of Martial Law in Ukraine of February 24, 2022, approved by the Law of Ukraine on Approval of the Decree of the President of Ukraine on the Imposition of Martial Law in Ukraine of February 24, 2022, taking into account the need for immediate and effective response to existing threats to Ukraine's national interests, having regard to the Provisions of the Fourth Hague Convention on the Laws and Customs of War on Land and its Annex: Regulations on the Laws and Customs of War on Land of 18 October 1907.

It defines the legal basis for the forcible seizure, for reasons of public necessity (including cases where military necessity urgently requires so), of property rights of the Russian Federation as a state that started a full-scale war against Ukraine and its residents.

Since 2014, the Law of Ukraine on Sanctions [https://zakon.rada.gov.ua/laws/show/1644-18#Text] is also in force, which was adopted to protect the national interests, national security, sovereignty and territorial integrity of Ukraine, and to counter terrorist activity.

Also important are the provisions of the Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine to Increase the Effectiveness of Sanctions Related to the Assets of Individuals of May 12, 2022 [https://zakon.rada.gov.ua/laws/show/2257-20#Text], which entered into force on May 24, 2022. This law, in particular, amends the Law of Ukraine on Sanctions and provides that: the sanction provided for in paragraph 1-1 of the first part of Article 4 of this Law is exceptional and may be applied only to individuals and legal entities whose actions created a significant threat to the national security, sovereignty or territorial integrity of Ukraine (including through armed aggression or terrorist activities) or significantly contributed (including through funding) to such acts by other persons, including residents within the meaning of the Law of Ukraine on Basic Principles of Compulsory Seizure of Objects of Property of the Russian Federation and Its Residents in the territory of Ukraine. This sanction may be applied only during the period of martial law and provided that the relevant natural or legal person, in the manner prescribed by this Law, has already been sanctioned in the form of blocking assets. The seizure of assets, the imposition of a moratorium or any other encumbrances on them (prohibition to dispose of or use them), as well as the possession of such assets as collateral does not prevent the collection of these assets to state revenue as a sanction under paragraph 1-1 of the first part of Article 4 of this Law.

A natural person who has reported on the assets referred to in paragraphs 1, 1-1 of the first part of Article 4 of this Law shall be released from civil liability for property and/or moral damage caused as a result of notification, except in case of knowingly false notification.

It is also worth noting the important role of the judiciary in the formation of relevant case law on the protection of the rights and interests of our citizens, in particular, property rights. In the decision of the Supreme Court of April 14, 2022 [https://supreme.court.gov.ua/userfiles/

media/new_folder_for_uploads/supreme/zakonodastvo/Rish_sud_imun.pdf], attention is drawn to the fact that Part 1 of Art. 79 of the Law of Ukraine on Private International Law establishes judicial immunity, according to which filing a lawsuit against a foreign state, involving a foreign state in the case as a defendant or a third party, seizing property belonging to a foreign state and located in Ukraine, using other means of securing the claim and recovering such property may be allowed only with the consent of the competent authorities of the state unless otherwise provided by an international treaty of Ukraine or the law of Ukraine.

As provided for in Part 4 of Art. 79 of the Law of Ukraine on Private International Law, in cases where, in violation of international law of Ukraine, its property or representatives in a foreign state are not provided with the same judicial immunity, which according to parts one and two of this article is provided to foreign states, their property and representatives in Ukraine, The Cabinet of Ministers of Ukraine may take appropriate measures against this state and its property, which are permitted by international law, unless diplomatic measures are not sufficient to address the consequences of this violation of international law.

Thus, the Law of Ukraine on Private International Law establishes judicial immunity against a foreign state in the absence of the consent of the competent authorities of the respective state to involve it in the case in the national court of another state. At the same time, international legal norms on the jurisdictional immunity of a state are unified in two conventions: the European Convention on the Immunity of States, adopted by the Council of Europe on 16 May 1972, and the UN Convention on Jurisdictional Immunities of States and Property, adopted by General Assembly Resolution 59/38 of 2 December 2004. These conventions embody the concept of limited immunity of the state, determine the form in which a state's waiver of immunity is possible ('explicit waiver of immunity' on the basis of an international treaty or contract or 'allowed waiver of immunity' when a foreign state enters into litigation and files a counterclaim in the court of a foreign state), as well as establish a list of categories of cases in which the state does not enjoy immunity in the court of another member state. Both the 1972 European Convention on the Immunity of States (Article 11) and the 2004 UN Convention on Jurisdictional Immunities of States and Their Property (Article 12) provide that a Contracting State may not invoke immunity from jurisdiction at the proceedings in the court of another Contracting State, which is normally competent to hear cases relating to monetary compensation in the event of death or personal injury or damage to property or loss of property as a result of acts or omissions of the state if such acts or omissions took place in whole or in part in the territory of the state of the court.

Ukraine is not a party to any of these Conventions. However, these Conventions reflect the trend of international law to recognize that there are certain limits within which a foreign state has the right to claim immunity in civil proceedings. In its judgment of March 14, 2013, in the case of Oleynikov v. Russia, the European Court of Human Rights stated that the provisions of the 2004 UN Convention on the Jurisdictional Immunities of States and Their Property apply "in accordance with customary international law, even if the state has not ratified it", and the Court has to take this fact into account in deciding whether the right of access to a court within the meaning of paragraph 1 of Article 6 of the Convention (paragraph 68, paragraph 31) has been respected. In its judgment of March 23, 2010, in the case of Cudak v. Lithuania, the European Court of Human Rights also acknowledged the existence of customary rules of state immunity, and the predominance of the theory of limited state immunity in international practice, but emphasized that the restriction must pursue a legitimate aim and be proportionate to that aim.

Therefore, the Supreme Court has rightly concluded that the state has no right to invoke immunity in cases involving damage to health or life if such damage is wholly or partly inflicted in the territory of the court and if the person who caused the damage was currently in the territory of the court.

This decision, together with the above provisions of the law, is an important mechanism for recovering from the russian federation in national courts the damage caused to the citizens of Ukraine by illegal actions of the russian federation.

Financial Expenses

According to rough estimates, the daily budget costs of fighting cost Ukraine about USD 66 million. If we add additional funding from private funds of individuals and legal entities, the total costs increase significantly. Given the need for increasing funds, government officials are in constant talks with foreign partners, and with business

representatives about the possibility of obtaining additional financial assistance, new grants and loans, and more.

Due to the forced movement of citizens across the territory of Ukraine, many Ukrainians have changed their place of residence. Some were sent on business trips. Since January 1, 2022, for civil servants and other persons who are sent on business trips across Ukraine by the state enterprises, establishments, and organizations, the maximum sum of expenses for rent of housing made no more than UAH 900 a day (Appendix No. 1 to the Resolution No. 98 of the Cabinet of Ministers of Ukraine as of February 2, 2011). It is obvious that during the war, employers send their workers to other cities to ensure the continuity of the work process, save jobs, and most importantly save lives. When moving temporarily to another city for a new job (or working remotely on a business trip), such people need housing not only for themselves but also for their family members; some are left with almost no extra things. In view of these and other circumstances, the Cabinet of Ministers of Ukraine decided that for the period of martial law civil servants and other employees of state enterprises will be reimbursed for actual expenses in excess of the maximum amount, with the permission of the head in accordance with supporting documents. The amount of reimbursement may not exceed UAH 1,800 excluding VAT (see: Resolution of March 21, 2022 No. 345). Here are the additional costs at the expense of, in particular, budget funds.

It is noteworthy that the state takes measures to support domestic businesses in such a difficult time. Earlier "Affordable Loans 5-7-9%" Credit Program of the Fund for Entrepreneurship Development proved to be quite good, which, on the initiative of the President of Ukraine V. Zelenskyi in March 2022, was changed by the Cabinet of Ministers of Ukraine, and it can now be used by agricultural producers to ensure primarily sowing, purchase agricultural machinery, purchase seeds, fertilizers, fuel and lubricant materials. The program is extended to medium-sized enterprises with an annual income of up to EUR 50 million (previously EUR 20 million) and to large enterprises with an annual income of more than EUR 50 million, regardless of the number of employees. A loan at 0% per annum can be obtained in the amount of up to UAH 60 million (previously UAH 50 million) for a period of 6 months. The amount of the loan guarantee is 80% of the loan amount of a micro, small and medium business entity (except for large business entities). That is, the state does not leave farmers without its help, realizing that without a properly organized sowing company, Ukraine will lose on the decline in export operations, taxes and so on. Therefore, a kind of investment in agribusiness today is an objective necessity.

Also noteworthy is the Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine on Creating Conditions for Ensuring Food Security in Martial Law of March 24, 2022. This is a comprehensive law concerning, in particular, land and lease relations. At the same time, they have an impact on financial relations, in particular, in terms of rent and land fees.

Borrowings, Loans and Financial Assistance

In difficult conditions of the war, the state needs additional funding. For this purpose, such financial instruments as borrowing — internal and external — are actively used.

Currently, the state borrows funds in several ways. First, through the issuance of domestic and foreign government bonds. During the war, the government decided to introduce military bonds. Since the beginning of Russia's full-scale attack on Ukraine, the Ministry of Finance of Ukraine has held 23 auctions for the sale of military bonds, attracting almost UAH 50 billion, USD 93.8 million and EUR 176.5 million to the state budget. According to the NATIONAL BANK OF UKRAINE, about 1,000 legal entities and individuals on April 27, 2022, received UAH 3.3 billion from the redemption of the first issue of military bonds. Some of these funds have been reinvested in new military bonds to further support Ukraine. Taking into account the April redemption of military bonds, the volume of investments of Ukrainian citizens and businesses in the relevant securities as of May 2, 2022, amounted to about UAH 3.5 billion, USD 38.3 million and EUR 25.4 million, and of non-residents more than UAH 66 million [https://bank.gov.ua/ua/news/all/kilkist-vlasnikiv-ovdp-ukrayini-nadali-zrostaye-vkladniki-otrimali-viplati-vid-pogashennya-pershogo-vipusku-viyskovih-obligatsiy--depozitariy-National Bank of Ukraine]. If internal and external revenues are not enough, then the last resort is that Ukraine will move to direct financing of the state budget by the National Bank. However, inflation risks are obvious here.

Note that the NATIONAL BANK OF UKRAINE has already purchased military bonds worth UAH 20 billion,

in fact, printing this money. This right was granted by the state to the NATIONAL BANK OF UKRAINE during martial law. The regulator promises to print hryvnias in exceptional cases and provided that it does not significantly affect inflation. Secondly, borrowing from international financial organizations and the EU. In the first three months of 2022, the state received soft loans in the amount equivalent to UAH 96.7 billion. In particular, UAH 41.3 billion (USD 1.4 billion) from the International Monetary Fund, and UAH 19.5 billion (EUR 600 million) from the EU. In May 2022, the EU should transfer the second part of macro-financial assistance — EUR 600 million. Third, Ukraine is negotiating with other countries to attract grant funding. Governments provide these funds on a repayable or non-repayable basis to support the budget, the economy, and so on in times of war. We do not provide the final amounts of such assistance, as at the time of publication of this monograph, financial assistance continues to arrive. Also in open sources, there are different amounts in different equivalents. Let us just say that we are talking about tens of millions of dollars/euros from some countries, and billions from others. A distinction should also be made between direct financial assistance, military assistance (machinery, weapons, ammunition, etc.), and humanitarian aid (medicines, equipment, food, clothing, etc.), which are also in monetary terms.

Ukraine is actively cooperating with the World Bank. In particular, in April, an Agreement was signed to provide Ukraine with a grant of EUR 88.5 million from the Trust Fund established by the International Bank for Reconstruction and Development and the International Development Association. At the end of April, Ukraine received full grant funding in a certain amount from the World Bank's Multi-Donor Trust Fund under the Second Loan Policy for Economic Recovery. It is envisaged to direct grant funds to the general fund of the State Budget of Ukraine to ensure priority to social and humanitarian expenditures, health care expenditures, and support for internally displaced persons [https://mof.gov.ua/uk/news/ukraina_otrimala_grant_na_885_mln_ievro_z_tsilovogo_fondu_svitovogo_banku-3425].

Subsequently, the Grant Agreement was also amended under the Second Loan Policy for Economic Recovery. According to the changes, Ukraine will receive additional grant funds (within one grant) in the amount of EUR 495 million from Norway, Austria, and the United States. This Trust Fund was established by the International Bank for Reconstruction and Development and the International Development Association, to which contributions have already been made from Denmark, Iceland, Latvia, Lithuania, the United Kingdom, Norway, Austria, and the United States [https://www.mof.gov.ua/uk/news/ukraina_otrimaie_dodatkovo_495_mln_ievro_grantovikh_koshtiv_z_tsilovogo_fondu_svitovogo_banku-3426].

Ukraine is repelling the enemy, and the international community is helping us to resist. Since the beginning of the war, a special account has been opened in the National Bank of Ukraine to support the Armed Forces of Ukraine. As of the beginning of May 2022, more than UAH 15.7 billion in equivalent was transferred to this account. In particular, more than UAH 4.9 billion in equivalent came from abroad in foreign currency (US dollars, euros, pounds, Canadian dollars, Chinese renminbi, Japanese yen, Swiss francs, Polish zlotys, and Australian dollars) [https://www.epravda.com.ua/news/2022/05/3/686558/]. The funds came from residents of Ukraine and non-residents from all over the world, and the National Bank of Ukraine transferred them to the needs of the Ministry of Defence, the National Police, the National Guard, and the State Border Guard Service of Ukraine. There is also a special account for humanitarian aid to the citizens of Ukraine.

In May 2022, at the initiative of the President of Ukraine V. Zelenskyi, the global U24 initiative was launched, which aims to unite people from around the world who have the desire and ability to contribute and help our country. Receipt and use of such funds should be the subject of a separate study — it is all a matter of the future.

And how much money citizens have transferred to different entities (territorial defence, victims, acquaintances, relatives, colleagues, etc.) it is hardly possible to count. In particular, this showed the unity of our nation.

Public Procurement

The war also affected public procurement. Yes, there occurred problems with suppliers (because some of them remained in the occupied territories, some lost their production capacities, some lost workers, etc.), logistical problems (delay or inability to deliver goods, services), growing demand for previously less popular goods. In order to optimize procurement during the war, meet the urgent needs of the state and restore Ukrainian business, the Prozorro State Enterprise, Professional Procurement

State Institution and electronic platforms (E-Tender, Zakupki.prom.ua, SmartTender, Public Procurement. Online and Tender-Online) have developed the Prozorro+ Platform.

The government also responded fairly quickly to procurement problems. We are talking about the adoption of the Resolution No. 169 of the Cabinet of Ministers of Ukraine of February 28, 2022 on Some Issues of Defence and Public Procurement of Goods, Works and Services Under Martial Law. During two months of the functioning of the Resolution, it was amended six times, and it happened several days in a row (in particular, March 2, 4, 5, 2022). This indicates a really high activity of the Government that, as we can see, responds instantly to the needs of defence and other procurement in martial law. Normally, appropriate changes should be made to the Laws of Ukraine on Public Procurement and on Defence Procurement, which would require much more time and compliance with legislative procedures.

Public procurement is a serious matter. But even in the difficult conditions of the war, the Ukrainian people try not to lose their sense of humour. On February 26, 2022 (the second day of the war), the Blyzniuky Village Council of the Kharkiv region posted an announcement on Prozorro about the purchase of occupier tanks, the subject of the purchase: 'Used tanks can be without towers, burned from Katsap military units', expected value: UAH 100 million [https://prozorro.gov.ua/tender/UA-2022-02-26-000262-a]. Unfortunately, the auction did not take place, but the discussions and questions about the procurement procedure were quite interesting.

Conclusion (Atypical Conclusion for the Scientific Research)

Scientific research usually does not allow the presentation of humorous and non-scientific material. However, during the war in Ukraine, many things that are familiar to us have changed, in particular: writing proper names in lower case (russia, russian federation); understanding a word as a censorship word, which means the direction of movement, but not part of the body (English version of the word will not convey the essence, so we do not cite it, but only state the fact [https://en.wikipedia.org/wiki/Russian_warship,_go_fuck_yourself]). So, we also decided to finish our part in a format unusual for scientific work. Our conclusion is as follows: despite the incredible difficulties our country has faced, the Ukrainian people are unbreakable. There will be losses, mistakes and betrayals on the financial front. But the overall victory will still be, and the state budget will survive.

Today, Ukraine is defending not only its own territory, but also the borders of modern civilized European countries from the russian invasion, from russian murderers, looters, rapists, sadists, and thieves. On our own behalf and on behalf of all Ukrainian people, we express our sincere gratitude for all the support provided to Ukraine by Poland, the Polish people, and other countries in Europe and the world. Glory to Ukraine! Glory to the Heroes!

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REPORT ON THE XX INTERNATIONAL SCIENTIFIC CONFERENCE "FUNCTIONING OF INVESTMENTS FINANCED FROM STATE RESOURCES AND FROM OTHER SOURCES IN THE COUNTRIES OF CENTRAL AND EASTERN EUROPE"

(23-24 SEPTEMBER 2021, ALMATY, REPUBLIC OF KAZAKHSTAN)

On September 23-24, 2021, Caspian University held both online and offline the 20th International Scientific Conference of the Center for Public Finance of Central and Eastern Europe on *"Functioning of investments financed from state resources and from other sources in the countries of Central and Eastern Europe"*.

Adilet Law School of Caspian University along with Centre for Public Finance of Central and Eastern Europe (CPFCEE) organized the conference. The conference was held offline in the Academic Council Meeting Hall (Almaty, 85 A Dostyk Ave.), as well as online via Zoom platform for foreign participants, speakers and listeners. The working languages of the conference were English and Russian.

This conference focused on the functioning of investments from state resources and other sources in Central and Eastern Europe. The participants discussed the following issues during the conference:

- funding investments from domestic and foreign sources (including the European Union);
- public procurement system and other public investment organisation systems;
- foreign investment protection (system of bilateral investment agreements);
- stimulating function of taxes;
- taxation of capital income;
- public-private partnership;
- public assistance;
- control of investment expenditures;
- impact of public investment on debt and public deficit;
- the role of society in consulting of investment and spatial planning; axiological problems (including corruption-stimulating factors);
- foreign investment legal regime;
- characteristics of investment activity legal regulations in Eurasian Economic Union member states;
- protection of investor rights; investment contracts;
- foreign investment legal regulations; investment dispute resolution;
- public and private investment;
- government investment support; characteristics of investment implementation in specific economic sectors;
- liability in investment law;
- taxation of investments;
- investment and financial law.

The purpose of the conference was to exchange experience and opinions in the field of jurisprudence and economics, discuss topical issues of tax law, financial law, investment law, comparative law, promote the development and improvement of professional education, improve the knowledge and qualifications of practicing lawyers, students, postgraduates and doctoral students.

The conference was moderated by Prof. D.J.S. Svetlana Moroz, Dean of Adilet Law School of Caspian University, and representatives of the University of Bialystok – Dr Marcin Tyniewicki and Dr Ewa Lotko (Bialystok, Poland).

Welcoming remarks at the opening of the conference were made by Prof. Zholdasbek Nussenov, Rector of Caspian University (Almaty, Republic of Kazakhstan), Prof. Mariusz Poplawski, Dean of the Faculty of Law, University of Bialystok (Bialystok, Republic of Poland), Prof., D.J.S. Svetlana Moroz, Dean of Adilet Law School, Caspian University (Almaty, Republic of Kazakhstan), Dr Larissa Korobeinikova, Vice-rector for Economics and Contract Service, Head of the Department of Economic Analysis and Audit, Voronezh State University (Voronezh, Russian Federation).

The conference was attended by the following speakers:

- Doc. Michal Radvan, Masaryk University (Brno, the Czech Republic);
- Mgr Sandra Papavasilevska, Masaryk University (Brno, the Czech Republic);
- Prof. Urszula K. Zawadzka-Pak, University of Bialystok (Bialystok, Republic of Poland);
- Prof. Andrzej Gorgol, University of Zielona Góra (Zielona Góra, Republic of Poland);
- Dr Kirill Maslov, Department of State and Municipal Law, Faculty of Law, Dostoevsky Omsk State University (Omsk, Russian Federation);
- Prof. Dmitrii Artemenko, Head of the Department of State, Municipal Finance and Financial Engineering, Southern Federal University (Rostov-on-Don, Russian Federation);
- Prof. Farkhad Karagussov, Leading Scientific Fellow of the Institute of Private Law of Caspian University (Almaty, Kazakhstan), Partner of «K&T Partners (Кей энд Ти Партнерс)» LLP, Associate Member of the International Academy of Comparative Law;
- Prof. Maidan Suleimenov, Director of the Institute of Private Law of Caspian University (Almaty, Republic of Kazakhstan), Academician of the National Academy of Sciences of the Republic of Kazakhstan;
- Prof. Anara Niyazova, Head of the Department of Civil Law and Procedure, Kyrgyz Russian Slavic University (Bishkek, Kyrgyz Republic);
- Prof. Slawomir Presnarowicz, University of Bialystok (Bialystok, Republic of Poland);
- Dr Adam Kalazny, Nicolaus Copernicus University in Toruń (Torun, Republic of Poland);
- Prof. Vladimir Belykh, Head of the Department of Business Law, Ural State Law University (Yekaterinburg, Russian Federation), Honored Scientist of the Russian Federation;
- Mgr Tatyana Stadnik, PhD student of the Ural State Law University (Yekaterinburg, Russian Federation);
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- Mgr Artem Krivosheev, Senior Lecturer of the Department of Economic Analysis and Audit, Voronezh State University (Voronezh, Russian Federation);
- Mgr Kristina Proskurina, Scientific Fellow of the Institute of Financial and Tax Law, doctoral student of Adilet Law School, Caspian University (Almaty, Republic of Kazakhstan);
- Mgr Marta Maksimczuk, University of Bialystok (Bialystok, Republic of Poland).

The decision to conduct a scientific study of the problems raised at the conference and prepare a collective monograph was made.

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WYDZIAŁ PRAWA