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НАЛОГОВОЕ И БЮДЖЕТНОЕ ПРАВО:
СОВРЕМЕННЫЕ ПРОБЛЕМЫ
ИМУЩЕСТВЕННЫХ ОТНОШЕНИЙ

TAX AND BUDGET LAW:
MODERN PROBLEMS
OF PROPERTY RELATIONS

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Для преподавателей, аспирантов, студентов высших учебных заведений, а также практических работников.

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НАЛОГОВОЕ И БЮДЖЕТНОЕ ПРАВО:
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PART IV
TAX AND BUDGET LAW:
INTERNATIONAL AND COMPARATIVE ASPECTS

SCOPE AND DEFINITION OF THE BUDGET LAW OF THE EUROPEAN UNION

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Термины «бюджет», «закон о бюджете ЕС» или «бюджетный закон ЕС» не часто используются представителями европейской науки. Их контекст зависит от формирования экономической политики в ЕС. Закон о бюджете в ЕС включает, с одной стороны, положения о внутренних финансах и экономике (куда относятся собственный годовой бюджет и финансовый – бюджетное планирование), с другой – положения, адресованные только государствам-членам, которые касаются координации бюджетной (фискальной) политики.

Автор анализирует сложную структуру бюджетного закона ЕС, положения, которые относятся к нему, и предлагает собственную дефиницию этого термина.

The terms budget (budgetary) law of the EU or EU budget law¹ are not used too often by representatives of the European science. Their scope depends on the forms of coordination of the EU economic policy. On the one hand budget law of the EU encompasses provisions on own financial economics of the EU (referring to own annual budget and financial – budgetary planning), on the other hand – provisions directed to Member States only, which concerning the issue of coordination budgetary (fiscal) policy.

Author analyses complexity of the structure of the EU budget law, provisions which belong to it and try to compose definition of that term.

Introduction

Provisions of which subject of regulation are budgetary matters in relation to European Union (EU) and Member States, are included in primary law (treaty law), i.e. in the Treaty on European Union² and the Treaty on the functioning of the European Union³ as well as in legal acts of the secondary law with variety legal nature, inter alia: in regulations, directives, decisions, interinstitutional agreements. Nevertheless, the terms *budget (budgetary) law of the EU* or *EU budget law*⁴ are not used too often by representatives of the European

¹ The terms budget law of the EU and EU budget law will be used in this paper interchangeably.

² Treaty on European Union (OJ EU of 30.3.2010, C 83/13) hereinafter referred to as TEU.

³ Treaty on functioning of the European Union (OJ EU of 30.3.2010, C 83/47) hereinafter referred to as TFEU.

⁴ European Commission, European Union public finance, Luxembourg 2002; European Commission, European Union Public Finance, Luxembourg 2008; Lenaerts K., Van Nuffel P., Constitutional law of the European Union. London, 2005. P. 478 and next.

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science. In professional literature there are appeared phrases more connected with economics than law: finance of Europe, public finance of the EU, EU finance and the general budget of the EU. Although, cases of application of the terms *budget (budgetary) law of the EU (European communities)* or *EU budget law* occur as well, but it is not a common practice⁵.

In Polish doctrine A. Komar used the term of *budget law of the European Communities*⁶ (in those days when the EU did not have separate and clearly indicated legal personality, i.e. before entry into force of the Lisbon Treaty). Another author – C. Kosikowski in one of his publication distinguished the term *European budgetary law*⁷, simultaneously he took note that it comprises of two groups of provisions:

- firstly – a group of provisions governing the financial management of the EU;
- secondly – a group of provisions in scope of the Economic and Monetary Union, concerning macroeconomic requirements on the basis of which the economic and the budgetary convergence between Member States is achieving.

Directly the term *budget law of the EU* was used by the author of this paper in one of his publications⁸.

In fact, theoretical issues of the scope and definition of budget law as well as financial law of the EU are not in-depth analyzed in European science, including Poland. Attempt at analyzing these problems was made by C. Kosikowski⁹ in two publications, what does not mean that other authors try to continue scientific researches in that scope.

Attempt at defining the scope of EU budget law and creating its definition seems to be seemingly easy and no to be questionable, but situation in this matter is different, because of some reasons.

Firstly – budget law of the EU or in wider meaning – financial law of the EU, are not uniform structure taking into consideration matter of regulation and the entities to whom financial and legal norm are addressed. It results from legal nature of the EU. On the one hand, it is an international organization, possessing a separate legal personality and own legal system based on fixed principles and legal norms with different importance. On the other, law of the EU is also addressed to Member States and influences on their national orders. During its application should be observed such principles as: primacy of EU law, direct applicability, direct effect.

Secondly, the shape of economic policy (including financial and budgetary policies as parts of economic policy) affects the nature of provisions (norms), which are its tools. In other words, content of the policy has primary character and therefore it determines adopted financial and legal solutions. EU economic policy is not homogeneous, it is implemented and coordinated in many ways. In consequence, financial regulations enacted by

⁵ Buti M., Nava M. Towards a European budgetary system // EUI Working Papers. 2003. No. 08. P. 23 ; Strasser D., Finance of Europe : the budgetary and financial law of the European Communities. Luxembourg, 1992.

⁶ Komar A. Gospodarka budżetowa Europejskich Wspólnot. Warsaw ; Poznan, 1981, P. 7 and next.

⁷ Kosikowski C. Prawo finansowe w Unii Europejskiej i w Polsce. Warsaw, 2005. P. 283 and next.

⁸ Tyniewicki M. General budget and budget law of the European Union. Białystok, 2008. P. 9 and next.

⁹ Kosikowski C. Prawo finansowe w Unii Europejskiej. Bydgoszcz ; Warsaw, 2008. P. 19 and next. ; *Idem*. Financial Law of the European Union. Białystok, 2008. P. 23 and next.

the EU institutions have complex nature, what is crucial for shape and scope of the financial (budget) law of the EU.

Influence of the EU economic policy on the scope of the EU budget law

The economic policy of the EU is not only implemented by the EU institutions, but also by the individual Member States. For that reason, for its coherence and efficiency, policy needs to be properly coordinated. Forms of coordination of the EU economic policy indirectly derive from art. 3 and art. 4 TFEU. They contain respectively, areas in which the Union has exclusive competence and areas in which competence are shared with the Member States. Having regard to those provisions, economic policy of the EU may be carried out in the following forms¹⁰:

1) single policy, where the EU has exclusive competence, so it acts independently (art. 3 TFEU);

2) close coordination, where the EU has shared competence, so it means that it cooperates with the Member States (article 4 TFEU).

There is third form of coordination (implementation) of the EU economic policy which is named as weak coordination, but it has not legal (binding) nature, what will be further described more widely.

The single policy has supranational and centralized character. It is implemented by independent of Member States organ, placed in the structure of the EU. Provisions determining principles of conducting of the single policy are comprehensive, i.e. they include all its aspects and are binding to all Member States and which must be strictly applied in principle. In the form of the single policy are carried out for example: monetary policy headed by European Central Bank, customs policy (implemented by the Commission and the Council), competition policy (implemented by the Commission).

Narrower scope has a policy conducted in the form of close coordination. Its part is centralized only. Rules of conduct are only imposed on the Member States in some areas of the entire policy. Moreover, they usually have freedom of action to choose the means of implementation provided that fixed objectives must be achieved. In that form of coordination there is conducting tax policy and its main instruments are directives. Only some issues of taxations are subject to harmonization, for example: system of value added tax, excise duty on excise goods, some areas of direct taxation (taxation of dividends, taxation of mergers and divisions, taxation of savings income in the form of interest payments). The authority responsible for coordination of tax policy is the Council, which means that Member States have an impact on it.

On the contrary, objectives established within weak coordination are not binding. Instruments for its implementation have not legal nature (opinions, recommendations, guidelines)¹¹, but play important political role. Fixed objectives are achieved according to the

¹⁰ European Commission, Directorate-General for Economic and Financial Affairs, Coordination of economic policies in the EU : a presentation of key features of the main procedures // Euro Papers. 2002. No 45. P. 4.

¹¹ Broad guidelines for the economic policies are the instrument within the forms of coordination of the EU economic policy which is not legally binding. They are passed by the Council as a recommendation (see more: Council Recommendation 2010/410/EU of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union, OJ EU of 23.7.2010, L 191).

principle of mutual consent and when one of the Member States does not intend to execute them, other ones put political pressure. In this form there are conducted inter alia policies of wage developments as well as labour market.

In above considerations the author intentionally passed over budgetary policy of the EU. Indication of the form in which it is carried out allows you to specify the scope of the budget law the EU. There may be introduced a thesis on dual nature of the budgetary policy due to it may be conducted in the following forms of coordination:

1) on the one hand – as single policy when it is implemented independently. Its objectives are achieving directly by the EU and it is not referred directly to the Member States. Individual instruments of the policy, i.e. legal regulations as well as financial plans (including general budget of the EU) are designated for achieving of these objectives and referred to own financial economics of the Union;

2) on the other – as close coordination in reference to some components of the budgets of Member States and their public finance, e.g. in reference to size of budget deficit and public debt, with regard to convergence criteria of the Economic and Monetary Union.

There should be mentioned the budgetary policy of the EU can be implemented as weak coordination in reference to quality of public finances of Member States. However, what was pointed above, content that form of coordination is not binding, so its instruments have no legal power.

Scope (components) of the EU budget law – two dimensions of the EU budget law

Having regard to above considerations, budget law of the EU should be analyzed in two dimensions, which have influence on its scope.

First dimension contains provisions concerning own financial economics of the EU, in particular referring to the Union annual budget and multiannual financial framework (often named as Financial Perspectives¹²). They belong to the part of financial law of the EU which is named as *law of finances of the EU*¹³. Those provisions are binding not only for EU institutions, but also for Member States, however scope of their application may be different. They are instruments of policy realized as single policy.

Provisions of that scope appear in primary and secondary law of the EU. The most important financial regulations of the Treaties are following:

- art. 310–325 of the TFEU – Part V, Title II «Financial provisions»;
- art. 171–182 of the TEAEC¹⁴ – Title IV «Specific financial provisions»;
- art. 41 of the TEU – provisions on the Common Foreign and Security Policy.

Financial provisions of the Treaties concerning such issues as: basic budgetary principles, own resources, multiannual financial framework, implementation of the budget, discharge, combating fraud. Placing public finance (including budget) in acts of primary law proves a crucial meaning of that subject matter.

Secondary law referring to the general budget and financial planning can be divided into some thematic groups, but this classification is not complete. For example:

¹² Interinstitutional agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (OJ EU of 14.6.2006, C 139/1 with amendments) containing the Financial Perspective for 2007–2013.

¹³ Kosikowski C. Prawo finansowe w Unii Europejskiej. Bydgoszcz ; Warsaw, 2008. P. 29 and next.

¹⁴ Treaty establishing the European Atomic Energy Community (OJ EU of 30.3.2010, C 84/1).

1) provisions on budgetary principles, budgetary procedure, implementation, procurement, grants, external audit and discharge:

- Council Regulation (EC, EURATOM) No 1605/2002 of 25 June 2002 on the financial regulation applicable to the general budget of the European Communities¹⁵;
- Commission Regulation (EC, EURATOM) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation No 1605/2002¹⁶;
- Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities¹⁷;

2) acts concerning budget revenue:

- Council Decision of 7 June 2007 on the system of the European Communities' own resources¹⁸;
- Council Regulation (EC, EURATOM) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euroatom on the system of the Communities' own resources¹⁹;
- Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (GNI Regulation) (Text with EEA relevance)²⁰;
- Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax²¹;

3) acts containing annual general budgets, for example: definitive adoption of the European Union's general budget for the financial year 2011²²;

4) acts on financial planning and management: interinstitutional agreement between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management²³;

5) provisions concerning financial control and protection of the EC financial interests:

- Council Regulation (EC, EURATOM) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests²⁴;
- Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF)²⁵.

Second dimension of the EU budget law comprises of provisions directed to Member States only, so they are binding for them exclusively, and refers to some components (not to whole) of their public finance, mainly to extent of budget deficits and public debts. How-

¹⁵ OJ EU of 16.9.2002, L 248/1 with amendments.

¹⁶ OJ EU of 31.12.2002, L 357/1 with amendments.

¹⁷ OJ EU of 31.12.2002, L 357/72 with amendments.

¹⁸ OJ EU of 23.6.2007, L 163/17.

¹⁹ OJ EU of 31.5.2000, L 130/1 with amendments.

²⁰ OJ EU of 19.7.2003, L 181/1.

²¹ OJ EU of 7.6.1989, L 155/9 with amendments.

²² OJ EU of 15.3.2011, L 68/1.

²³ OJ EU of 14.6.2006, C 139/1 with amendments.

²⁴ OJ EU of 23.12.1995, L 312/1.

²⁵ OJ EU of 31.5.1999, L 136/20.

ever, they can regulate other parts of public finance area. They make a part of financial law of the EU named as *Union financial law*²⁶. Those provisions are instruments of policy realized in the form of close coordination.

Provisions of that scope are included in Treaties as well as in secondary law of the EU. The most important regulations of the Treaties are following:

- art. 126 of the of the TFEU concerning excessive deficit procedure;
- protocol 12 of the TFEU on the excessive deficit procedure;
- protocol 12 of the TFEU on the convergence criteria,

Provisions of secondary law refer to the following issues:

1) excessive deficit procedure and Stability and Growth Pact:

– Council Regulation (EC) No 479/2009 of 25 May 2009 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community (Codified version)²⁷;

– 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 policies²⁸;

– Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure²⁹;

– Council Regulation (EC) No 1222/2004 of 28 June 2004 concerning the compilation and transmission of data on the quarterly government debt³⁰;

2) financial support of the national budgets of Member States:

– Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism³¹;

3) other issues concerning coordination of budgetary (fiscal) policy:

– Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area³²;

4) Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States³³.

Summing up, scope of budgetary law of the EU, on the one hand encompasses provisions on own financial economics of the EU (referring to own annual budget and financial (budgetary) planning, on the other hand – provisions directed to Member States only, which concerning the issue of coordination budgetary (fiscal) policy.

Definition of the EU budget law

Described above the scope (dimensions) of the EU budget law will be helpful to create definition of that term, however author is conscious of its imperfection and insufficien-

²⁶ C. Kosikowski. Prawo finansowe w Unii Europejskiej. Bydgoszcz ; Warsaw, 2008. P. 30 and next.

²⁷ OJ EU of 10.06.2009, L 145/1.

²⁸ OJ EU of 2.8.1997, L 209/1 with amendments.

²⁹ OJ EU of 2.8.1997, L 209/6 with amendments.

³⁰ OJ EU of 2.7.2004, L 233/1.

³¹ OJ EU of 12.5.2010, L 118/1.

³² OJ EU of 23.11.2011, L 306/1.

³³ OJ EU of 23.11.2011, L 306/41.

cy. Proposed definition may be subject to modification depending on criteria according to which this definition is built.

The definition may sound: budget law of the EU comprises of all legal provisions (norms) regarding financial management of the EU based on its annual budget and multiannual framework (**a strict meaning of the budget law**) as well as all legal provisions (norms) directed to Member States concerning coordination of the budgetary (fiscal) policy.

Taking into consideration those two groups of provisions (norms), being components of the definition, it appears as **a wide meaning of the budget law** of the EU.