Petr Mrkývka, Jolanta Gliniecka,
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THE FINANCIAL LAW TOWARDS CHALLENGES OF THE XXI CENTURY

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(Conference Proceedings)

Petr Mrkývka, Jolanta Gliniecka, Eva Tomášková,
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Report

Concept of the Financial Legal Act in Financial Law of the European Union

Marcin Tyniewicki[1]

Abstract

Financial legal acts functioning in the Union legal order are regulated by EU financial law, a relatively young field of science, and in particular the science of Polish financial law. Having regard to the EU legal order, as far as it is possible to talk about legal regulations concerning its public finance, inasmuch as, from the formal point of view, the concept of "the EU financial law" basically has not been established in the European doctrine, what does not exclude the possibility to separate such a field on the basis of certain criteria. Taking the above consideration into account, the aim of this paper is to prove the following hypotheses: firstly – despite not common usage of the EU financial law concept, such a field may be distinguished in the Union legal order; secondly – including the specificity and the subject of such law regulations, within its range will function financial legal acts which may be subjected to proper typology.

Keywords: Policy Coordination; EU Public Finance; Financial Law; Financial Act; Sources of Law; Primary Law; Secondary Law.

JEL Classification: E61; H0; K1; K100; K40.

1 Introduction

The division of the EU law into primary and secondary has been generally accepted in the EU law science. It was used when the Union functioned

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as a structure based on the three pillars[2], as well as currently, i.e. after the reform of the system introduced by the Lisbon Treaty. However, it should be noticed that distinguishing primary and secondary law is not the way to classify the sources of law in such terms as they are examined in the theory of law, e.g. in regulatory terms, i.e. sources as rules of binding law (regulatory terms) (Lang, Wróblewski, Zawadzki, 1986: 413–416). This division proves rather the existence of general hierarchy of legal acts and connected with it relation between such acts covered by the frameworks of both distinguished groups. Primary law is generally established by the Treaties (Founding and Accession), although not exclusively, which have the highest rank in the EU legal order. They constitute certain constitutional order of the EU, thus they make its constitutional law. In compliance with them should be secondary law (Lenaerts, VanNuffel, 2011: 817–820), which is characterised by a complexity of legal acts of different character, covered by law-making and law application spheres. Here especially appear the acts with not only such features as: common scope, Treaty basis, general and abstract content, but also containing more precise and individual character. Therefore, not all legal forms appearing in the secondary law may be regarded as sources of law in the theoretical-legal meaning.

Even brief analysis of the primary and secondary law allows to formulate the following conclusion: the Union legal order is characterised by a diversity of law-making forms as well as other legal acts which have different legal rank (legal character). Despite the fact that the Lisbon Treaty was in particular to simplify and increase structure transparency of the legal acts, it is still quite expanded and complicated to a certain degree.

In the Treaty on the functioning of the European Union (TFEU) (OJ C 202, 7. 6. 2016: 1–388) was directly made a categorisation of legal acts due to the type of legislative procedure during which they are adopted. Pursuant to Art. 289, legislative acts, established by legislative procedure (ordinary or special), are distinguished. The result is that all other law-making acts, i.e. adopted during other procedures – at least from the formal and literal

2 According to the Treaty on European Union three pillars of Union were: European Communities, common foreign and security policy and police and judicial cooperation in criminal matters.

point of view – will not have a legislative status and therefore in the doctrine of the Union law they are classified as non-legislative acts (Heartley, 2010: 108; Chalmers, Davies, Monti, 2010: 415; Lenaerts, Van Nuffel, 2011: 885). This term appears also in the Treaty provisions, however *expressis verbis* it is not indicated that such acts constitute the effect of non-legislative procedure (e.g. such acts described as "delegated acts" are referred to in Art. 290(1) TFEU). This does not mean that non-legislative acts, taking into account the character of norms constructed on their basis, will always significantly differ from legislative acts (Lenaerts, Van Nuffel, 2011: 645). The referred Art. 289 TFEU uses only one procedural criterion (Hartley, 2010: 108) and does not refer to the legal nature of legislative acts. The group of non-legislative acts is internally diversified. On the one hand, there are acts which by their legal character, in particular general and abstract content and direct Treaty basis, will be similar to legislative acts, especially the ones adopted during a special legislative procedure. On the other hand, Art. 290–291 TFEU establish the so-called executive acts – delegated acts and implemented acts, which are to make legislative acts more specific and are to implement their provisions.

In turn, on the basis of material (subject) criterion in Art. 288 TFEU three basic regulatory instruments (law-making forms) were distinguished, through which EU secondary law provisions are established, i.e. regulations, directives and decisions[3]. Each of these forms is classified both as a legislative act (regulation) as well as a non-legislative act (delegated regulations, implemented regulations), depending on the legislative procedure in which it was adopted (Lenaerts, Van Nuffel, 2011: 885). Although the referred provision of the Treaty regulates material features of regulations, directives and decisions, still full evaluation of their legal character should also include the type of their adoption procedure.

Presented tripartite division of acts under secondary law is not closed, i.e. it does not exhaust all law-making forms of the EU activity. Several other acts may be distinguished, such as: interinstitutional agreements, budgets, resolutions, declarations, guidelines, clarifications, communications, codes

3 Art. 288 TFEU also indicates recommendations and opinions which have no binding force.

of conduct or by-laws. Some of them have Treaty basis and some have been developed during the practice of the Union institution. In professional literature it is common to describe them as a collective term of *sui generis* acts (Horspool, Humphreys, 2010: 116–119), however this group is not uniform, so the analysis of the legal content of this type of acts should be individual in relation to each of them.

In the whole structure of the Union law-making forms function also acts with financial content, which the Author defined as a collective category of "financial legal acts" or interchangeably – "acts of financial law". This category may be distinguished due to the subject of regulation of a given act, which is EU public finance, and more precisely – its public financial management. Therefore, such act will belong to the scope of EU financial law, a relatively young field of science, in particular the science of Polish financial law. Having regard to the EU legal order, as far as it is possible to talk about legal regulations concerning its public finance, inasmuch as, from the formal point of view, the concept of "the EU financial law" basically has not been established in the European doctrine, what does not exclude the possibility to separate such a field on the basis of certain criteria.

On the other hand, broad acceptance of financial law as a separate field of law is in the countries of Central and Eastern Europe. In the doctrine of the Polish legal science it is commonly assumed that the subject of such law regulation is public financial management (activity), thus managing public finance (Ruśkowski, Stankiewicz, 1991: 29–31; Borodo, 2005: 26; Ruśkowski, 2015: 104) and what is important – tendencies of its further development are noticeable (Ruskowski: 2018: 39–40), including shifting towards international financial law, also covering financial management and financial market of the EU (Kosikowski, 2003: 39; Kosikowski, 2005: 68–69; Drwiłło, 2018: 74–137).

Having regard to the above preliminary considerations, the aim of this paper is mainly to propose a concept of the EU financial legal act. According to the Author, it is justified to put a hypothesis that the acts of such type, including their specificity and subject of regulation, may be distinguished in the whole EU legal order and their typology may be conducted. Moreover, financial legal acts will belong to the scope of EU financial law, a field of the Union

law not very common in the doctrine of law, at least from the formal point of view.

The following research problems will be used to prove the above hypotheses:

- what is the scope and how can be characterized EU financial law functioning within the Union legal order?
- what features are EU financial legal acts characterised by and in what way their typology may be made?

Conclusion resulting from the analysis of the indicated problems have been established on the basis of non-reactive (non-empirical) research methods, i.e. based on source literature and binding EU legal regulations.

2 EU financial law as a separate field in the legal order of the Union

2.1 The specificity of the EU economic policy as an element determining the scope of its financial law

There is no doubt that the EU conducts public financial management by implementing specific aims determined by the provisions of the Treaties. The manner of conducting such management will guide financial policy (will be its content) and in a broader scope – EU economic policy.

The instruments implementing every economic policy (including financial one) are, among others, established legal norms (Ruśkowski, 2000: 28). Therefore, the question about the scope (shape) of the EU financial law should be limited in the first place to the explanation of the essence of the Union economic policy.

Broadly understood EU economic policy indicates significant specificity in relations to classic understanding of economic policy of a state as well as it has a complex character. It results from the fact that, on the one hand, the Union as an independent international organisation having legal personality and own institutions, on the basis of public funds generated in, among others: annual general budget, makes certain financial moves (decisions). On the other hand, all Member States, by preparing national budgets and making legal and financial norms also implement own fiscal policies,

and in a broader scope – economic policies. However, these countries function is a specific economic and legal environment which is largely determined by the membership in the EU. This environment is impacted by general aims of the Union determined in Art. 3 of the Treaty on European Union (TEU) (OJ C 202, 7. 6. 2016: 13–388). In the economic sphere they are mainly concentrated on: 1) creating uniform internal market, implemented by the principles of free movement of goods, people, services and capital; 2) facilitating permanent development of Europe based on sustainable economic growth, prices stability, highly competitive social market economy; 3) monetary integration under economic and monetary union. Thereby, the Member States also become actors of the whole Union economic policy and this in turn exerts the need to coordinate actions.

Such need to coordinate actions in conducting the EU economic policy was indirectly created by the principle of conferral regulated in Art. 5 TEU. On its basis the Union is authorised to act exclusively within the limits of the competence granted to it by the Member States in the Treaties, necessary to achieve goals determined in these Treaties, e.g. in the mentioned Art. 3 TEU. However, competence not granted may only be used by the Member States. Even in the case of granted competence the Union does not have full freedom of taking initiatives excluding the Member States. Because from Art. 2 TFEU results the division of competence granted to the Union into excusive competence and shared competence. The latter is exercised jointly with the Member States. Additionally, the freedom of implementing the Union's actions on the basis of the principle of conferral was limited by resulting from it principles of: proportionality (Art 5(4) TEU) and subsidiarity (Art 5(3) TEU).

Forms of the EU economic policy coordination are indirectly determined by the referred principle of conferral as well as by distinguishing exclusive and shared competence in particular fields. The consequence of establishing the principle of conferral and specifying exclusive and shared competence in particular fields mentioned in Art. 3 and 4 TFEU are its other provisions which directly indicate the obligation to coordinate, i.e.:

- Art. 5 and Art. 120–121 – determining general obligation to coordinate economic policies of the Member States within the Council;

- Art. 119(1) TFEU – ordering to maintain strict coordination of economic policies of the Member States to achieve aims determined in Art. 3 of the Treaty;
- Art 119(2) TFEU – determining the obligation to coordinate in relation to monetary and exchange rate policy, which is to be implemented in a uniform way, i.e. as a single monetary policy and a single exchange rate policy.

The referred provisions indicate the field of the EU and the Member States coordination actions. However, on the basis of the general obligation to coordinate economic policies, special emphasis was put on monetary integration under single currency, euro. Coordination actions in this field are more intensive than in other fields, as a result of which monetary policy and exchange rate policy have uniform character for the states participating in the Eurosystem. The remaining countries are covered by the so-called derogation, i.e. they are at the second stage of economic and monetary union (except for the UK).

Having regard to the mentioned regulations, economic policy coordination is conducted in the EU in the following forms (European Commission, Directorate-General for Economic and Financial Affairs, 2002: 4):

- single policy, in which the Union has exclusive competence, what means that it acts independently. The centre creating directions and taking decisions with regard to policy implemented in this form was placed on a transnational level – in the Union structures. The role of the Member States is mainly to adopt these directions and to participate in the realisation of the policy according the established principles. In the form of a single policy are implemented: monetary policy, exchange rate, customs, competition and budgetary policy, whose main instrument is the EU general budget;
- close coordination, which is based on the division of competence between the Union and the Member States. It consists in the fact that general aims which are to be achieved are determined by the Union bodies and the Member States have the freedom to select instruments to achieve these aims. Examples of policies coordinated in this way are tax policy (by tax harmonisation), structural policy connected with the functioning of internal market, the EU single market, budgetary

policy in relation to budgetary balance and public debt of the Member States as well as in the scope of conducting budgetary surveillance in relation to them;

- weak coordination having very general and broad character, but legally non-binding for the Member States. Therefore, it is implemented with the use of "soft" instruments such as guidelines, opinions or recommendations, and the Member States exercise it on a voluntary basis, e.g. budgetary policy in relation to the quality of public finance.

2.2 The scope and internal structure of the EU financial law

Determining the structure of the EU financial law is quite complicated owing to a non-uniform character of provisions (norms) constituting this law. Not without a reason the Author started consideration on the principle of conferral and division of competence which impact the diverse character of the Union economic policy. The instruments used to implement it are provisions, some of which make the EU financial law. Thus, the specificity of the EU financial law consists in a complex character of the Union regulations. They may be classified according to various criteria, in particular: the criterion of the subject (scope) of regulation, addressees, validity and application. At the same time these criteria may be used to determine the structure of the EU financial law.

It seems that the key criterion is the subject (scope) of regulation of financial law, with which is connected also the criterion of addressees. It is justified by the division of the Union competence into exclusive and shared and by the coordination of economic policy. Additionally, not without significance is the criterion of validity and application of the EU financial law, but due to limited framework of this publication it is not discussed here. Therefore, having account of the provisions regulating EU public finance, its financial law may be discussed in the narrow (*sensu stricto*) and broad (*sensu largo*) sense.

2.3 EU financial law in the narrow sense

The EU financial law in the narrow sense will mainly consists of provisions concerning the Union finance as a separate organisation. Additionally,

they are connected with policies implemented in a single form. These provisions regard monetary system of the EU, central banking and its financial management, based on the general budget as well as on other extra budgetary institutions. Therefore, they create a kind of "EU finance law" or "law on the EU finance". Specifying the scope of the EU financial law *sensu stricto* it should be indicated that there are legal regulations regarding:

- economic and monetary union, including the functioning of the European System of Central Banks with first and foremost European Central Bank;
- multiannual financial planning whose main instruments are multiannual financial frameworks (financial perspectives);
- general budget of the EU, in particular its revenues, expenditure (including financial instruments), procedure of adopting and exercising budget, discharge procedures and budgetary control, protection of the Union financial interest;
- extra budgetary institutions and financial instruments, e.g. executive agencies, decentralised Union agencies, European Investment Bank, European Investment Fund, European Development Fund;
- customs union.

The addressees of this group of provisions will be Union bodies (institutions) as well as the Member States. For the former they constitute regulations whose subject is the Union financial system. In turn, compliance with legal and financial norms of this type by the Member States is justified by their membership of the EU, the consequence of which is the exercise of rights given to them as well as being subjected to the duties imposed on them, e.g. transferring revenues to the Union budget, spending resources from the EU budget within determined funds (so-called shared management of the budget).

2.4 The EU financial law in a broad sense

The EU financial law in a broad sense, besides regulations regarding financial system of the Union itself, also includes regulations which serve to build internal market and realisation of the principle of free movement of goods, people, services and capital. The addressees of the second group

of provisions are mainly the Member States. Their basic duties include either realisation of norms directly arising from the Union acts or implementation of the Union law and ensuring its effectiveness in national legal orders (total implementation of the EU law). Thus, these provisions will be directed only to the Member States. The role of the Union institutions will be limited to control over performing these obligation and applying legal requirements towards the states which infringe in this scope, e.g. by starting preliminary procedures by the European Commission or addressing complaints to the Court of Justice of the EU on the basis of Art. 258 TFEU.

Among norms of the EU financial law *sensu largo*, the ones which will be exclusively directed to the Member States, may be indicated provisions regarding:

- fulfilment of the convergence criteria, in particular fiscal rules (Zawadzka-Pąk, 2017: 111);
- compliance with the so-called reference values of budget deficit and public debt of the Member States;
- keeping budgetary surveillance in the Member States in various aspects, e.g. budgetary planning, transfer of programmes and reports, implementation of excessive imbalance procedure in the Member States (Zawadzka-Pąk, 2017: 111);
- tax harmonisation and administrative cooperation in tax issues;
- EU single financial market (Jurkowska-Zeidler, 2017: 381–382).

The above provisions are in majority covered by the frameworks of directives, what implies the need to their implementation by the Member States pursuant to Art. 288(3) TFEU.

3 Features identifying financial legal act

Different notions of a legal act appear in the doctrine of law. It may be defined very broadly, i.e. any behaviour by any person with authority acting within the legal system (Friedman, 1987: 25). However, for the purposes of this paper the Author assumed a bit narrower sense of the legal act which covers by its scope formalised actions of a public body (EU institution) within the competence granted to it and causing defined legal consequences.

This definition includes both acts making the law (normative acts) as well as applying the law (individual decisions, judicial decisions).

Moving to distinguish features identifying a financial legal act it needs to be stipulated that the Author does not identify it only with "legal-financial act" (individual financial act) – institution known in financial law as application of law act (a special type of administrative act) which has features of individualisation and specification.

Main features distinguishing a financial legal act in a given legal system include the following.

Firstly, the subject of regulation, which is public financial management of a public body. Conducting such management should be characterised by intentionality and awareness of formulated aims. It will consist in conducting financial (economic) policy with the use of proper instruments, e.g. normative acts, individual decisions. Therefore, in fact also financial policy will be the subject of regulation of financial legal act and it will be comprised of not only actions from managing public funds but also monetary system of the state or specific organisation, in particular the EU.

There is no doubt that the EU conducts defined financial (economic) policy, but as the Author has indicated, it has its own specificity. Therefore, its bodies establish legal acts which are instruments implementing this policy.

Secondly, intentionality of financial legal regulations. The main aim (justification) of financial legal acts established by public bodies is to regulate particular issues from financial management. In other words, such management is the basic aim for which the legal act passed or issued. It is important due to fact that most of provisions or decisions (rulings) causes bigger or smaller results in public finance, but not all will be classified to the category of financial legal acts.

Thirdly, the character of norms arising from the content of financial legal acts. These norms will be of imperative-attributive character, what is caused by the fact that financial law is a public law (Kosikowski, 2003: 57). As a consequence, legal and financial norms will regulate legal relationships, in which will be no equivalence of parties. Basically, a privileged party are public bodies which will impose certain financial obligations and expect proper

behaviour of the party obliged to act or refrain from performing certain actions (duty to pay taxes, duty not to exceed the amount of budgetary expenditure or maintaining financial discipline).

Fourthly, specificity of some norms arising from financial legal acts. These norms, besides classic regulation of certain behaviour, i.e. generally and in abstract, very often sanction economic phenomena, processes of managing financial resources, which have numeric (specific) aspect. In the legal-financial doctrine due to the subject of regulation formulated in such a way, was created a concept of specific norms whose content includes mentioned processes and which were defined as parametric norms (Gajl, 1992: 49).

Moreover, financial legal acts often regulate future and uncertain processes and their validity is limited in time, what in particular refers to financial plans. In this context appear so-called planned norms which are subjected to the processes of "expiry" due to time or due to their implementation.

4 Typology of the EU financial legal acts

4.1 Criteria of typology of the EU financial legal acts

Typology of the EU financial legal acts proposed below is based on the criterion of regulation manner of the EU financial policy (public financial management) and in a broader scope – economic policy as well as on the criterion of the character of the legal content. Such typology could also be conducted on the basis of the form of legal acts which usually determine legal character, but not always. Such situation is in the EU law, in which legal character of the Union acts is also analysed on the basis of functional criterion, but not only with regard to form which they have or procedure based on which they are adopted (Hartley, 2010: 108–109). In the case of functional criterion, the subject of analysis is the aim (significance) for which a given act was established.

Moreover, in the structure of legal acts in the EU secondary law, legal form does not prove its specified legal rank, including superior position. This results from the fact that the rule of hierarchy within secondary law is at least disputable and questioned by some representatives of the doctrine

(Lenaerts, Van Nuffel, 2011: 818). Therefore, financial legal acts distinguished in the types presented below are non-uniform regarding their legal character.

The proposal to make a typology of the Union financial acts mainly on the basis of the criterion of the manner of conducting financial management seems justified in the context of the above analysis. The Author indicated that such management as the subject of the acts' regulation constitutes the main feature identifying the group of financial legal acts.

The proposed typology of financial legal acts is of "framework" character. Due to limited number of pages of this paper, the Author indicated only the most important features with some examples. However, within particular types more precise analysis of legal acts may be done.

4.2 Regulatory acts

As a rule, provisions of regulatory acts determine the conduct of financial management in abstract and general manner. This will be acts of normative character, constituting the basis to formulate legal norms. Abstract character of these norms causes that their application will be repetitive until their formal abrogation in a proper legislative procedure. As a result, they will not "expire" after single application.

In turn, addressees of these acts determined in an abstract way cause that on the one hand their scope will be common, i.e. addressees will be the Union institutions, the Member States and units (e.g. regulations and general decisions) or only Member States (but without indicating particular states) and units under certain conditions (directives). On the other hand, regulatory act may be binding only within organisational structure subordinate to the body which issued it (act of internal character).

Therefore, regulatory financial acts are law-making acts and belong to the sphere of law-making. They are in the following legal forms determined in Art. 288 TFEU: regulations, directive and general decisions, including delegated and implemented acts. This group includes, for example:

- Council decision of 26 May 2014 on the system of own resources of the European Union (OJ L 168, 7. 6. 2014, p. 105);

- regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (…) (OJ L 193, 30. 7. 2018, p. 1).

4.3 Planning (strategic) acts

Planning acts of strategic character include planned norms whose content will be to forecast particular actions within the EU financial (economic) policy. In connection with the fact that these acts refer to the future, their provisions (norms) will not be binding.

Planning acts will belong to the sphere of financial management but of long-term character, i.e. exceeding one financial (budget) year. Both the long-term nature as well as the lack of binding nature will distinguish these acts from short-term operational (ongoing) plans (Stoner, Freeman, Gilbert, 2001: 263–265).

Planning acts are in the forms of strategies, guidelines, recommendations, etc., and among them the act of financial content is, e.g. Council recommendation (EU) 2015/1184 of 14 July 2015 on broad guidelines for the economic policies of the Member States and of the European Union (OJ L 192, 18. 7. 2015: 27).

4.4 Current financial management acts

Current financial management acts belong to the sphere of the application of law, and having regard to their subject of regulation – they will implement provisions of the Treaties and regulatory acts in the scope of conducting EU current financial policy. They will be issued on the basis of regulatory acts or directly on the basis of the Treaties. Therefore, norms resulting from current financial management acts will be of concrete character.

In turn, due to the scope and the character of addressees, these norms will have individual dimension. The addressees of the current financial management acts will be indicated by name: Union institutions, the Member States and units.

Basically, the group of current financial management acts will include:

- individual decisions, referred to in Art. 288 sentence 2 TFEU;

- budgets distinguished from the general budget of the EU institutions, e.g. decentralised executive agencies;
- rulings of the EU Court of Justice on financial matters.

4.5 Mixed acts

As the name suggests these acts include different features which possess acts from the above mentioned groups. This may be features typical for the law-making acts, application of law acts as well as at the same time there might appear planned norms. As a consequence, provisions of mixed acts show both binding and unbinding character. Due to this non-uniformity the Author classified them as a separate category.

An example of such acts may be the EU multi-annual financial frameworks adopted in the form of a regulation (currently – Council regulation No 1311/2013 of 2 December 2013 – OJ L 347, 20. 12. 2013: 884) and the Union general budget. On the one hand, both documents should be determined as financial plans of different duration. Financial frameworks are established for 7 consecutive years (currently 2014–2020), whereas budget for one year. On the other hand, they include planned norms in the form of amounts which in a specific scope are binding, e.g. expenditure ceilings. What is more, annual budget is the basis of the Union financial economy. There are more such diverse elements in the mixed acts.

5 Conclusion

Considerations made in this paper allow to positively answer the problems stated in the Introduction. Thus, also the stated hypothesis regarding the existence in the EU financial law a separate category of legal acts with defined identifying features, i.e. financial legal acts, should be verified.

First of all, it needs to the stated that despite the lack of formal distinction of the EU financial law in the European doctrine, it is possible to talk about regulations (norms) which comprise this law. EU financial law indicates its specificity and its scope is determined by firstly – principle of conferral and division of competence in particular fields between the Union and the Member States, and secondly – the character of financial (economic)

policy of the whole Union. In the implementation of this policy also the Member States participate and that is why it must be conducted in specific coordination forms.

Legal provisions regulating EU public financial activity, and thus regulating its financial policy, in fact comprise the EU financial law, which due to the mentioned coordination forms of this policy will have two scopes. Namely, financial law *sensu stricto* will be created by legal regulations regarding the finance of the Union as a separate organisation. They are connected with policies implemented in a single form. These regulations determine Union monetary system, central banking and its financial management based on its own budget. The addressees of this group of provisions are both the Union bodies (institutions) as well as the Member States. In turn, financial law *sensu largo*, besides regulations regarding the Union financial system, also covers the ones which serve to build internal market and implementation of the principle of free flow of goods, people, service and capital. Member States are the main addressees of these norms.

The above provisions within the Union secondary law established in proper forms comprise the EU financial legal acts. The Author distinguished this category due to particular characteristic features: the subject of regulation which is financial management (EU financial policy), imperative-attributive character of the norms resulting from these acts as well as the presence of parametric and planned norms, although this is not a rule.

At the same time on the basis of the criterion of the regulation manner of the EU financial policy (public financial management) and the criterion of the character of legal content, the following types of the EU financial legal acts may be distinguished: regulatory acts, strategic planning acts, current financial management acts as well as mixed acts.

Beyond the framework of this paper was the issue which financial legal acts will be the sources of the EU financial law, what should to be the subject of a separate publication.

References

Borodo, A. Polskie prawo finansowe. Zarys ogólny (Polish financial law. The general overview), Toruń: Dom Organizatora, 2005.

Chalmers, D., Davies, G., Monti, G. European Union Law Cases and Materials, New York: Cambridge University Press, 2010.

Drwiłło, A. (ed.). Podstawy finansów i prawa finansowego (Bases of finance and financial law), Warsaw: Wolters Kluwer, 2018.

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 no 45 (2002).

Friedman, L., M. The legal system. A social science perspective, New York: Russel Sage Foundation, 1987.

Gajl, N. Finanse i prawo finansowe (Finance and financial law), Warsaw: PWN, 1992.

Hartley, T., C. The Foundations of European Union. An Introduction to the Constitutional and Administrative Law of the European Union, New York: Oxford University Press, 2010.

Horspool, M., Humphreys, M. European Union Law, New York: Oxford University Press, 2010.

Jurkowska-Zeidler, A. EU financial market law: from minimal harmonization to federalization, in: Radvan, M., Gliniecka, J., Sowiński, T., Mrkývka, P. (eds.). The financial law toward challenges of the XXI century: conference proceedings, Brno: Masaryk University, 2017.

Kosikowski, C. Finanse i prawo finansowe Unii Europejskiej (Finance and financial law of the European Union), Warsaw: Wolters Kluwer, 2014.

Kosikowski, C. Financial law of the European Union, Białystok: Temida 2, 2008.

Kosikowski, C. Prawo finansowe w Unii Europejskiej i w Polsce (Finacial law in the European Union and in Poland), Warsaw: Lexis Nexis, 2005.

Kosikowski, C. Prawo finansowe. Część ogólna (Financial law. The general part), Warsaw: Dom Wydawniczy ABC, 2003.

Lang, W., Wróblewski, J., Zawadzki, S. Teoria państwa i prawa (State and law theory), Warsaw: Państwowe Wydawnictwo Naukowe, 1986.

Lenaerts, K., Van Nuffel, P. European Union Law, London: Sweet & Maxell, 2011.

Ruśkowski, E. The discipline of public finance and financial law in Poland, in: Mrkývka, P. (ed.). System of financial law. General Part: conference proceedings, Brno: Masaryk University, 2015.

Ruśkowski, E. (ed.). Finanse publiczne i prawo finansowe (Public finance and financial law), Vol. 1, Warsaw: KiK, 2000.

Ruśkowski, E., Stankiewicz, J. Finanse i prawo finansowe (Finance and financial law), Białystok: Era, 1991.

Stoner, J. A., Freeman, R. E., Gilbert, D. R. Kierowanie (Management), Warsaw: PWE, 2001.

Zawadzka-Pąk, U. Legal and ethical aspects of fiscal rules in Poland, in: Radvan, M., Gliniecka, J., Sowiński, T., Mrkývka, P. (eds.). The financial law toward challenges of the XXI century: conference proceedings, Brno: Masaryk University, 2017.

Treaty on European Union.

Treaty on Functioning of the European Union.

Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community.