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# The Principle of the Social Market Economy from the Perspective of Public Economic Law

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**Abstract:** The social market economy is a conceptual category transposed to the provisions of the Constitution of the Republic of Poland, within which it is defined as a principle. It constitutes an appropriate foundation for the construction and functioning of the system of public economic law. It is a starting point for actions of the state and its bodies and defines the range of influence on the economy, as well as directs state activity in the economy. The premises for the participation and influence of the state on the economy which, according to the assumptions, should be both market-oriented and responsive to social needs, result from the principle of a social market economy. The objective so outlined should be pursued through the rules of public economic law and the legal constructions and institutions introduced in this normative area. They must remain, in terms of their content and nature, in close connection with the essence of the principle in question and its constituent elements.

## 1. Introduction

The social market economy (hereinafter: SMA) is a conceptual category reflected in the legal system. It has been transposed to the provisions of the Constitution of the Republic of Poland, within which it is defined as a principle. It is usually interpreted in the context of the provisions of the Constitution, although it seems to constitute an adequate basis for the construction and operation of the system of public economic

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law. From the perspective of that law, it is the starting point for actions undertaken by the state and its bodies, and it defines the area of influence on the economy, as well as directs the state's activity in the economy.

Periodically and at the same time regularly held, scientific conferences devoted to the subject of public economic law and the discussions conducted within the framework of them bear witness to the fact that it is still relevant to discuss the fundamental problems of the indicated discipline, and in particular the premises of impact on the economy, the objectives of the state's involvement in the area of economic activity of entrepreneurs and the creation of appropriate conditions for these entities to carry out business activities. It seems that such considerations, due to their importance, are worth continuing also in the present article. It is advisable, as it must be admitted, to combine them with the essence and features of the social market economy, as will be shown below.

## 2. Public economic law and its objectives

Public economic law is a component of the legal system comprising norms whose object is the impact of the state on the economy, including regulation as to the manner in which the state behaves towards the subjects of economic activity, i.e. entrepreneurs. Public economic law is a form of normatively regulated permissibility of interference of the state within the sphere of economic relations. It is an expression of the state's authority in the economy, reflects the duties of the state, and at the same time shapes the rules of functioning and the scope of rights and obligations of entrepreneurs determined in connection with the functions of the state[1].

Public economic law regulates in particular: the economic system and the principles of its functioning and protection, property relations which are the basis of management and the object of state protection, principles of management which are typical of a given system of property relations and which are subject to state protection, the legal forms of organising

[1] To read more the notion and essence of public economic law see: Jan Grabowski, "Prawo publiczne gospodarcze," in *System Prawa Administracyjnego, Volume 8A, Publiczne prawo gospodarcze*, ed. Jan Grabowski, Leon Kieres, Anna Walaszek-Pyzioł, (Warsaw: C. H. Beck, 2013), 4 et seq. See aso: Kazimierz Strzyczkowski, *Prawo gospodarcze publiczne* (Warszawa, 2011) and the literature cited therein.

and carrying out economic activity, the scope and forms of state legal protection of economic mechanisms and economic rights, as well as the organisation and legal forms of state interference into economic relations on a macro- and micro-economic scale[2].

As the doctrine highlights, the basis for the separation of the issues of public economic law is the thesis according to which the subject of economic law is constituted by the functions and tasks of the state in the sphere of economy and all legal consequences of their performance[3]. The said law encompasses the legal relations shaped in the relationship between state authorities and the subjects of economic activity. These entities are both the addressees of state actions, as well as their initiators, expecting relevant actions to be taken by state authorities. The area of the aforementioned legal relations includes the competences of the state bodies, the mechanism (procedures) of their decision-making and expressing a certain point of view (e.g. through the establishment of norms), as well as the rights and obligations of the subjects of economic activity, together with the conditions and forms of their realisation and guarantees of protection. The indicated legal relations are usually shaped with the use of methods and instruments of an administrative-legal nature, although solutions specific to civil law are also increasingly used.

The aim of public economic law is to protect the fundamental values of the market economy and to set permissible limits to the realisation and respect of the public interest. Thereby, it is recognised that the influence of the state on the economy is the domain of public administrative activity. According to this line of thinking, public economic law includes the provisions of administrative law that govern the conditions for undertaking and carrying out economic activity and define the relevant functions and competences of public administration bodies[4]. Thus, it constitutes the juridical layer of state interventionism, an encroachment upon the sphere

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2 The subject matters of public economic law are specified and discussed in the study: Andrzej Powałowski, ed., *Prawo gospodarcze publiczne* (Warsaw: C.H. Beck, 2020).

3 See, for example: Kazimierz Strzyczkowski, *Prawo gospodarcze publiczne* (Warsaw: Lexis Nexis, 2009), 27 et seq. and in: Hanna Gronkiewicz-Waltz, Marek Wierzbowski, ed., *Prawo gospodarcze. Aspekty publicznoprawne* (Warsaw: Wolters Kluwer, 2020), 19 et seq.

4 See: Leon Kieres, ed., *Administracyjne prawo gospodarcze*, Wrocław, 2009 and the literature cited therein and Leon Kieres, "Działalność gospodarcza," in *System Prawa*

of economic activity of society, and its object is to define the areas of such interference, its content and legal forms. The said areas include police and economic rationing, as well as organising certain macroeconomic undertakings or actively supporting certain areas of the economy. It is, therefore, the scope of state influence on the economy to the extent to which – legitimised by the rule of law – the public interest justifies state interference in the sphere of constitutionally protected freedoms and rights of the citizen exercised on the market. Moreover, it is also accepted that public economic law applies to state action in the sphere of free economic activity, not only to restrict and protect it, but also to shape a certain desired and intended order in the economy, including in the sphere of competition, property relations and various areas of economic activity.

Both the aim and the means (instruments) of state influence on the economy and their main carrier (expression of the message), which is the system of law, clearly indicate that the social market economy is the premise of this influence, and the constitutional principle of the social market economy is the foundation on the basis of which public economic law is constructed.

## 3. The essence of a social market economy

Social market economy is a normative concept in the Polish law, introduced into the Constitution of the Republic of Poland. It seems that since its introduction into the law, both the legislator, the doctrine and the jurisprudence have made only a small contribution to clarifying the content of this concept and the possibility of its transposition to the grounds of legal acts relating to the economy. The hierarchical legal order and the interrelation of legal contents and constructions provide the basis for assuming that there is an obligation to respect this order in the form prescribed by the provisions of the Constitution of the Republic of Poland. It also seems that there is a duty to develop the general legislative concepts in a reflective, creative manner, which the legislator has just given expression to in the Basic Law, and to suggest that the legislator should transpose those concepts into ordinary laws.

*Administracyjnego, Volume 8A, Publiczne prawo gospodarcze,* ed. Jan Grabowski, Leon Kieres, Anna Walaszek-Pyzioł, (Warsaw: C. H. Beck, 2013), 165 et seq.

Of course, all sorts of concepts, ideas and doctrines of a social and economic nature may derive from the Constitution, from its particular provisions and their fragments, including individual expressions. They often constitute the premises for the provisions introduced into the Constitution, and they undoubtedly form the genesis of its content. However, it seems, in the first instance, to be the duty of legal scholars to take steps to interpret the law by applying the rules of grammar. It was, after all, these rules that made it possible to introduce certain provisions into the Constitution and into other legal acts and to give them a specific linguistic meaning. It was undoubtedly the intention of the legislator and this preceded the transposition of concepts, ideas or doctrines into the law. It means that there is primarily a need to read the content of the provisions in the meaning given to them by the legislator, and only then the underlying normative formulation (idea, concept, doctrinal views).

The doctrinal basis of social market economy (SME) is, as is indicated, the concept, which originated in Germany, of regulating the economic system through a peculiar combination of the principle of economic liberalism and the market economy with the attainment of social goals[5]. It gained acceptance and political support in most European countries, including those in Eastern Europe, after their political, social and economic transformations in the 1990s, with the proviso, however, that its 'transposition' into the legal systems of individual countries took place in a very diverse manner and with emphasis on various elements of the concept indicated[6] Thus, there is no 'one' social market economy, or its ideal model.

The SME is, first of all, a principle expressed in the Constitution of the Republic of Poland, which provides the basis of Poland's economic system supported by the freedom of economic activity, private property and solidarity, dialogue and cooperation of social partners. The principle unequivocally implies that Poland's economic system should, as part of its legal construction, be based on the aforementioned three pillars:

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5 See: Tadeusz Włudyka, *Model społecznej gospodarki rynkowej a transformacja ustrojowa polskiej gospodarki. Analiza prawnogospodarcza* (Kraków: wydawnictwo Uniwersytetu Jagillońskiego, 2002), 124 and 191 et seq.

6 See in this regard Jan Ciapała, *Konstytucyjna wolność działalności gospodarczej w Rzeczypospolitej Polskiej* (Szczecin: WPiA USz, 2009), 61 et seq.

freedom, ownership and dialogue, in a uniform and equivalent manner, while at the same time neither of the pillars should be marginalised and treated less fundamentally than the others[7] At the same time, it is difficult to assume, as this is by no means apparent from the content of Article 20 of the Polish Constitution, that the SME is supported by yet other values (pillars)[8]. Thus, the SME principle is an indication for the state to shape the economy through its bodies by legislating and applying laws that make it possible to achieve a state of harmony between a free and predominantly private, and consequently market economy and the needs of society, while at the same time ensuring that the conditions for dialogue and cooperation between the social partners exist[9].

The above statements by no means imply that the SME as a principle of law has been expressed in a fully correct manner with no doubts concerning its interpretation[10]. First of all, it should be noted that as early as Article 22 of the Constitution of the Republic of Poland, the possibility of limiting the freedom of economic activity by way of a statute was introduced, however without linking this possibility to the principle of the SME, but only with reference made by the limiting entity (the state) to an important public interest as the premise for the indicated limitation. At the same time, it is not known whether the public interest is identical with the social interest and whether, as a consequence, restrictions on the freedom of economic activity made in the public interest will be in line with the social interest in the area of functioning of the economy[11]. It is, moreover, not at all possible to give an answer to the question posed in this way, as the social

7 Differently Przemysław Czarnek, *Wolność gospodarcza. Pierwszy filar społecznej gospodarki rynkowej* (Lublin: Wydawnictwo KUL 2014), 93 et seq.

8 Differently Cezary Kosikowski, "Gospodarka i finanse publiczne w nowej Konstytucji," *PiP*, no. 11–12(1997): 149.

9 See for example: Wiesław Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz, ed. VII* (Warszawa: Lex, 2013), art. 20.

10 See for example: Krystian Complak, Komentarz do art. 22 Konstytucji RP, in *Konstytucja RP. Komentarz*, ed. Monika. Haczkowska (Warszawa: LexisNexis, 2014).

11 See in this regard Artu Żurawik, "Interes publiczny", „interes społeczny" i „interes społecznie uzasadniony". Próba dookreślenia pojęć," *Ruch Prawniczy, Ekonomiczny i Społeczny*, no. 2(2013): 57–69. Extensive comments on the issue are presented by Marek Szydło, *Wolność działalności gospodarczej jako prawo podstawowe,* (Bydgoszcz-Wrocław: Oficyna Wydawnicza Branta, 2011), 165 et seq.

interest may only be a default category, possibly alleged one on the part of the state, while it may be clear and defined in a specific situation, at a specific time by the society or its group, but also on the grounds of specific provisions of the law. None of the categories of the indicated interests is defined and they are not distinguished on the grounds of the Constitution of the Republic of Poland.

It would also be difficult to assume that – in determining the content of the normative construction of the social market economy – it is necessary to refer to other concepts, values, constructions or institutions contained in the Constitution of the Republic of Poland. This was not done by the legislator in the content of Article 20 of the Constitution of the Republic of Poland, allowing, however, for a systemic interpretation of the concept of the SME, including, as it seems, the one related to the system of public economic law.

## 4. The state participation in a social market economy

It can be assumed that the premises of participation and influence of the state on the economy, which, according to the assumptions, should be both market-based and taking into account social needs, stem from the principle of the SME. The pursuit of such a goal should be carried out through the provisions of public economic law and the legal constructions and institutions introduced on the basis of this normative area. In terms of their content and nature, they must remain closely related to the essence of the principle in question and its constituent elements, including: freedom of economic activity, private property and solidarity, dialogue and the cooperation of social partners.

Determining the meaning of the concept of freedom of economic activity remains a debatable issue[12]. The interpretation in this matter is not

[12] Cf. in this regard e.g. Cezary Kosikowski, "Wolność działalności gospodarczej i jej ograniczenia w praktyce stosowania Konstytucji RP," in *Zasady ustroju społecznego i gospodarczego w procesie stosowania Konstytucji,* ed. Cezary Kosikowski (Warszawa: Wydawnictwo Sejmowe, 2005), 37 et seq.; Ciapała, *Konstytucyjna wolność działalności gospodarczej w Rzeczypospolitej Polskiej* 115 et seq.; Klaudia Klecha, *Wolność działalności gospodarczej w Konstytucji RP* (Warszawa: C.H. Beck, 2009). 21 et seq.; Szydło, *Wolność działalności gospodarczej,* 53 et seq.; Kazimierz Strzyczkowski, *Prawo gospodarcze publiczne* (Warszawa: Wolters Kluwer, 2011), 98 et seq.; Marian Zdyb, "Wolność działalności gospodarczej

made by the legislator, and the Constitution of the Republic of Poland indicates only that this freedom is a pillar of the social market economy. The grammatical interpretation of the indicated concept undoubtedly dictates that freedom of economic activity should be distinguished from economic freedom. The latter concept, non-normative but applied in doctrine[13], has a broader scope than the freedom of economic activity, because its scope includes both the problem of performing economic activity perceived in the context of the freedom (freeness) on the part of the participants (subjects) of the economy understood objectively, as well as the sphere of initiating (undertaking) economic activity in a free manner, creating appropriate economic entities and structures, and, moreover, the provision of adequate (freeness) rules by the state and its authorities for the functioning of entrepreneurs and the use of instruments of influence on the economy by the state which do not cause excessive infringement (or nullification) of the freedom of economic activity.

The doctrine highlights various meanings of the term: freedom of economic activity. Freedom is first perceived as a fundamental constitutional principle of the Republic of Poland[14]. It is also seen as a public subjective right of a negative nature, which is matched with a general obligation of the state not to infringe this right in the sphere of (free) economic activity[15]. Moreover, it may be assumed, referring the notion category to the subjects of economic activity that the freedom of economic activity means all the freedoms ascribed to these subjects by law[16].

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w Konstytucji RP," *Rejent*, no. 5 (1997): 145–166, and also: Andrzej Ogonowski, "Konstytucyjna wolność działalności gospodarczej w orzecznictwie Trybunału Konstytucyjnego," *Przegląd Prawa Konstytucyjnego*, no. 1( 2012): 213–235.

13 See e.g.. Stanisław Biernat, Andrzej Wasilewski, *Wolność gospodarcza w Europie* (Kraków: Kantor Wydawniczy Zakamycze, 2000); Zdzisław Brodecki, ed., *Wolność gospodarcza* (Warszawa, 2003); Jerzy Jacyszyn, "Wolność gospodarcza – stan obecny," *Przegląd Ustawodawstwa Gospodarczego,* no. 7 (2015): 2–6, Cezary Kosikowski, *Wolność gospodarcza w prawie polskim* (Warszawa: Państwowe Wydawnictwo Ekonomiczne, 1995).

14 See: Biernat, Wasilewski, *Wolność gospodarcza w Europie,* 141, Strzyczkowski, *Prawo gospodarcze publiczne*, 101–103

15 See: Anna Walaszek-Pyzioł, *Swoboda działalności gospodarczej* (Kraków: Księgarnia Akademicka, 1994), 12 et seq.

16 See: Andrzej Powałowski, "Wolność gospodarcza a konkurencja," in *Granice wolności gospodarczej w systemie społecznej gospodarki rynkowej, Księga jubileuszowa z okazji*

It seems that the freedom of economic activity is the element (pillar) of the SME which is most strongly linked to the market economy. In order for the economy to have a market character, its subjects should be able to be guided by the rules of the free (unrestricted) market in the course of economic activity, and thus be guaranteed, in particular, freedom of contract, decision-making regarding the strategy and tactics of performing various activities in the sphere of the economy, price formation, as well as free competition with other entities. Consequently, as it were, market economy actors can (and should) be guided by economic calculation and, above all, by profit in their actions. After all, economic activity has, according to the law, a profit-making purpose. It could be added here that the freedom of economic activity is a determinant of the market economy. Total freedom, as well as limited freedom, enables the economy to function as a market mechanism; the absence of freedom, or its restriction to an excessive, disproportionate extent, negates the nature of the economy as a market mechanism[17].

However, the freedom of economic activity cannot be absolute, ruthless. Such freedom would be a negation of the social market economy, as it would favour the market element, while neglecting the social aspect within the economy. The legislator recognises this and introduces (Article 22 of the Constitution of the Republic of Poland) the possibility of limiting the freedom of economic activity in the public interest.

An issue that does not find a proper optimal solution is the scope of restrictions on the freedom of economic activity. The stipulation that these restrictions should result from the provisions of laws and that they are to be justified by an important public interest does not make it possible to define the limits of state interference in the sphere of freedom, and thus in the sphere of the market economy. In principle, the state may consider the implementation of various activities and the pursuit of – also various – objectives to be in the public interest, even if such activities and aims are

*40-lecia pracy naukowej prof. dr hab. Jana Grabowskiego* (Katowice: Górnośląska Wyższa Szkoła Handlowa im. Wojciecha Korfantego, 2004), 202.

17 Cf. in this regard Krystyna Pawłowicz, "Wolność gospodarcza w kręgu mitów," in *Konstytucyjna zasada wolności gospodarczej. Materiały konferencyjne*, ed. Wojciech Szwajdler i Henryk Nowicki (Toruń: Dom Organizatora, 2009).

objectively not of a public nature and are not "important" at all, although, of course, this "validity" may also be adequately justified and may even be linked to an alleged, artificially created public interest[18].

Accepting that a restriction on the freedom to operate should be, for example, proportionate presupposes that there is an awareness on the part of the state authorities of the need not to overstep the boundary demarcating the sphere of freedom and the sphere of its absence, and thus to recognise that certain restrictions on the freedom to operate an economic activity, or the sum thereof, will lead to a state of exclusion of freedom in the economy and the impossibility of functioning of the market economy. The assessment of the achieved state of freedom and the economy goes beyond the legal issues, as the yardsticks of that state are rather economic or even political in nature. Therefore, it should be assumed that – in line with the content of Article 22 of the Constitution – it is necessary to characterise not so much the state of freedom (freedom and economy) achieved as a result of the application of limitations but rather the form (law) of the limitations applied, as well as their premise (important public interest). In this respect, there are no doubts as to the possibility of using only the form of an act for the introduction of restrictions, while an undoubtedly controversial issue, as noted earlier, is the premise in the form of an important public interest. It seems indisputable that it should be valid and linked to the fulfilment of public needs, although both 'validity' and the catalogue of public needs are not subject to normative characterisation and assessment.

It is difficult to assume that the legislator will undertake the task of specifying the category of validity, as this by its very nature is of a particularly subjective character, and it should probably be assumed that a privilege, reserved to the state bodies, derives from the Constitution, and which reduces to the possibility of arbitrary recognition of a public interest as important, and thus of making a kind of segregation of public interests

[18] On the 'validity' of the public interest, see: Szydło, *Wolność działalności gospodarczej,* 186–189; See the judgment of the Constitutional Tribunal of 8 July 2008, ref. no: K. 46/07, OTK ZU 2008, no. 6A, item.104

into important and non-important ones[19]. At most, it may be assumed that the public interest acquires the feature of validity when the legislator refers to it in the area of an act of statutory rank and indicates such interest as a premise for specific (statutory) legal regulations. Examples in this respect are provided by many legal acts relating to the economy and various aspects of its functioning[20].

On the other hand, one might expect the category of public interest to be specified in ordinary legislation, since the Constitution of the Republic of Poland does not do so. It could take place, as it seems, on the occasion of referring to this category on the grounds of particular acts, if only by indicating the aims which should be pursued with respect to the public interest, or by way of justifying the reason for which the actions of state authorities consisting in restricting the freedom of economic activity are undertaken. It is relevant because there is no single, generally understood public interest, and such interests take on different content. For example, it is only possible to point to the issue of state security, consumer interests, protection of the domestic market, environmental needs, price stability, balance of payments sustainability, protection of certain entities of the economy, state aid, needs related to the protection of citizens' health, etc. Thus, what matters is to move away from the general public interest formula, which in the current state of the law is used to conceal the intentions and purposes of those entities that can legitimately undertake actions leading to the restriction of freedom of economic activity.

If it is reasonable to assume that the public interest formula may be a premise for limiting the freedom of economic activity, and consequently for narrowing or changing the character of the market

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19 Different, however, was the opinion of the TK in the judgment of 14 December 2004 in case K. 25/03, OTK ZU 2004, no. 11, item 116. In the opinion of the TK, each case of the necessity to protect the goods specified in Article 31(3) of the Constitution of the Republic of Poland, such as: state security, public order, protection of the environment, health and public morality certainly falls within the notion of 'important public interest'"

20 See, for example, the Act of 16 February 2007 on competition and consumer protection, i.e Journal of Laws. Of 2021 item 275, Act of 10 April 1997 Prawo energetyczne, i.e. Journal of Laws of 2022 item. 1385, as amended, the Act of 11 September 2019 Prawo zamówień publicznych, i.e. Journal of Laws of 2022 item 1710, as amended., the Act of 6 March 2018 Prawo przedsiębiorców, i.e. Journal of Laws of 2021 item 162, s amended.

economy, one cannot, at the same time, accept arbitrary actions taken in the name of the public interest, unidentified as to their purpose and content. The Constitution of the Republic of Poland, in creating the legal construction of a social market economy and indicating its pillars (Article 20), as well as in treating the possibility of limiting the freedom of economic activity as one of these pillars, does not give any consent to the exclusion or significant restriction of freedom and negation of the market economy, even in the name of an important public interest. In order to prevent the use of the general public interest for actions contrary to the SME principle, it is necessary to recognise, firstly, the primacy of the freedom of economic activity over the public interest and, secondly, the need to identify the public interest, in order to ascertain, by means of legal and social control, the correctness of the actions of state bodies and their adherence to the said SME principle.

The question of the second pillar, mentioned in Article 20 of the Polish Constitution, and the constituent element of the SME, is different. Private property within a market economy is, as one may assume, the dominant form of property. Even if there are non-private entities in the structure of the economy, the state is tasked with the aim of marketising their mode of operation, i.e. making them similar to private entities from the sphere of private property so that they can become elements of the market economy with the dominant participation of private entities. The legislator reflected on this fact in the law on commercialisation[21] and in the concept of subjecting organisational units belonging to the public sectors to analogous rules of operation as private entities. Thus, noting that private ownership is a pillar of the SME is meant to recognise the primacy of such ownership in the economy and, at the same time, to acknowledge that within the framework of a market economy the rules for conducting economic activity proper to private entities for which the point of reference is the freedom of economic activity should apply. These rules should also extend in their entirety to those economic entities in which the State Treasury or another public entity is the sole or majority shareholder, and for which such a public entity is the founding body. However, it does not

[21] See the Act of 30 August1996 on commercialisation and certain rights of employees, i.e. Journal of Laws of 2022 item318, as amended.

mean that a public entity, just like any other (private) entity of property, may not exercise its property rights with respect to a given organisational unit which is an entrepreneur within the meaning of the provisions of relevant acts[22]. In no way does it contradict the participation of such organisational units in the market economy and the inclusion of such units in the freedom of economic activity.

The third pillar of the social market economy, i.e. solidarity, dialogue and cooperation of the social partners, is, in its content, a guiding principle that should be applied to the state and its bodies and to all social and economic organisations. Such a broad *spectrum* of players should be taken into account given the need to achieve the indicated solidarity, dialogue and cooperation. Reaching a state amounting to the existence of a social market economy requires the application of a broad formula for participation in the process of determining the objectives, forms and methods of functioning of the economy. Undoubtedly, organisations representing various types of social groups should have the possibility to express their members' needs and expectations with regard to the functioning of the economy. Within the framework of a democratic state under the rule of law, such a possibility is something very obvious, which, at the same time, does not mean, however, that these needs and expectations will be met by merely articulating them. In many cases their implementation is unrealistic or impossible for legal, economic or organisational reasons or, which is equally predictable, they remain in opposition to the market economy system. In many cases, a "social" perception of the problems of the functioning of the market economy should also be appropriate for the bodies of the state, which, after all, is by its very nature a form of organisation of society and which is obliged to represent and express the social interest as well. In doing so, the involvement in the determination of strategies and tactics for the functioning of the economy is also extremely important for all those entities that represent the interests of entrepreneurs as direct participants in economic processes performing economic activity. The said bodies are most capable of determining what the interests of the market economy

[22] This refers to the definition contained in Article 4 of the Act of 6 March 2018. Entrepreneurs' Law and in Article 431 of the Act of 23 April 1964 Civil Code, i.e. Journal of Laws of 2022, item 1360, as amended

are, what its priorities and development prospects are under the given conditions and environment.

The selected groups of entities are – as it seems – the social partners, who have a duty to fill in the content of the notions of solidarity, dialogue and cooperation, concepts referring to the activity of these entities in the area in which the market economy is given proper character. It may be assumed at this point that it is the social partners and their solidarity, dialogue and cooperation that should contribute to the fact that the market economy, governed in principle by the freedom of economic activity and dominated by private property, may at the same time have a social character.

The indicated terms referring to the activities of the social partners are difficult to determine and are of no normative significance. At the same time, it seems that they should be ranked in a slightly different order than in Article 20 of the Polish Constitution. First of all, the social partners negotiate, i.e. conduct a dialogue, expressing their own positions within the framework of this dialogue. In the event of differences of opinion as to the issues covered by the subject of dialogue, they should declare their willingness to cooperate, including the possibility of compromise, in the name of solidarity, i.e. the community of interests. What is meant here is an ideal, exemplary situation that is very difficult to achieve. If it is possible to initiate a dialogue between the social partners, it is not realistic to develop a common position resulting from the desire to cooperate in many cases. However, it is absolutely impossible to work out a community of interests because the social partners, and above all the social organisations (excluding the state), represent interests that are diametrically opposed to those of the business community. The social interest includes, to a significant extent, the protection of the rights and privileges of the entire community, as well as its individual groups, including the right to a decent remuneration for work, social security, consumer protection, while the interest of the entities of the market economy is dominated by the interest of achieving maximum profit. Due to the fact that these are antagonistic interests, an ideal community of interests will probably never exist, and presumably the legislator, when using the word solidarity, had in mind only the pursuit of a common position with regard to the functioning of the market economy, as well as the emphasis on the role of the actors representing social interests and

their capacities, and in particular the need for them to influence the shape of the market economy.

The provision of the Constitution of the Republic of Poland concerning the third pillar of the GSC finds its extension in the provisions of the Act on social dialogue[23]. It stipulates (Article 1) the functioning of the Social Dialogue Council as a forum for tripartite cooperation of employees, employers and the government. The Council is established to 'conduct dialogue in order to ensure the conditions for social and economic development and to increase the competitiveness of the Polish economy and social cohesion, and acts for the implementation of the principle of participation and social solidarity in employment relations. Moreover, the Council acts to improve the quality of formulation and implementation of socio-economic policies and strategies, as well as to build social consensus around them by conducting a transparent, substantive and regular dialogue between organisations of employees and employers and the government party'.

However, irrespective of the problem of the correctness of the semantic and substantive construction of the notions: solidarity, dialogue and cooperation, it should be pointed out that they should relate to the first constituent element of the principle of social market economy, i.e. to the term indicating the nature of market economy. The market economy, pursuant to the provision of Article 20 of the Constitution of the Republic of Poland, is supposed to be social, and therefore, as it seems, responsive to social interests and needs. At the same time, the economy is to be a market economy, i.e. related to the freedom of economic activity, as far as the boundaries and the area of social interest reach.

One should note, however, that the above interpretation of the meaning of the word 'social' is not exclusive. 'Social', in relation to the economy, may also mean the manner and scale of the influence of society and its organisations on decision-making concerning the management of the economy by collective, social bodies such as e.g. employee self-governments or the influence of social groups (e.g. shareholders) on the management of enterprises. 'Social' can furthermore be the economy realised (performed) by non-public entities, not related to organisational units of the public sector.

[23] See Act of 24 July 2015 on the Social Dialogue Council and other institutions of social dialogue, i.e. Journal of Laws of 2018, item 2232, as amended.

## 5. Conclusions

By indicating the purpose, object scope, methods and means of the state's influence (impact) on the economy, one can see the close connection between public economic law, which is the expression and basis of this influence, and the social market economy, legitimately perceived primarily as a constitutional principle defining Poland's economic system. The link is primarily based on the recognition of the need for a correct, rational and legal interpretation of the principle of the SME also (or perhaps primarily) in the area of the creation and application of the provisions of public economic law.

The interpretation of the SME principle should aim at the introduction of everything that follows from the constitutional principle of the SME into public economic law. In particular, it is a matter of appropriate modelling of the relationship between the state and its bodies and entrepreneurs as well as including in this relationship the freedom of economic activity, private property and solidarity, dialogue and cooperation of social partners as pillars of the SME and at the same time features of such an economy.

The constituent elements of the SME are not only directional guidelines shaping the normative content of public economic law, but, which needs to be emphasised, specific values 'entering' the sphere of the axiology of this law. As values, they should justify the formal and material constructions introduced into public economic law and, moreover, serve the interpretation and application of the law.

In the context of its objectives, comprehensively defining the sphere of the state's influence on the economy, including shaping the conditions for the functioning of entities of economic activity, public economic law bases its normative existence on the principle of the social market economy and is at the same time its emanation, an entity shaped on its grounds. The above characteristics seem to support such a statement.

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