

*Henryk Nowicki*

Uniwersytet Mikołaja Kopernika, Toruń

nowicki@law.umk.pl

ORCID: <https://orcid.org/0000-0003-0392-2433>

## Economic policies, objectives, and principles of the system of public procurement law\*

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### 1. Objectives and principles in the legal system

Public procurement, which is part of the single market, is an important part of economic policy both in the EU market and in the markets of individual Member States<sup>1</sup>. Therefore, the EU legislator and national legislators, when laying down the legal rules for awarding contracts, include in this system, in addition to the procedural rules, the need or obligation to pursue other, the so-called non-purchase objectives within the framework of the awarded

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<sup>1</sup> More details on this subject: H. Nowicki, *Zamówienia publiczne elementem polityki gospodarczej państwa. Zagadnienia wybrane*, in: *Przegląd Naukowy Disputatio*, Vol XXV, Prawne aspekty udziału państwa w gospodarce, Gdańsk 2018, p. 41 et seq.

public contracts. Thus, the system of law should introduce into public procurement procedures provisions that indicate the need to implement specific economic policies<sup>2</sup> (objectives), which thus become part of public procurement law. By institutionalising legal rules of conduct for entities participating in the process of awarding public contracts, the public procurement law<sup>3</sup> defines the rights and obligations for all entities to which its rules are addressed. The entities subject to this law include both public authorities and other public and private entities to which the rules apply<sup>4</sup>. The rules of this law are primarily addressed to contracting authorities as well as contractors and competent state authorities<sup>5</sup>. Public procurement law also determines the legal situation of other entities for which the rules of this law are the basis for their conventional activity<sup>6</sup>.

One of the important issues influencing the shape and understanding of public procurement law found in the literature<sup>7</sup> is the

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<sup>2</sup> For more details on the subject see P. Nowicki, *Zamówienia publiczne jako instrument kształtowania gospodarki przez państwo*, in: *Przedsiębiorca w społecznej gospodarce rynkowej*, Wrocław 2017, p. 114 et seq.

<sup>3</sup> The concept of public procurement law is understood broadly, including relevant EU legal acts and acts of national law: the Act of 29 January 2004. – Public Procurement Law (i.e. Journal of Laws of 2018, item 1986 as amended), hereinafter: PPL; Act of 21 October 2016 on the concession contract for construction works or services (Journal of Laws, item 1920 as amended); Act of 19 December 2008 on public-private partnership (i.e. Journal of Laws of 2017, item 1834, as amended); executive acts to PPL; acts to which the above acts refer directly (or indirectly) (“unless the provisions of the Act stipulate otherwise”) and acts that introduce separate procedures for awarding public contracts.

<sup>4</sup> For more information on institutionalization, objectives, as well as functions and entities in public procurement law, see: A. Bator, *Problemy prawa zamówień publicznych. Uwagi z perspektywy teorii i filozofii prawa*, in: *Przedsiębiorca w społecznej gospodarce rynkowej*, Wrocław 2017, p. 20 et seq.

<sup>5</sup> In Article 1 of the PPL, the legislator uses the term “authorities competent in matters regulated in the act”.

<sup>6</sup> This includes, inter alia, authorities appointed to control public procurement and awarding procedures.

<sup>7</sup> See J. Sadowy, *Cele systemu zamówień publicznych i ich realizacja na przestrzeni 15 lat w świetle sprawozdań Prezesa Urzędu*, in: *XV-lecie systemu zamówień publicznych w Polsce*, H. Nowicki, J. Sadowy (ed.), Toruń–Warszawa

issue of public procurement objectives<sup>8</sup> and the objectives of public procurement law<sup>9</sup>. The term “objectives” is understood here as the values we want to achieve, “something we are striving for”<sup>10</sup>, an action that “aims” at achieving the indicated desirable goals. The law is appropriately identified as “a tool used to achieve the intended objectives”<sup>11</sup>. When analysing the issue of public procurement objectives, one should consider to what extent these objectives are or should be normative and thus be objectives of public procurement law, and to what extent they may be defined in other documents (other than legislative acts). When indicating the objectives of public procurement in documents which are not sources of law<sup>12</sup>, we have to answer the question: to what extent will the objectives included therein bind the entities to which the documents are addressed? When defining public procurement objectives, we should consider whether and to what extent these objectives are also objectives of public procurement law. It is particularly important to define the objectives of public procurement in documents which are not sources of law and their impact on public procurement law. Can

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2009, p. 170; H. Nowicki, *Wprowadzenie do systemu zamówień publicznych*, in: J. Sadowy (ed.), *System zamówień publicznych w Polsce*, Warszawa 2013, p. 21 et seq.; M. Szydło, *Prawna koncepcja zamówienia publicznego*, Warszawa 2014, p. 1 et seq.

<sup>8</sup> The term “public procurement” is understood as paid contracts concluded on the basis of legal acts included in the system of public procurement law as understood above. Therefore we can speak of a public procurement system, which is constituted by contracts concluded on the basis of the PPL, concession contracts, and public-private partnership contracts, see: H. Nowicki, P. Nowicki, *Partnerstwo publiczno-prywatne jako element systemu zamówień publicznych*, “Studia BAS” 2014, No. 3(39), 2014, p. 85.

<sup>9</sup> The system of public procurement law is understood in terms indicated under the first footnote.

<sup>10</sup> See Z. Duniewska, *Prawo administracyjne – wprowadzenie*, in: *Instytucje prawa administracyjnego*, R. Hauser, Z. Niewiadomski, A. Wróbel (ed.), *System Prawa Administracyjnego*, Warszawa 2010, p. 104.

<sup>11</sup> Ibidem.

<sup>12</sup> The sources of the law are understood within the meaning of Article 87 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483 as amended).

the objectives set out therein be directly incorporated into public procurement law, or should they be given a normative character? This is particularly important at the stage of applying public procurement law by contracting authorities and contractors, as well as public procurement controlling authorities. Controlling authorities follow, for instance, the criterion of legality of operations, and other authorities carry out their inspections using the criterion of purpose. The inclusion of public procurement objectives in “non-normative” documents and their application by entities that participate in the public procurement process may raise reasonable doubts among the controlling authorities. When assessing the fact that the contracting authority in the public procurement process invoked the objectives set out in “non-normative” documents, it will be difficult to qualify such actions as being based on relevant legal provisions. At most, it will be possible to assess them from the point of view of purposefulness, i.e. the objectives the achievement of which the contracting authority is obliged or entitled to.

The primary purpose of public procurement<sup>13</sup>, from the point of view of the contracting authority, is to purchase a supply, service, or construction works. When awarding public contracts, some contracting authorities that are entities of the public finance sector must be guided by the rationality of spending, as defined in the provisions of the Public Finance Act<sup>14</sup>. The rationality of spending public funds is undoubtedly a value (objective) which is legally defined and additionally protected by the regulations concerning liability for the violation of public finance discipline<sup>15</sup>. The literature points to the basic objective of public procurement, which is the economic efficiency (value for money) of purchases made within the

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<sup>13</sup> In this case, the notion of the objective refers to the subject of the public procurement.

<sup>14</sup> Article 44(3) of the Public Finance Act of 27 August 2009 (i.e. Journal of Laws 2017 item 2077 as amended).

<sup>15</sup> Act of 17 December on the liability for the infringement of the public finance discipline (i.e. Journal of Laws of 2018, item 1458 as amended), in particular 17 and 17a.

framework of public procurement<sup>16</sup>. If we adopt the regulation of the Public Finance Act as – at least partially – corresponding to the objective of economic efficiency, the provisions contained therein are binding and applicable only to the contracting authorities that are entities of the public finance sector<sup>17</sup>.

When laying down the legal rules for purchasing under the public procurement system, the legislator points out the procedures that must be followed in order for a measure to be assessed as a legal purchase. Procurement law may also indicate the achievement of other objectives<sup>18</sup> which, at the will of the legislator, are to be achieved through the actions of the contracting authority making the purchase. It is therefore necessary to consider to what extent these other objectives, which are to be achieved through the award of public contracts, are compatible with the objectives of public procurement law. And are the objectives compatible or should they be compatible?<sup>19</sup> The basic problem of the Polish public procurement system is to define the objectives of procurement and to incorporate them (codification) in the public procurement law. Among the objectives of the public procurement law we will indicate exemplary objectives that can (or should) be achieved directly (or indirectly) together with the purchases.

The objectives of legal regulations are specific values for which a given legal act is intended. When expressing the objectives in the normative part, the legislator may directly give them the form of legal norms. They may result from the regulations which have the character of principles and thus they may be derived from them. They do not always have to be expressed *expressis verbis* in regulations, they may result from the non-normative part of a legal act

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<sup>16</sup> See M. Szydło, op. cit., p. 3 et seq. together with quoted references; P. Nowicki, *Efektywne zamówienia publiczne jako rezultat stosowania nowego podejścia do zamówień publicznych*, Warszawa 2013.

<sup>17</sup> We should be aware that not all of the contracting authorities have the status of public finance sector entities.

<sup>18</sup> I define these objectives as “non-purchase” objectives, which are achieved alongside the purchase.

<sup>19</sup> Marek Szydło clearly indicates the identity of these objectives, op. cit., p. 1.

(introduction, preamble<sup>20</sup>), its justification, or from other (official) documents adopted by a competent authority participating in the legislative process. The Polish legislator, in the justifications of subsequent drafts of public procurement acts, formulates remarks concerning the objectives of the regulation and the introduced rules. At the same time, the text of legal acts includes provisions that contain the principles of awarding contracts. There are no specific provisions that indicate the objectives of public procurement. This raises the question: does such an approach mean that the objectives and principles of public procurement law are given a different legal status and character? This may also mean that the Polish legislator adopts a solution consisting in deriving objectives from all the provisions contained, e.g. in the Public Procurement Law Act. This solution, in my opinion, should not characterise a rational legislator, as it does not benefit the legal certainty of the participants in the public procurement process. From the point of view of the application of public procurement law by the participants of this process, it is important that contracting authorities and contractors have a clear and precise law at their disposal that gives them a legal basis for their actions.

The adoption of objectives and their inclusion (codification) as the principles of public procurement law, expressed in the norms of this law, will mean that these are provisions which play a significant role in influencing other norms that belong to this system of law. The implementation of the adopted objectives will at the same time be compliant with the applicable law and will not raise any doubts as to the legality of the purchases made. The proposal of codifying public procurement objectives requires a change in the current approach to the principles of legislation, and in fact to the applied legislative techniques. It should also be taken into account that in our system of public procurement law some of the objectives are already codified.

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<sup>20</sup> In our system of legislation, we occasionally encounter an introduction or a preamble to a legal act, and we do not always have the opportunity to obtain a justification for issuing a given legal act or a specific provision introduced e.g. as a result of an amendment to a legal act.

## 2. Economic policies and objectives of public procurement in the EU legal regulations

In the system of EU law, many legal acts have a direct reference to the objectives<sup>21</sup> for which a given legal act is intended. In the provisions of the Treaty on the Functioning of the European Union<sup>22</sup>, we find references to the objectives of the functioning of the EU and the objectives for which the adopted legal regulations are intended. To a large extent, public procurement directives directly define the objectives of public procurement, which are mainly contained in the introduction to these legal acts. This part of the directives is not normative (as in the system of Polish law), but indicates the premises for introducing a given legal act. Among these premises, there is also an indication of the objectives that the EU legislator intends to achieve by introducing a given regulation. This means that the EU legislator, when defining the obligations of the public sector as regards purchases, indicates that other, parallel objectives need to be achieved alongside expenditure<sup>23</sup>. When justifying the need to introduce the directives in question, the EU legislator also points to other documents and values presented therein, which can or should be achieved through the system of public procurement law. One such document is the Communication from the Commission Europe 2020<sup>24</sup>, which sets out three priorities: smart, sustainable, and inclusive growth. The adopted priorities are interrelated and define the objectives (policies), which in the

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<sup>21</sup> The objectives are also understood, according to the EU legislator, as specific policies.

<sup>22</sup> Journal of Laws of 2004, No. 90, item 864/2, hereinafter: TFEU.

<sup>23</sup> The objectives achieved through the public procurement system are indicated by H. Nowicki, *Znaczenie systemu zamówień publicznych*, in: J. Sądowy (red.), op. cit., p. 21 et seq.

<sup>24</sup> Communication from the Commission Europe 2020, Strategy for smart, sustainable and inclusive growth, Brussels, 3.03.2010, COM (2010), p. 5.

system of EU law and legal orders of the member states may take on different characters (mandatory or optional) and concern different spheres of public life. The establishment of a common market (internal market) serves the economic objective of EU integration<sup>25</sup>. The public procurement market is an element of the common market. The objectives and principles of the single market are at the same time objectives and principles of public procurement. The provisions of the TFEU define the means and objectives (free movement of goods, persons, services, and capital) which are intended to establish or ensure the functioning of the internal market while ensuring balanced progress<sup>26</sup>.

Currently, “the basic policies (objectives) of the public procurement system as defined by the EU and national law should include:

1. efficient spending of funds,
2. transparent spending of funds,
3. opening the public procurement market to competition,
4. preventing violations of the law (corruption),
5. innovation in public procurement,
6. green public procurement (ecology oriented),
7. pro-social procurement,
8. support for SMEs (including as contractors and subcontractors),
9. cross-border procurement,
10. and many others (depending on the needs) as defined by the law”<sup>27</sup>.

The EU legislator defines the objectives of the single market and public procurement in many legal acts and also in other documents, not always legal acts.

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<sup>25</sup> See M. Szydło, *Swobody rynku wewnętrznego a reguły konkurencji. Między konwergencją a dywergencją*, Toruń 2006, p. 119.

<sup>26</sup> See Article 26 TFEU.

<sup>27</sup> H. Nowicki, *Prawo zamówień publicznych instrumentem kreowania innowacyjnej gospodarki*, in: A. Powalowski (ed.), *Prawne instrumenty oddziaływania na gospodarkę*, Warszawa 2016, p. 289; more on the objectives implemented via public procurement see H. Nowicki, *Wprowadzenie do systemu*, in: J. Sadowy (ed.), op. cit., p. 22 et seq.



### 3. Public procurement objectives and economic policies in the process of shaping public procurement law

In the justification of the draft of the Public Procurement Act of 1994, the Polish legislator specified that the purpose of the regulation is to introduce mechanisms conducive to rational, effective, and fair management of public funds<sup>28</sup>. This was to be achieved through the creation of systemic institutional solutions, including the definition of rules and procedures for making purchases. At the same time, the main principles of public procurement, which were to ensure the proper functioning of the public procurement system, were pointed out. These principles included: equality (prohibition of discrimination), openness of the procedure and control at each stage, competitiveness of the procedure, and the possibility of supporting domestic suppliers and contractors. Specific regulations contained in the Act were to be used to achieve the indicated objectives. When adopting a new Act – Public Procurement Law<sup>29</sup> in 2004, its justification<sup>30</sup> indicated and specified the new objectives of the introduced regulations, which were:

- ensuring a coherent, comprehensive regulation of public procurement, taking into account the differentiation of procurement mechanisms according to their value;
- full adaptation of the Polish public procurement law to the requirements of the European Union;
- extension and strengthening of the existing mechanisms limiting corrupt practices in the legal system;

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<sup>28</sup> Justification of the draft Act of 10 June 1994 on public procurement (print 310 and 310A) (original text: Journal of Laws No. 76, item 344).

<sup>29</sup> Act of 29 January 2004 – Public Procurement Law (original text, Journal of Laws No. 19, item 177).

<sup>30</sup> Print No. 2218 of the Sejm of the fourth term of office.

- elimination of unnecessary bureaucratic burdens and the introduction of solutions that facilitate the entrepreneurs' access to the procurement market.

The prerequisite for the introduction of the new act and thus for the redefinition of the objectives of this regulation was the work of the EU bodies on the adoption of the next generation of directives on public procurement<sup>31</sup> and preparation for Poland's membership in the EU. In the justification, the drafters separately indicated and defined a catalogue of public procurement rules<sup>32</sup>, and gave them a normative form by introducing a chapter on public procurement rules into the Act<sup>33</sup>. At the same time, the outlined objectives justified the need to introduce a new act, while the rules related to the award of public contracts. In defining both the objectives and principles, the legislator did not refer them directly to the procurement itself. The successive changes in the EU<sup>34</sup> and national<sup>35</sup> law have set new objectives for public procurement and have influenced the principles for which the current regulation of public procurement is intended. This means that the current legal status in this respect should be considered unsatisfactory, and the proposed new

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<sup>31</sup> The work on the directives that were adopted on 31 March 2004. – Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of contracts by entities operating in the water, energy, transport, and postal services sectors (OJ L. 2004, No 134, p. 1) and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L. 2004, No. 134, p. 114).

<sup>32</sup> The following principles were indicated: decentralization (independence of the contracting authority); openness; fair competition; equal treatment of contractors; impartiality; written nature; and tendering procedures as basic procedures.

<sup>33</sup> Chapter 2 of the Act of 29 January 2004. – Public procurement law, amendment of 22 June 2016 (Act on amending the Public Procurement Law, Journal of Laws of 2016, item 1020), the content of some of the rules was changed and a new rule "of taking into account the complexity of the contract" was added – Article 9a.

<sup>34</sup> This concerns the procurement directives of 2014.

<sup>35</sup> In this case, these are subsequent numerous amendments to the Public Procurement Law.

act should be considered a legal act which may introduce changes in this respect.

#### 4. The new public procurement law and the economic policies and objectives of public procurement – conclusions

The ongoing discussion and work on a new legal regulation of public procurement inspire us to consider the introduction of systemic solutions to the Act. One of such issues is the issue of economic policies aimed at achieving specific objectives and rules of the new Public Procurement Law assigned to them. In connection with the existing system of legislation in Poland, I consider it appropriate to combine in the provisions of the law the objectives (values) that the public procurement law is intended for with those to be achieved in the process of awarding public contracts. Marek Szydło points out that the objectives of public procurement are the same as the objectives of public procurement law. This view should be regarded as correct, with the reservation, however, that the current state of Polish law does not indicate it. The above view can be related to the law of the European Union and the views presented in the European literature. As I stressed above, the EU law, in its normative part, directly includes the objectives of the given regulations, which serve the implementation of specific economic policies. In addition, the directives on public procurement have an extensive preliminary part, which, apart from indicating the objectives of the regulation, refers to the justification of the objectives adopted and the motives for their implementation. In our public procurement law, just as in the vast majority of statutory acts, the introduction or the preamble is not applied. In order to indicate the objectives of a given regulation, it is therefore necessary to introduce these objectives into the normative part, which in practice may take place by combining the objectives with the principles of public procurement law. Giving a normative form to public procurement objectives will be important at the stage of application of public

procurement law by the contracting authorities, who will thus have a specific legal basis for their actions. The reference at the stage of applying public procurement law to public procurement purposes specified in other documents may be challenged by the controlling authorities. As I pointed out above, all public procurement controlling authorities use the legality criterion as a basis for evaluating contracting authorities' activities. The vast majority of contracting authorities is bound by the provision of the Constitution, which obliges public authorities to act on the basis and within the limits of the law<sup>36</sup>, and thus give the objectives a normative character will deepen the application of the rule of law by contracting authorities. Doubts in this respect may be raised by the adoption of public procurement law objectives in non-normative documents, and then by the actions taken by the contracting authority, which will indicate documents that are not legal acts, as a basis e.g., for the adopted innovative solutions<sup>37</sup> in the planned public procurement<sup>38</sup>. The literature points to the basic objective of public procurement, which should be the economic efficiency of purchases<sup>39</sup>. Without the necessary regulation in this respect, it will be difficult for the contracting authority to indicate why it has adopted a specific relation of price (cost) to the value that the contracting authority intends to achieve when making a given purchase. The principle of economic efficiency is based on this relationship and should always be optimised in accordance with the values that the contracting authority intends to achieve in the public interest. When creating a new public procurement law, it should therefore be considered to

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<sup>36</sup> Article 7 of the Constitution of the Republic of Poland.

<sup>37</sup> One of the basic objectives of public procurement should be to stimulate an innovative economy, see H. Nowicki, *Zamówienia publiczne elementem innowacyjności w polityce gospodarczej Unii Europejskiej oraz Innowacyjność w polskim prawie zamówień publicznych – zagadnienia wybrane*, in: A. Brzezińska-Rawa (ed.), *Rola państwa w procesach podnoszenia konkurencyjności i innowacyjności przedsiębiorstw. Diagnoza istniejących uwarunkowań i barier prawnych – perspektywy rozwoju*, Warszawa 2015, pp. 69 and 79.

<sup>38</sup> Even if it is a government document, e.g. Government Policy in the field of public-private partnership development or the previously mentioned EU document, the Communication from the Commission Europe 2020.

<sup>39</sup> See references in the footnotes 12.

what extent legislation can establish economic efficiency as a goal of the contracts to be awarded. It is clear that, in addition to economic efficiency, other objectives identified in the EU law, which take into account smart, sustainable and inclusive growth<sup>40</sup>, must also be introduced. Consideration could also be given, where appropriate, to introducing the nation's own (national) objectives<sup>41</sup> into the public procurement system, while complying with the EU law. The indicated public procurement objectives will always be public objectives, which are implemented in the contracts in question on the basis of the concluded contracts<sup>42</sup>. Some of the objectives indicated by the EU legislator are developed in the Polish public procurement law and – more broadly – in the Polish legal system. Such objectives include e.g. transparent spending of funds, opening the market to competition, or counteracting corruption. One can only wonder whether the regulations adopted are sufficient and appropriate to achieve these objectives. Our national public procurement law system partly addresses such objectives as efficient spending, innovation in public procurement, green public procurement, pro-social procurement, or support for SMEs. The regulations adopted in this area are, in my opinion, insufficient for them to be considered as introducing specific objectives into public procurement. One example is innovation in public procurement, which in the PPL has been included in the innovation partnership procedure, and yet it should apply to all public procurement contracts<sup>43</sup>.

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<sup>40</sup> Marek Szydło calls these objectives secondary objectives, indicating at the same time that these are not less important objectives, M. Szydło, op. cit., p. 19 et seq.

<sup>41</sup> On the subject of national economic policy, see: H. Nowicki, *Zamówienia publiczne*, p. 45 et seq.

<sup>42</sup> See e.g. the definition from Article 2(24) of Regulation No 1303/2013 of the European Parliament and of the Council of 17 December 2013: "Public private partnerships (PPPs) means forms of cooperation between public bodies and the private sector, which aim to improve the delivery of investments in infrastructure projects or other types of operations, delivering public services through risk sharing, pooling of private sector expertise, or additional sources of capital".

<sup>43</sup> Mentioned above, for more details about innovation in public procurement: H. Nowicki, *Przygotowanie postępowania o udzielenie zamówienia pu-*

An important part of the new procurement act should therefore be the modification of the provisions defining the principles, including objectives, of the public procurement law. Thus, the legislator would give the rules and objectives a normative character. Thanks to such action by the legislator, these rules would perform a twofold function – first of all, they would formulate “specific substantive indications”<sup>44</sup> and would systematize the standards of “a given part of the legal system”<sup>45</sup>. It is necessary to consider which of the adopted principles (objectives) should be included in the initial part of the Act, and which may be left in the already adopted form, i.e. in the regulations already existing in the Polish legal system.

When adopting the rules, the legislator should refer them to the most important and relevant issues for public procurement, with the reservation that, as emphasised above, the rules must be in line with EU law. By reforming the rules and linking them to the objectives of public procurement, the legislator will create the basis for a correct interpretation of the legal rules that govern public procurement. Thus, public procurement law will implement the principle of transparency to a wider extent, while at the same time shaping the legal position of its participants, both contractors and contracting authorities more precisely.

The creation of such a legal framework for public procurement must be accompanied by the assumption that an intelligent and responsible contracting authority<sup>46</sup> should operate in the public procurement system, which, in accordance with the will of the legislator, is responsible for the preparation and implementation of public procurement procedures. The introduction of new public procurement rules (objectives) should be based on the so-called regulatory minimalism, which means “regulating only what is nec-

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*blicznego i jego wpływ na innowacyjność udzielanego zamówienia*, in: *Państwo a gospodarka. Kierunki zmian publicznego prawa gospodarczego*, H. Nowicki, P. Nowicki (ed.), Toruń 2016; H. Nowicki, *Prawo zamówień publicznych instrumentem kreowania innowacyjnej gospodarki* and the author's other works.

<sup>44</sup> Z. Ziemiński, in: S. Wronkowska, M. Zieliński, Z. Ziemiński, *Zasady prawa. Zagadnienia podstawowe*, Warszawa 1974, p. 69.

<sup>45</sup> *Ibidem*, p. 69 et seq.

<sup>46</sup> More on the subject: P. Nowicki, *Efektywne zamówienia publiczne*, pp. 14–15.

essary and only to the extent necessary for the proper implementation of the new directives and the proper functioning of the public procurement system”<sup>47</sup>. An intelligent and responsible contracting authority and the practice of applying public procurement law, including the jurisprudence of the National Appeal Chamber and the courts, will determine the directions for introducing the above rules (objectives) to public procurement in Poland.

Putting public procurement law in order on the basis of the above rules and the establishment of the objectives (specified values) of public procurement, for which this law is intended, will cause this regulation to serve public purposes much more effectively. The objectives of public procurement must be the same as the objectives of public procurement law and take the form of statutory provisions.

## STRESZCZENIE

### Polityka gospodarcza a cele i zasady systemu prawa zamówień publicznych

Artykuł przedstawia problematykę polityki gospodarczej, która przekłada się na cele i zasady systemu zamówień publicznych oraz ich powiązanie i współzależność z celami prawa zamówień publicznych. Rozważania wskazują na relację celów jako wartości służących realizacji określonej polityki gospodarczej i jej przełożenia na zasady systemu zamówień publicznych oraz jej ujęcia w części normatywnej systemu prawa zamówień publicznych. Analizie poddano politykę gospodarczą UE, cele zamówień publicznych w prawie unijnym oraz potrzebę ich implementacji do prawa krajowego. Prowadzone rozważania zawierają postulaty *de lege ferenda*

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<sup>47</sup> H. Nowicki, P. Nowicki, M. Wierzbowski, *Nowe dyrektywy zamówieniowe a polskie prawo zamówień publicznych. Uwagi de lege ferenda*, in: H. Nowicki, P. Nowicki (ed.), *Prawo zamówień publicznych. Stan obecny i kierunki zmian*, Wrocław 2015, p. 22; a similar approach towards regulations with regard to public-private partnership is formulated by T. Gas, *Die gesetzliche Normierung des öffentlich-privaten Kooperationsvertrags*, „Die Verwaltung” 2012, No. 1 and M. Kania, *Modyfikacja umowy o partnerstwie publiczno-prywatnym w świetle modelowych rozwiązań regulacji prawnej dotyczącej współpracy publiczno-prywatnej*, in: H. Nowicki, P. Nowicki (ed.), *Prawo zamówień publicznych. Stan obecny i kierunki zmian*, p. 368 et seq.

i są skierowane do prawodawcy przygotowującego nową ustawę dotyczącą zamówień publicznych.

**Słowa kluczowe:** polityka gospodarcza; cele zamówień publicznych; cele prawa zamówień publicznych; zasady prawa zamówień publicznych

## SUMMARY

### Economic policies, objectives, and principles of the system of public procurement law

This article presents the problems of economic policies, which translate into the objectives and principles of the public procurement system, as well as their connection and interdependence with the objectives of public procurement law. The considerations indicate the relation of objectives as values serving the implementation of specific economic policies and their translation into the principles of the public procurement system and their inclusion in the normative part of the system of public procurement law. EU economic policies and public procurement objectives in the EU law, as well as the need to implement them into national law, have been analysed. The deliberations contain *de lege ferenda* postulates and are addressed to the legislator preparing a new law on public procurement.

**Keywords:** Economic policies; objectives of public procurement; objectives of public procurement law; principles of public procurement law

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