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PROBLEMS OF DEFINING FINANCIAL-LEGAL MEASURES FOR ENVIRONMENTAL PROTECTION IN POLISH LAW

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Abstract

Effective protection of environmental resources is not possible without the use of instruments typical of financial law. This requires the use of public funds from the State and local governments, which are collected and spent in the manner prescribed by law. The Environmental Protection Law regulates the various legal-financial instruments used to fulfil this protective purpose. It also contains a provision defining what financial-legal measures are in terms of this Act. However, the legal definition is formulated in a way that raises numerous drafting and interpretative doubts. This article aims to demonstrate the accuracy of the thesis that there are defects in the statutory definition of legal and financial measures for environmental protection.

Keywords: financial-legal measures, environmental protection, legal definition

INTRODUCTION

Real, effective, and efficient environmental protection is not possible without a commitment of financial resources from both public and private entities. These resources are crucial for the development of society and national economies, and

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are subject to public policy and legal restrictions.[1] It is the responsibility of the State to ensure protection of the natural environment in accordance with the principle of sustainable development.[2] According to the statutory definition, this development is social and economic in nature, characterised by the process of integrating political, economic, and social activities.[3] Business and public planning should consider preserving natural balance and ensuring the sustainability of fundamental natural processes. Sustainable development aims to ensure that the basic needs of individual communities and citizens can be met, both for the present and future generations. Notably, Polish law incorporates a significant aspect of intergenerational solidarity. Environmental resources are viewed as a foundation for long-term economic and social development, extending beyond the lifespan of a single generation. Therefore, financial-legal measures cannot be used as emergency solutions or as instruments with an annual scope for protective purposes, which is typical of state budget execution. The correct legal formulation of these instruments requires their inclusion in the State's strategic plans and programmes.

The Constitution mandates that every entity is responsible for the state of the environment and any deterioration caused by its actions or omissions.[4] Environmental protection is undeniably a public task, and the State is responsible for fulfilling this duty.[5] Achieving this task requires use of public funds for operations carried out within the framework of budgetary and off-budget management.[6] Public finances and the environment are constitutional values, and legal institutions that have a mutual and functional connection. As previously stated, protecting the environment is not possible without funding. The use of resources and mitigation of their impact generate public revenue. However, the fiscal needs of the State alone cannot determine the extent of permissible interference with environmental resources. Indeed, public interest justifies the primacy of non-fiscal functions, particularly those aimed at stimulating behaviour and redistributing GDP through financial law to protect the environment.

The Environmental Protection Law ('EPL') contains the phrase 'financial-legal measures'. This terminology refers to the instrumental use of public monetary resources to achieve the State policy objectives set out in the Act. It can be concluded that the protection of the environment is a higher value in the legal hierarchy than concern for public finances. This type of systemic and functional relationship of supremacy and subordination is not present in constitutional axiology. The Basic Law also does not use the phrase 'financial-legal measures'. Polish Constitution

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1 Gorgol, A., 'Kontrowersje uregulowania prawnofinansowych środków ochrony środowiska: Zagadnienia systemowe', in: Jeżyńska, B., Kruk, E. (eds), *Prawne instrumenty ochrony środowiska*, Lublin, 2016, pp. 23–24.

2 See Article 5 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended), hereinafter referred to as 'the Constitution'.

3 See Article 3(50) of the Act of 27 April 2001 – Environmental Protection Law, (consolidated text, Journal of Laws of 2021 item 1973, amended), hereinafter referred to as 'the EPL'.

4 See Article 86 of the Constitution.

5 See Article 74(2) of the Constitution.

6 Gorgol, A., 'Prawo ochrony środowiska jako ustawa daninowa', *Krytyka Prawa: Niezależne Studia nad Prawem*, 2020, Vol. 12, Issue 4, pp. 73–74, https://doi.org/10.7206/kp.2080-1084.410.

serves as the foundation for the national legal system and is considered the supreme law, directly applicable in principle.[7] This regulation establishes the legal obligation to interpret statutory terms in a manner consistent with the Constitution. However, the practical significance of this precept in determining the scope of the meaning of the expression 'financial-legal measures' within the framework of linguistic-grammatical interpretation is questionable. No comparison is necessary between the designations of identical constitutional and statutory terms. Furthermore, the directive of pro-constitutional interpretation is a systemic interpretation that aims to rectify uncertain conclusions of legal semiotics. However, the legal definition does not alleviate this uncertainty.

An intra-system interpretation of the statutory definition shows that the legal term 'financial-legal measures' is used only twice in the Act, at different levels of its formal layout. The title, which is the most general editorial unit, is where the term first appears in the nomenclature of this part of the Act.[8] Based on initial assumptions and referring to the Latin maxim *nomen omen* and the rationality of the lawmaker's actions, it should be considered that legal phrases are used deliberately in the legislative process and carry a specific meaning. Thus, it is reasonable to assume that all financial law measures in statutory terms, which are used to protect the environment, should be included in Title V of the EPL. Secondly, this term is used as a *definiendum* in the defining provision.[9] The Environmental Protection Law includes a 'statutory glossary', which groups legal definitions formulated to apply to this Act.[10] However, the catalogue does not contain a provision defining legal and financial measures. Therefore, the question to be clarified is whether this omission is a rational solution.

The purpose of this article is to critically analyse the legal significance of the phrase 'financial-legal measures' as used in the Environmental Protection Law. The defined research intention determines the thematic scope and structure of the article. The author's argument aims to demonstrate the accuracy of the thesis that there are defects in the statutory definition of legal and financial environmental measures. To address the research problem, it is necessary to use dogmatic interpretation. This helps analyse legal texts and determine the applicable legal provisions. Laws will be treated as formalised linguistic expressions of a molecular nature, consisting of linguistic signs linked by syntactic and logical ties.

7 See Article 8 of the Constitution.
8 See Title V of the EPL.
9 See Article 272 EPL.
10 See Article 3 EPL.

DEFINIENDUM OF FINANCIAL-LEGAL MEASURES FOR ENVIRONMENTAL PROTECTION IN THE LIGHT OF THE PRINCIPLES OF LAW-MAKING TECHNIQUE

Before establishing the meaning of the expression 'financial-legal measures', it is worth considering the legislative conditions for the application of legal definitions. The importance of this issue lies in the fact that the accuracy of law-making directly affects the content of provisions and their interpretation and application. Defects in the law may be so significant that they cannot be remedied without derogating from or amending the law.

In Polish law, the principles of legislative technique have been formulated as an appendix to the Regulation of the Council of Ministers. As the name suggests, these principles aim to achieve the correct outcome of the legislative process. They hold technical value as they recommend the use of precise instruments to accomplish the intended legislative goals. Statutory definitions are one example of such means.[11] It is worth noting that this method of definition is subject to constraints that are not homogeneous, as they are governed by separate editorial units of a legal act with the same formal rank, namely paragraphs. Some of these give rise to legislative imperatives, while others result in legislative prohibitions, which can be applied either conditionally or unconditionally.

Firstly, it is important to note the injunction to create legal definitions. The legislative body is not free to choose whether or not to use such an instrument, as § 146(1) RLT uses the expression 'shall be formulated'. The use of a legal definition is deeply justified from a rational praxeological perspective. Failure to apply this means of legislative technique in the situations described in the provision under consideration would result in significant legislative shortcomings.

Legal language is used to edit the content of a legal document. It typically employs the official language of a country, which is often the national colloquial language. However, there is a notable exception in EU legislation, which is drafted in all the languages of the Member States. The wording in each language version is equivalent to the national wording in the others. In Poland, statutory definitions are drawn up solely according to the rules of the Polish language, which is the official language used by public authorities, including those responsible for creating laws.[12] Legislation is a procedure for carrying out a public task, and therefore, the use of the Polish language is required.[13] The monopoly of this language in official matters does not, however, guarantee the absence of problems in the construction of legal provisions, the decoding of their content, and their application in social relations. These issues arise from the use of colloquial Polish, which may not always be adequate for achieving legislative goals. Legal acts frequently describe intricate

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[11] See for example § 147 and 148 of the Regulation of the Council of Ministers of 20 June 2002 on Rules of Law-making Techniques (consolidated text, Journal of Laws of 2016, item 283, as amended), hereinafter referred to as 'the RLT'.

[12] See Article 4 of the Act of 7 October 1999 on the Polish Language (consolidated text, Journal of Laws of 2021, item 672, as amended), hereinafter referred to as 'the APL'.

[13] See Article 5(1) APL.

social, economic, and political phenomena using technical terminology, which may have a different meaning in informal Polish than in legal language. It can be concluded that provisions of Polish law may be drafted within the scope of legislative discretion using typical dictionary rules of the Polish language or with their omission but in accordance with the principles of law-making technique. The literature on the subject emphasises the need for legal definitions to assign specific meanings to vocabulary that differ from those in common Polish language.[14]

The obligation to provide a legal definition is restricted to situations listed in a closed catalogue. Under § 146(1) RLT, this applies in four cases: (1) when the term in question is ambiguous; (2) when it is unclear and it is desirable to limit this defect; (3) when its meaning is not universally understood; and (4) when there is a need to establish a new meaning for the term due to the field of regulated matters. § 146(2) RLT clarifies the rationale for ambiguity. This provision applies when an unclear term appears in a single legal provision. In this case, the requirement to use legal definition is subject to the condition that the context in which the term is used has not resolved the ambiguity. It is important to note that a linguistic-grammatical interpretation alone is insufficient to determine the meaning of legal language. The meaning of the *designatum* is derived from both its content and its position in the structure of the legal act. The contextual interpretation of the provision is achieved through systemic interpretation, which includes *argumentum a rubrica* in the inferential process.

As previously stated, Title V of the EPL uses the term 'financial-legal measures'. It is important to note that this section of the Act does not constitute a legal provision. The meaning of the legislative measure is functionally linked to the nomenclature of the formal unit. At first glance, it is clear that this does not resemble a sentence written in legal language. Article 272 EPL is the only provision that includes the term 'financial-legal measures'. It is important to note that this provision defines a legal expression that differs from the one used in the title of Title V of the EPL. The *definiendum* also includes the phrase 'environmental protection'. This raises the question of whether this regulation results in a significant alteration of the definition. The answer to this question should be negative. It is evident from the normative context that 'financial-legal measures' serve as tools for environmental protection. This instrument is functionally linked to the protective purpose of its application. The term 'financial-legal measures' appears only twice in the Act. It is unnecessary to create a legal definition of this term to understand the meaning of other legal provisions that do not include this wording. Assuming the rationality of the legislator's actions,[15] it should be considered that the *definiens* contained in the defining provision refers both to the concept of 'financial-legal measures' and 'financial-legal measures of environmental protection'. It is important to note that the identified inconsistency of statutory terms should not be

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[14] Wierczyński, G., *Redagowanie i ogłaszanie aktów normatywnych: Komentarz*, Warszawa, 2010, pp. 743–745; Zieliński, M., Wronkowska, S., *Komentarz do zasad techniki prawodawczej*, Warszawa, 2012, pp. 287–289.

[15] Wróblewski, J., 'Racjonalny model tworzenia prawa', *Państwo i Prawo*, 1973, No. 11, pp. 4–6.

seen as a weakness of the legal definition; rather, it constitutes an error in constructing names of the units within the structure of a legal act.

The construction of the *definiendum* is disputed due to the incorrect use of the phrase 'financial-legal measures'. The error lies in the use of the term 'financial-legal'. There is no dictionary definition of this wording in the Polish language. Even at first glance, it is evident that this term has a complex lexical structure. It is composed of two words connected by a hyphen. From this, two conclusions can be drawn. Firstly, a word is a binary linguistic compositum, containing two elements: 'financial' and 'legal'. Secondly, the use of a hyphen indicates that the two elements should be equivalent, each referring to the characteristics of the noun 'measures', which must be both financial and legal. In order to decipher the meaning of the *definiendum*, internal relations within the linguistic compound should not be taken into account. The term 'financial' does not clarify the term 'legal'. The meaning of the word 'legal' is not narrowed by reference to the context expressed by the word 'financial', nor does the reverse relationship occur. However, the construction of the *definiendum* should be considered incorrect as the structure of the linguistic compound cannot be deemed equivalent. The importance of the legal element outweighs that of the financial element. In a democratic state ruled by law,[16] financial phenomena cannot operate in isolation from legal rules and the axiological foundations of the legal system. For this reason alone, the separation of legal and illegal forms of finance has no substantive justification and should even be considered absurd. The phrase 'financial-legal' should be replaced by 'legal-financial', as it relates directly to financial law.[17] As previously stated, the measures outlined in this legislation are crucial for safeguarding environmental resources. Environmental law is a form of public law. Financing environmental protection is a public task and is one of the processes typical of public finance.[18] Laws should therefore define the competencies, forms of action, and means necessary for this task. Consequently, the collection and disbursement of public funds for environmental protection purposes must adhere to the basis of implementing financial regulations, within their limits and for their intended purpose. These considerations lead to the thesis that the expression 'financial-legal measures' means financial law instruments used to protect the environment.

The phrase 'financial-legal measures' is not defined in the Polish language dictionary, nor is it commonly used in colloquial Polish. On these grounds alone, the term can be considered specialised and used exclusively by professionals. As previously stated, its editorial structure does not meet the requirements of correct legislation. These arguments justify the need for a legal definition to determine the meaning of the expression 'financial-legal measures'. It is important to note that legislative bodies are required to include a definition of any terms that may not be commonly understood in the law.[19]

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16 See Article 2 of the Constitution.

17 Gorgol, A., 'Kontrowersje…', op. cit., pp. 27–28.

18 The legal definition of public finance is contained in Article 3 of the Act of 27 August 2009 on Public Finances, (consolidated text, Journal of Laws of 2021, item 305, amended), hereinafter referred to as 'the APF'.

19 See §146(1)(3) RLT.

As previously mentioned, the term being defined is a composite used in legal language. This circumstance is significant in terms of the Rules of Law-making Technique, as they allow for the use of the shortened phrase.[20] Repetition of the identical term in the same act is a condition for using this instrument of legal drafting. The use of the abbreviated phrase would be unnecessary if 'financial-legal measures' were mentioned only once in the Environmental Protection Law. However, this is not the case because the compositum is used twice. Nevertheless, there is uncertainty regarding the meaning of 'multiple' as a requirement for abbreviating the defined word. The term is not defined in any legal act; therefore, it is necessary to refer to the dictionary definition of the Polish language. Based on this evidence, it can be concluded that the term 'multiple' refers to 'something that is repeated many times'.[21] Multiplicity is the opposite of singularity and includes duplicity, characterised by a single repetition. For this reason, the phrase 'financial-legal measures' must be considered to have been used multiple times in the text of the Act.

It is worth noting that the legislative directive prescribes that the abbreviation be placed in a general provision, a systemising unit of a legislative act, or a provision in which the compositum first appears.[22] The Act's general provisions do not use the phrase 'financial-legal measures'. As previously stated, this term is not included in the glossary of statutory terms created for the application of the entire Act. The placement of the legal definition among specific provisions is a contentious issue in design. In view of the crucial role of legal and financial measures in the environmental protection, it is advisable that they be defined at the beginning of the legislative act, in addition to the general provisions. This thesis is further supported by the formal structure of the Act. The importance of financial law measures is demonstrated by the fact that the *definiendum* is reflected in the nomenclature of Title V of the EPL, which is the most general editorial unit. It is important to note that the designation of the subject should not be abbreviated in place of its first regulation. The use of an abbreviation in the legal definition itself makes no sense when subsequent provisions do not refer to the *definiendum*. However, the rule of decent legislation is more relevant than the non-use of abbreviated words. The use of abbreviations is not allowed in the section of the provision that defines the term.[23] As aptly noted in the literature, it is important to distinguish between the abbreviation and the legal definition. Explanations of abbreviations may not be provided in the glossary of statutory terms but in a separate provision.[24] Therefore, the abbreviation cannot be used to signify the *definiendum* in a defining provision. The examined prohibition is a rational tool for preventing ambiguity in the definition of a legal concept.

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[20] See §154(1) RLT.

[21] Bańko, M., *Słownik Języka Polskiego. Tom 6*, Warszawa, 2007, p. 34; Szymczak, M., *Słownik Języka Polskiego PWN R-Z. Tom 3,* Warszawa, 1999, p. 657.

[22] See §154(2) RLT.

[23] See §154(4) RLT.

[24] Szafrański, D., *Zasady techniki prawodawczej w zakresie aktów prawa miejscowego: Komentarz praktyczny z wzorami oraz przykładami*, Warszawa, 2016, Legalis/el., Nb. 7.

DEFINIENS OF FINANCIAL-LEGAL MEASURES FOR ENVIRONMENTAL PROTECTION IN LIGHT OF THE PRINCIPLES OF LAW-MAKING TECHNIQUE

The explanation of the meaning of financial-legal measures for environmental protection takes the form of an exemplary enumeration of their specific categories. According to Article 272 EPL, these include a fee for using the environment, an administrative fine, a differentiation in the rates of taxes and other public imposts to protect the environment, and an emission fee. At first glance, it is evident that the items listed in the statutory catalogue are not uniform in their editorial aspect; some are singular, while others are plural. Based on this, it can be concluded that measures for environmental protection can take the form of a specific financial instrument or a combination of different instruments. The singular designation is characteristic of the fee for using the environment, the administrative fine, and the emission fee. In contrast, a collective editorial description has been applied to the rates of taxes and other public imposts. It is important to note that differentiating between singular and plural forms when referring to environmental protection measures can have interpretative implications and substantive justification. Rates are an element of the construction of taxes and other public imposts, and they are used to calculate the amount of a pecuniary performance. In contrast, fees and administrative fines are considered pecuniary performances themselves. It should be stressed that the defining provision includes two categories of fees. Therefore, there is a question as to whether they should not be regulated together in the legal definition. However, the current editorial solution is reasonable, as the charges differ significantly despite the common name. They have very different structures and fiscal purposes. A standard fee is a mutual performance; the entity making the payment receives a service or an official act from the state or local authority. In the absence of such mutual performance, a tax may be disguised as a 'fee'. The distinction between a tax and a fee is based on only one feature: unlike a fee, a tax is non-chargeable. It has been argued in the literature that the terms 'emissions fee' and 'fee for using the environment' are misleading and that they are actually taxes.[25] In agreement with this position, it should be considered that the terms used in the provisions should not be misleading. The law must use precise and commonly accepted linguistic phrases in their basic meaning.[26] The term 'fee' used in relation to a tax does not meet the requirements of this important drafting directive.

It is possible to allege a breach of the legislative directive in Article 8(1) RLT by using the singular in the *definiens* to designate a measure that is, in fact, a group of separate instruments. The defining provision includes a fee for using the environment, which is drafted in the singular. However, an analysis of the following articles of the Act contradicts the legislative accuracy of this expression. For instance, in Article 277(1) EPL, the term 'fees for using the environment' is used. From a logical perspective, an instrument cannot be designated in two opposing and

[25] Głuchowski, J., *Podatki ekologiczne*, Warszawa, 2002, p. 71; Gorgol, A., 'Prawo…', op. cit., p. 81.

[26] See § 8(1) RLT.

mutually exclusive ways. It cannot be both a 'fee' and 'fees'. Identical terms should always be used to refer to the same concepts, and different concepts should not be referred to using the same terms.[27] This directive aims to prevent confusion in the wording of legal language. It is important to note that legislation cannot be reduced solely to its formal aspects. Concepts have specific meanings, and legal language describes social, economic, and political phenomena. It should reflect reality and avoid speculative creations that contradict observable regularities.

When analysing the provisions that regulate fees for using the environment, it is important to note that they formally include the so-called 'increased fee'. This impost shall be paid by the entity using the environment without obtaining the required permit or other decision. The entity using the environment without obtaining the required permit or other decision shall be responsible for paying this impost.[28] The linguistic drafting of this fee indicates that it is a single measure. However, the detailed regulation is located in Chapter 3 of Title V of the EPL, which is titled 'increased fees'. In this case, there is a set of environmental protection measures that share a common feature indicated by their name. There is an increase in monetary performance that distinguishes these measures. It is worth considering whether the increase in monetary value is merely an additional feature of the measure or if it alters the fundamental nature of the environmental protection instrument. An increase in the fee for using the resources of the environment should not be evaluated solely on quantitative grounds; the legislative effect is also significant. This thesis is motivated by the rationale for applying increased fees. If the entity does not have a permit or other authorisation to use the environment, it is not entitled to use it. In this situation, the individual is breaking the law by illegally exploiting environmental resources. This justifies imposing a penalty rather than a fee.[29] The payment of higher public imposts should not legalise infringements of the law, as this would weaken its protective function. Increased fees may be considered an administrative fine, leading to an unjustified preference for wealthier entities who can avoid necessary administrative formalities over permit holders or those with other decisions. The fee increase is actually an administrative fine.[30] As previously stated, it is listed in the definition as a measure within the category of 'financial-legal' measures. This is the main reason for disguising the actual monetary penalty as a 'fee'. Thanks to this legislative solution, it became possible to apply various environmental protection measures simultaneously in the same factual situation. However, it should be noted that this solution is incorrect from the point of view of legislative technique. The administrative fine is accompanied by an increased fee.[31]

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[27] See § 10(1) RLT.

[28] See Article 276(1) EPL.

[29] Radecki, W., *Odpowiedzialność prawna w ochronie środowiska*, Kraków, 2004, p. 29; Wincenciak, M., *Sankcje w prawie administracyjnym i procedura ich wymierzania*, Warszawa, 2008, p. 73; Radecki, W., 'Kary pieniężne w polskim systemie prawnym: Czy nowy rodzaj odpowiedzialności karnej?', *Przegląd Prawa Karnego*, 1996, No. 14–15, pp. 5–18; Szydło, M., 'Charakter i struktura prawna administracyjnych kar pieniężnych', *Studia Prawnicze*, 2003, No. 4, pp. 123–150.

[30] Gorgol, A., 'Kontrowersje…', op. cit., pp. 30–31; Bukowski, Z., Czech, E., Karpus, K., Rakoczy, B., *Prawo ochrony środowiska: Komentarz*, Warszawa, 2013, pp. 476–482.

[31] See Article 276(2) EPL.

From Roman law, the maxim *ne bis in idem* is derived. This short sentence contains the important principle that no one can be punished twice, or repeatedly, for the same deed. From a formal perspective, the application of an administrative fine alongside a fee does not constitute an infringement. However, if an administrative sanction is disguised as an 'increased fee', it violates the principles of fair legislation and the standards of a democratic state ruled by law. It is important to note that an increased fee may be charged in addition to the standard fee for using the environment.[32] This applies when waste is dumped illegally. From the perspective of a democratic state ruled by law, it is impermissible to tax the same individual twice. For this reason, the provision allowing for the cumulative application of two fees violates the principle of good legislation, as it is not clear and concise. However, the legal classification of the situation differs when an administrative fine is imposed in addition to the standard fee. Not only does the use of various means enhance the protection of environmental resources, but the standard of a democratic state ruled by law is upheld.

The inclusion of differentiated rates of taxes and other public imposts in the catalogue of financial-legal measures for environmental protection should be considered a matter of legislative discretion and a manifestation of the traditional right of the sovereign state. However, the outcome of this legislative process is not flawless and raises valid concerns regarding both content and drafting. Fees, along with taxes, are categorised as public imposts, which are one of the groups of public revenues.[33] The rate is a structural element of these legal and financial instruments. Fees applied to protect the environment have different rates. The nomenclature and structure of the increased fee confirm this unequivocally. The rates of the typical fees for using the environment are regulated in Chapter 2 of Title V of the EPL. The title of this editorial unit is misleading, as it suggests that the structural elements of the public impost are derived directly from its provisions. However, the regulated rates are not actually governed by the Act, but rather by the implementing regulations. The statutory provisions only introduce maximum ceilings on the amount of rates.[34] Still, the Act does not introduce a threshold limit. The purpose of this regulation is to define the limits of legislative discretion, within which the legislator has the competency to determine the rates. The statutory provision includes an authorisation that grants the government the authority to issue an implementing regulation.[35] The Council of Ministers must comply with the legislative directives outlined in the statutory empowerment, which include, *inter alia*, the possibility of differentiating the rates of fees. Assuming the rationality of law-making activity, it can be considered that differentiation is determined by the function of the legal-financial instrument used to protect the environment. As a fee is a public impost with differentiated rates, it can be considered a hybrid of the two measures described in the *definiens*. It is characterised both by its features and by the diversity of its rates for environmental protection purposes. This example highlights the logical and drafting errors in the definition of the term 'financial-legal measures'. There is a view in academic literature

[32] See Article 295(7) EPL.
[33] See Article 5(2)(1) APF.
[34] See Article 290(1) EPL.
[35] See Article 290(2) EPL.

that considers this to be a categorical error in definition.[36] This thesis is not valid, as within the framework of legislative discretion, it is possible to define the term 'measure' differently from its colloquial meaning in Polish.[37] A well-constructed statutory catalogue should contain elements with separable scopes of meaning.

It is important to note that the differentiation of rates of taxes and other public imposts is a legislative directive of law-making aimed at protecting the environment. However, it is inadequate for achieving the statutory objective. From a linguistic perspective, the rate itself is not included in the *definiens*. This tax parameter should have the additional feature of being differentiated. No provision clarifies what it should specifically consist of. Under Article 283(1) EPL, rates of taxes and other public imposts should be differentiated based on the objectives of environmental protection. When evaluating the informational value of this legislative sentence, it must be considered very limited. Essentially, the legal expression is a repetition of the words used in the name of an environmental protection measure. The addition of the word 'purpose' indicates the purposeful and stimulative nature of the differentiation of rates. However, the means of achieving the statutory result have been omitted. Therefore, it should be noted that the reviewed provision contains a standard programming norm.[38] It should also be noted that only in the case of differentiating excise duty rates is there an additional imperative to structure them in a way that the market price of fuels primarily reflects their negative environmental impact.[39] It is thus clarified that prices are the instrument of direct influence on taxpayers, shaped directly by the market mechanism. The state has an indirect influence on public imposts through its regulation of their construction, which is achieved by standardising rates rather than differentiating them.

It is should be noted that the differentiation of rates of taxes and other public imposts stands out among other elements of the *definiens* by the manner of its regulation in statutory provisions. Title V of the EPL does not contain any chapters or subchapters that further develop this issue. As previously stated, the differentiation of rates is regulated by a single article of this Act. It is worth noting that the provision is located at the end of Chapter 1, titled 'General Provisions'. Based on this evidence, it can be concluded that the regulation of rate differentiation is very vague, fragmentary, and purposeful. There is another drafting issue of great importance in establishing non-compliance with the rules of law-making technique. Title V of the EPL is structured by dividing the normative content into chapters. As previously stated, the initial section is titled 'General Provisions'. The use of the term 'nomenclature' in this context is misleading as subsequent editorial units do not contain specific provisions on legal and financial measures for environmental protection. Chapter 1 should be seen as the section of the Act where the provisions common to all the instruments included in the statutory catalogue of the *definiens* are collected in one editorial unit. This chapter serves as a reference point for the

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[36] Draniewicz, B., *Opłata produktowa*, Warszawa, 2009, p. 67.

[37] Gorgol, A., 'Kontrowersje…', op. cit., p. 31.

[38] Grzonka, L., *Koncepcja norm programowania z perspektywy teorii prawa*, Poznań, 2012, pp. 31–51.

[39] See Article 283(1) EPL.

entire Act. The title 'General Provisions' is not appropriate and should be changed to 'Common Provisions'. However, a caveat must be made. The provision governing the differentiation of rates of taxes and other public imposts is not common or general. It should not be placed in Chapter 1 of Title V of the EPL, but in a separate editorial unit covering the matter regulated in that title. The use of the term 'General Provisions' is not discretionary, primarily due to the rules of decent legislation. The legislative body is bound by the order in which individual provisions appear in a legal act.[40] The general provisions of the Act should be placed immediately after its title. The regulation of legal and financial measures for environmental protection does not meet this requirement. Their placement in Title V of the EPL, and thus in the middle of the Act, indicates that they are special provisions. General provisions of an act define its subjective and objective scopes, specify the matters and entities excluded from regulation, and explain the expressions and abbreviations used.[41] The Act may also contain provisions that are common to all or most of its substantive provisions.[42] However, it is important to note that common legal solutions for special provisions should not be interpreted as general provisions, as this would breach the rule of law-making technique. The Act's editorial units use the same nomenclature 'General Provisions' to designate both its Title I and Chapter 1 found in Title V. This could be classified as a violation of another rule of law-making technique, where different concepts should not be designated by the same terms.[43] It can be concluded that specific regulations should not be referred to as general regulations.

The defining provision mentions the emission fee and indicates that it is 'referred to in Article 321(1)'. Based on this evidence, it can be concluded that the *definiens* was constructed using a typical legislative technique of reference. Surprisingly, other legal-financial measures are not described in the statutory catalogue through a cross-reference provision, prompting the question of whether this is the outcome of rational action. The emission fee is a single monetary performance and does not need to specify whether it covers a set of instruments. Article 272 is the first instance of its appearance in the Act. Chapter V in Title V of the EPL contains provisions that regulate this environmental protection measure. The emission fee is referenced in various special provisions, not only in Article 321(1) EPL. Therefore, the reference therein is unnecessary and confusing. There is an additional question about the location of the provision referred to in the legal definition, as the reference does not provide sufficient information about the legal act. This editorial issue cannot be resolved through linguistic and grammatical interpretation. The use of systemic interpretation is necessary to determine that the reference is internal rather than external. The analysed element of the defining provision does not meet the requirements of proper legislation. It is important to note that the statutory definition contains a linguistic error in stating that any provision 'talks' about an

[40] See § 15 RLT.
[41] See § 21(1) RLT.
[42] See § 21(2) RLT.
[43] See § 10(1) RLT.

emission fee. Speaking requires uttering words to communicate with other people.[44] Provisions lack this ability, a trait commonly found in humans and some animals.

A reference is an instrument of legislative technique used to ensure the brevity of the text or the coherence of the legal institutions regulated in a legal act.[45] As noted above, neither legislative outcome can be achieved in terms of regulating the emission charge in the statutory definition of 'financial-legal measures'. It should be noted, however, that to ensure consistency, the cross-referencing provision must both define the scope of the matter referred to and clearly identify the legal provision or provisions to which reference is made.[46] There is undoubtedly a lack of such clarity in the *definiens*. The reference contained in the provision defining legal and financial measures for the protection of the environment cannot be considered an instrument for achieving consistency between legal institutions. As noted above, there is only one provision to which reference is made. At first glance, it may appear that the legislative requirements for using the reference to shorten the content of the Act have been met. They consist in indicating the provision or group of provisions to which reference is made.[47] However, the lack of clarity as to the location of the provision to which the reference is made precludes its recognition as a measure having the effect of shortening the content of the legal act.

The provision to which reference is made must be in force. However, its meaning may change as a result of amendments to the Act, raising the issue of selecting the correct wording, which is crucial for its proper interpretation and compliance with the rule of law. The rules of law-making technique provide instructions for dealing with such situations, including the use of dynamic references.[48] The textual version of the provisions in force at the time of application of the referring provision must be considered. The exception is a static reference. The name of this instrument indicates that, when interpreting a legal act, the wording of the provision does not change, even if it has been amended. The reference provision should clearly indicate the version of the legal regulation to which it refers.[49] It should be emphasised that the reference provision contained in the legal definition of 'financial-legal measures' has a dynamic form. In practice, however, it does not matter whether this reference is static or dynamic. A systematic interpretation of the *definiens* shows that it follows Article 321a(1) EPL, and this provision has not been amended.

The use of the method of exemplary enumeration of legal and financial measures applied for environmental protection in the *definiens* makes the statutory catalogue a form of exemplification of these instruments. From the point of view of an interpreter of the text of a legal act, there is no doubt that the enumerated explanatory elements of the *definiendum* must be qualified in legal terms accordingly. As a rule, only the typical legal institutions characteristic of the defined concept

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[44] Bańko, M., *Słownik Języka Polskiego. Tom 3*, Warszawa, 2007, p. 22; Szymczak, M., *Słownik Języka Polskiego PWN L-P. Tom 2*, Warszawa, 1999, p. 208.

[45] See § 156 RLT.

[46] See § 156(3) RLT.

[47] See § 156(2) RLT.

[48] See § 159 RLT.

[49] See § 160 RLT.

are included in the catalogue. For this reason, the informational value of the exemplification is relatively limited. It should also be noted that the definition of 'financial-legal measures' is restricted to a non-exhaustive list of examples of these instruments. However, the text does not provide an explanation of the specific characteristics that each means of protecting environmental resources should possess. The limitation of the content of the *definiens* to exemplification should be considered a legislative defect. The legal definition becomes partial, apparent, and uncommunicative. This error leads to the division of environmental legal-financial measures into named and unnamed ones.[50] Named instruments are included in the statutory catalogue, while unnamed measures are omitted from the definition. The shortcomings of the legal definition are mainly seen in the absence of any editorial description of this group of instruments. In this case, it is not even a matter of legislative understatement; rather, there is no legal requirement for such measures. This issue should be addressed by broadening the content of the *definiens* to clarify the essence of each 'financial-legal measure' for environmental protection.

A definition constructed by enumerating the constituent elements of the scope of meaning of a *definiendum* has a defined scope.[51] However, this statement needs clarification, as an enumerative catalogue can influence the meaning of a legal term in a positive or negative manner. A clear and objective definition enables the determination of the meaning of a *definiendum*. A negative definition, on the other hand, is formulated by contradiction, indicating the exclusions of certain elements from the scope of the *definiendum*. As it creates exceptions, they should be included in a closed catalogue. The Latin rule *exceptiones non sunt extendendae* requires strict interpretation of provisions drafted in this manner. It is important to note that defining provisions can have both positive and negative elements, which should not be considered in isolation. By placing them together in the *definiens*, the legal definition becomes a mixed, but not a hybrid, definition. The positive and negative elements must not overlap in their scopes of application. Overlapping scopes would create a functional and logical contradiction, indicating a mutual relationship between the elements. It should be noted that the term 'financial-legal measures' is defined positively. There are no negative elements present in either the *definiens* or the *definiendum*.

The Rules of Law-making Technique establish a standard for defining the scope of a legal concept. § 153(1) RLT requires that the definition be formulated in a single provision and cover the entire scope of the term being defined. It follows that the constituent elements of a definition should not be scattered throughout the text of a legal act. It is not permissible to include them in the text of two or more provisions, as this would cause interpretative issues. Determining the designation of legal language requires more than just interpreting the linguistic and grammatical features of the Act's editorial units. The outcome of the interpretation depends on the interaction of all rules, which are collectively used. Ambiguity in legal provisions can lead to disputes during interpretation and application. It is important to acknowledge that a single definitional provision has a functional

[50] Gorgol, A., 'Kontrowersje…', op. cit., pp. 26–27.
[51] See § 153(1) RLT.

and positive correlation with its coverage of the entire scope of the definition. The formal fragmentation of the regulated matter is a result of the multiplicity of provisions. A loophole may arise if the legal term being defined has a broader range of meaning than the combined ranges of the individual elements in the legal definition resulting from separate provisions. It is important to note that the term 'financial-legal measures' has been defined through a single provision. However, the formal compilation of the regulation did not lead to a full definition of their entire scope of meaning in the *definiens*.

A scope definition may be closed or open, and this division is crucial in interpreting the content of a legal act. The definition of a closed scope meets the requirements outlined in § 153(1) RLT. The defining provision governs the entire scope of the meaning of the *definiendum*, and the interpreter cannot supplement or alter a legal definition constructed in this manner. However, if the content violates the coherence of the legal system, it is necessary to remove this defect by applying the rules of systemic interpretation. In contrast, a scope definition that is open-ended does not fully specify the meaning of a legal language concept. This definition only provides an example list of the most common indications for the *definiendum*. The defining provision uses the phrase 'in particular', which is to be expected; it is not an editorial means of differentiating the designations used. The use of 'especially' instead is not acceptable because it implies that the following elements in the *definiens* may have been considered more important than the others.[52] An open-ended scope definition weakens the process of interpreting legal provisions, as its application does not resolve various doubts arising from the findings of linguistic-grammatical interpretation. Too narrow a scope of the terms included in the content leads to the vagueness of the provision. There is no doubt that the legal definition of 'financial-legal measures' is an open-ended definition of its scope. This conclusion is confirmed by the fact that the list of instruments used for environmental protection in the statutory catalogue is too limited. Furthermore, the defining provision contains the term 'in particular', which is typical of an open-ended scope definition.

In the process of creating an open scope definition, the requirements set out in § 153(3) RLT cannot be ignored. This provision makes its application conditional on the *definiens* indicating the exemplary nature of the enumeration. The use of the term 'in particular' achieves the editorial objective. The legislator is thus deprived of the possibility of using another word that is equivalent to the wording of the legal definition. The rule of law-making technique 'binds' him strictly, so that he loses his legislative discretion. This undoubtedly leads to a standardisation of the defining provisions, but its degree and scope are limited by the meaning of the expression 'in particular'. On this basis, it can be concluded that such restrictive regulation of the legislative process is unnecessary and not reasonable. It even contradicts the rule that the meaning of terms in the legal language is determined by their context. For the legislator and the interpreter of legal provisions, what follows from their validity is more important than the specific word used. If the words are synonyms, each can potentially be used to regulate the scope of the *definiendum* meaning.

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[52] Szafrański, D., *Zasady…*, op. cit., Nb. 4.

It should be considered reasonable to remove the legislative discretion to choose whether the scope definition is open or closed. § 153(3) RLT makes clear that there is a sequential standard for applying these measures. A closed scope definition is the typical tool for defining legal terms and should be applied in the first instance and whenever possible. An open scope definition, on the other hand, is an exceptional instrument, used on a conditional basis. This is the case when it is 'not possible' to give a definition in closed form, implying that it is a 'last resort' measure, as it is the only legislative technique available in certain situations where there is no alternative. However, the rationale for applying an open scope definition may be questionable. The difficulty lies in the precise decoding of the meaning of the expression 'it is not possible'. It should be considered equivalent to the meaning of the word 'impossible'. The Dictionary of the Polish Language explains that it is a phrase expressing the belief that the thing in question has not happened or will not happen.[53] Impossibility means that a given situation becomes impossible, i.e., fails to happen. It should be understood in objective terms, not subjective ones. The impossible is not due to the lack of capacity of a particular person to act; rather, objective circumstances are the source of the obstacle to the realisation of a state or situation. They prevent the planned outcome from materialising, regardless of the actor who takes action to achieve this goal. It should be noted that there is no absolute impossibility that precludes the possibility of constructing a closed definition while allowing the use of an open definition. This would mean that, for objective reasons, the legislator is not in a position to describe all the *definiendum* indications in the definitional provision and instead confines itself to listing them by way of example.

It should be emphasised that any scope definition is a non-classical definition. Indeed, it contains a list of the designations of the defined legal language. Enumeration is characteristic of a *definiens* and does not apply to a *definiendum*, which may be a collective concept but not a collection of individual elements. The provision defining 'financial-legal measures' describes them in the plural, aptly indicating that there is more than one. Although the *definiendum* consists of three words, they are not homogeneous. The noun 'measures' is further specified by the compositum, which is made up of two words that function as adjectives. This leads to the conclusion that they do not constitute an enumeration of the defined concept of the language of law. The legal definition under consideration is a nominal one, not a real one, as it defines a name, a linguistic construct, not a real existing object. This definition should be treated as a design definition, not a reporting definition, as it creates a new concept of legal language, which is unknown in common Polish language. It is worth noting that design can also be thought of in terms of making laws and programming how they are interpreted and applied. Legislative activity consists, *inter alia*, in drafting the content and form of legal acts and their constituent parts.

Definiendum and *definiens* are undoubtedly the two basic elements of any legal definition. The construction of this measure of legislative technique also includes a link known as a *copula*. Following an analysis of the syntax of the provision

[53] Bańko, M., *Słownik Języka Polskiego. Tom 3*, op. cit., p. 149; Szymczak, M., *Słownik Języka Polskiego PWN L–P. Tom 2*, op. cit., p. 324.

defining financial-legal measures for environmental protection, we can conclude that it contains an indicative sentence. A legal definition provides information about the meaning of the phrase used in the *definiendum*. The combination of this element with the *definiens* should meet the requirements described in the Rules of Law-making Technique. The typical form of a *copula* is the terms 'means' and 'means as much as'.[54] However, stylistic considerations may also justify the use of the phrase 'it is'. Neither of these versions of the *copula* appears in the legal definition of the concept of 'financial-legal measures'. The *definiendum* is linked to the *definiens* by the word 'constitute', i.e. a verb. It follows that the *definiens* functions in a sentence as an object, defining the verb and being its logical completion. The function of the *copula* can be described using the metaphor of weight: there are two elements of the defining clause on either side of the hyphen that should 'balance' each other. This means that the range of meanings of the *definiens* and *definiendum* must be equivalent so that the error of inadequacy does not occur. As noted above, the definition of 'financial-legal measures' is flawed for this reason. The scope of meaning of the *definiens* is too narrow in relation to the *definiendum*, which is characteristic of a narrow and unequal definition.

CONCLUSION

'Financial-legal measures for environmental protection' are a legal language concept that is used only twice in the Environmental Protection Law. It appears in the name of Title V of the Act and in only one of its provisions. It is important to note that the formulation of a legal definition for this term was based on qualitative rather than quantitative factors. This legislative technique is commonly used to determine the meaning of a word or group of words in a legal act. In a standard scenario, this applies to the interpretation of the following provisions that include the defined term. In the legal definition of financial-legal measures, this legislative motif is irrelevant. This definition introduces a mental construct, creating a new linguistic expression that describes a set of legal instruments used to finance environmental protection. It is not, therefore, a reporting and real definition. Undoubtedly, this is a non-classical, nominal, projective, scope, open, and unequal definition.

It should be considered a proven thesis that the legal definition of financial-legal measures has numerous shortcomings weakening its legislative and interpretative value. The defining provision violates several rules of law-making technique regarding its rationale, content and location. An open scope definition should be used only exceptionally, as a legislative 'last resort' measure, when it is not possible to give it a closed form. This definition should be included in the initial part of the Act, among the general provisions. In contrast, financial-legal measures are defined in specific provisions in the middle of the Act. Defects in the construction of a legal definition can be found in each of its elements: the *definiendum*, *definiens*, and *copula*. The terminology of the compositum used in the *definiendum* is disputed. The *copula*, on the other hand,

[54] See § 151(1) RLT.

does not meet the drafting requirements outlined in the Rules of Legislative Technique. However, the regulation of the *definiens* is a highly debated topic. It is an exemplary list of financial-legal means for environmental protection. This results in an imbalance between the scope of the *definiendum* and the *definiens*. The defining provision lacks clarity regarding the characteristics of each financial-legal instrument. The definition does not encompass all of these measures, but only a select few. The terminology employed in the statutory catalogue is misleading and inconsistent with the nature of the regulated legal and financial institutions. The defining provision fails to meet the principles of decent legislation due to constructive and linguistic errors.

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