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Lines of Interpretation for the Definition of a Household under Harmonised Excise Duty Rules in the Light of the Decisions of Polish Tax Authorities and the Case-Law of Polish Administrative Courts[2]

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Abstract

This article provides only a small contribution to the inevitable scholarly discussion on whether excluding the primacy of the literal rule in favour of the priority of a pro-EU teleological interpretation in the judicial and administrative applications of Polish tax law is really reasonable. Firstly, this article sets out to discuss the stages of the transposition of the concept of a household from EU legislation into the provisions of the Excise Duty Act. Secondly, it presents the evolution in the lines of the interpretation of this term as used by tax authorities and national courts. Thirdly, it demonstrates the negative legal and fiscal consequences that are caused in practice by the definition of this term as framed by the Polish legislator.

Keywords: household, judicial application of the law, literal rule, pro-EU interpretation, excise duty, tax exemption.

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Linie interpretacyjne dotyczące definicji gospodarstwa domowego zgodnie ze zharmonizowanymi zasadami opodatkowania akcyzą w świetle decyzji polskich organów podatkowych i orzecznictwa polskich sądów administracyjnych[3]

Streszczenie

Niniejszy artykuł stanowi jedynie drobny przyczynek do koniecznej dyskusji naukowej na temat zasadności wykluczania w sądowym i administracyjnym stosowaniu prawa podatkowego w Polsce prymatu wykładni językowej na rzecz pierwszeństwa prounijnej wykładni celowościowej. Celem niniejszego artykułu jest po pierwsze omówienie etapów transponowania z przepisów prawa europejskiego do przepisów ustawy o podatku akcyzowym pojęcia gospodarstwa domowego. Po wtóre ewolucji kierunków wykładni tego wrażenia stosowanych przez organy podatkowe i sądy krajowe. Po trzecie ukazanie negatywnych skutków prawno-podatkowych, które wywołuje w praktyce sformułowana przez polskiego prawodawcę definicja tego wyrażenia.

Słowa kluczowe: gospodarstwo domowe, stosowanie prawa w sądownictwie, dosłowna interpretacja przepisów, interpretacja prounijna, podatek akcyzowy, zwolnienie z podatku.

[3] Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

Introductory Remarks

To begin with, one should note that the legal definition of a term *T* is a wording of a legal text that determines the meaning of the term as the legislator understands it. In this way, the legislator can frame the meaning of a term for the purposes of a specific statute, even if it is already operative in the legal language in other areas of law. Further, legal definitions can be used to frame new normative terms which have been previously non-existent in the language of law.[4]

Any legal definition, regardless of the type and reasons for which it has been put into law, lays down a legal category as an inherent part of the legal language, and as such, it is subject to the valid rules of interpretation in the application of law. Framing definitions is therefore a component of both law-making and law-applying processes. The legislator puts a legal definition of a term into legal provisions, or frames a new legal term, and the one that interprets the legal text while applying the law determines its meaning in view of the specific facts of a case. The ultimate goal of both processes is to remove any doubts or ambiguities that there may be as regards the meaning of a term covered in a definition.[5] Legal definitions can vary as to their nature. Due to the specific character of definitions contained in tax law, one can distinguish between system-wide definitions[6] and those that are binding under a single legal act and any implementing instruments adopted on its basis.[7] The purpose of such a solution is to ensure, as much as possible, the optimal delivery on the intended function of an object or set of objects being

[4] A. Malec distinguishes between *sensu largo* and *sensu stricto* legal definitions, and further between metalinguistic and intralinguistic definitions among the latter; for more on this by this author, see: A. Malec, *Zarys teorii definicji prawniczej*, Warszawa 2000, pp. 25–32.

[5] Ibidem, p. 11; B. Brzeziński, *O zasięgu definicji zawartych w Ordynacji podatkowej*, [in:] L. Etel (ed.), *Ordynacja podatkowa w teorii i praktyce*, Białystok 2008, p. 30; L. Morawski, *Zasady wykładni prawa*, Toruń 2010, p. 104.

[6] For instance, the definition of the concept of tax; taxpayer; payer; and collector, as well as the definition of overpayment. An example of a system-wide definition laid down in the provisions of a detailed tax statute is the definition of a farm as contained in the Agricultural Tax Act; see Article 2 of the Act of 15 November 1984 on Agricultural Tax, consolidated text Journal of Laws of 2020, item 333, hereinafter the ATA. A reference to these provisions is contained, for example, in Article 4(10) of the Act of 20 November 1998 on Flat-Rate Forms of Income Tax, consolidated text Journal of Laws of 2021, item 1993, as amended, and in Article 2(16) of the Act of 11 March 2004 on Value Added Tax, consolidated text (Journal of Laws of 2021, item 685, as amended), hereinafter the VAT Act.

[7] For instance, the definition of economic activity; see: Article 5a(6) of the Act of 26 July 1991 on Personal Income Tax, consolidated text Journal of Laws of 2021, item 1128, as amended.

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defined under a statute.[8] One should note, however, that the meaning of definitions can be limited even within a specific statute. This depends either on the wording of the legal provisions containing a definition, or on the systemic context in which a definition operates.[9]

This article sets out, first, to discuss the stages of the transposition of the concept of a household from EU legislation into the provisions of the Excise Duty Act. Secondly, to present the evolution in the lines of the interpretation of this term as used by tax authorities and national courts. Thirdly, it demonstrate the negative legal and fiscal consequences that are caused in practice by the definition of this term as framed by the Polish legislator.

Evolution of the Legal regulation for the Concept of a Household in the Excise Duty Act

In the original version of the Excise Duty Act of 2008, the term 'household' as indicated in the title of this article was not regulated at all. A 'household' emerged in the excise duty regulations following an amendment to the Act in 2011,[10] in the list specifying by name the entities exempt from excise duty for the purchase of coal products for heating purposes.[11]

The concept was not initially defined by the Polish legislator and operated as an open-ended term. The legal regulation so framed was consolidated by the Energy Taxation Directive implemented into the Polish national system, which also left the term 'household' undefined.[12] When implementing the ETD, the national legislator only extended the scope of exemption of households from excise duty with an additional area.[13] Under the amendment, households were exempt from excise duty for activities involving gas products intended for heating purposes.[14] That step was entirely in line with the spirit and letter of the ETD, as the

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8 B. Brzeziński, *Wykładnia prawa podatkowego*, [in:] L. Etel (ed.), *System prawa finansowego. Tom III – prawo daninowe*, Warszawa 2010, pp. 295–296.

9 Idem, *Podstawy wykładni prawa podatkowego*, Gdańsk 2008, p. 73.

10 Under Article 21(10) of the Act of 16 September 2011 on the reduction of certain obligations of citizens and entrepreneurs (Journal of Laws of 2011, No. 232, item 1378), a new Article 31a was added in the EDA, regulating subject-based and object-based exemptions.

11 See: Article 31a(2)(3) EDA.

12 See: Article 15(1)(h) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L.2003.283.51).

13 See: Article 1(6) of the Act of 27 September 2013 amending the Excise Duty Act, Journal of Laws of 2013, item 1231.

14 See: Article 31b(2)(1) EDA.

intent of the EU legislator was to enable the application of tax exemptions and reductions without any time limit to households or organisations recognised as charitable by the Member State concerned, save that in the latter case only for non-business activities. Where mixed use takes place, taxation should apply in proportion to each type of use. A level of taxation down to zero may be applied to energy products and electricity used for agricultural, horticultural or piscicultural works and in forestry.[15]

With the statutory definition of the term in question missing, not only did criticism rise among taxpayers, but also parliamentary questions were asked by MPs, highlighting the negative consequences of that state of affairs. Interpretation problems were aggravated by the position of the Ministry of Finance which prohibited the use of the definition of a household as contained in the Housing Allowances Act in attempts at a systemic construction intended to clarify the meaning of a household.[16]

In January 2012, the Deputy Finance Minister stated in one of the replies to parliamentary questions that the concept of a household was an economic concept and that there was no obligation to define every phrase or term used by the legislator under a specific act. The definitions were only used when a term was given a meaning different from what it designates in its common understanding.[17] It seems that the position of the Ministry was a kind of generalisation and did not fully reflect the state of knowledge found in this regard in economic scientific literature. After all, economic literature recognises that the term 'household' tends to be defined ambiguously. For this reason, it requires an appropriate criterion to specify the concept of a household, which would make it possible to discriminate it from among related concepts. The term household is frequently identified with concepts such as family, a family housing unit or consumer living quarters. Authors argue that most often, those who make up a household are linked by family ties, which give rise to the social functions of parenting and child care. It should be emphasised, however, that economic or social scientific literature excludes any broader communities, such as a monastic community or a cooperative, from the scope of

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15 See also on the effects of the Directive in the national legal system: M. Marszałek, *Podatek akcyzowy od energii elektrycznej*, "Przegląd Prawa Publicznego" 2009, 7/8, pp. 79–83.

16 Article 2 of the Act of 21 June 2001 on Housing Allowances (consolidated text Journal of Laws of 2013, item 966, as amended). Under the above provisions, a 'household' is understood to mean a household run by a person applying for a housing allowance, occupying the premises on their own, or a household run by that person together with their spouse and other persons permanently living, and keeping the household, with them, who derive the right to live in the premises from that person's right.

17 Reply of the Undersecretary of State in the Ministry of Finance, authorised by the Minister, to the written question no. 79 concerning the issues arising from the taxation of coal products with excise duty as of 2 January 2012, http://www.sejm.gov.pl/sejm7.nsf/InterpelacjaTresc.xsp?key=007C6A96 (access: 29.01.2022).

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the term discussed here.[18] Another effect of a missing unambiguous definition of the concept of a household was that the excise duty rules did not clearly discriminate between that concept and the term farm. As a result, following another written question, the Minister of Finance was obliged to clarify how a household should be understood in the case of farmers and whether it was tantamount to the concept of a farm.[19]

The consequences of the absence of a definition of the concept of a household were so serious that the term under discussion operated as undefined for a very short time, only in the period from 2 January 2012 to the end of October 2013. In November 2013, the Ministry of Finance, contrary to the above-mentioned original opinion presented in the Sejm by the Deputy Minister of Finance, introduced a definition of the term household into the provisions of the Polish Excise Duty Act.[20] Under the amended legislation, a property used in its entirety for the purposes of business activity, in which the use of products referred to in Article 31b(6)(1) or (2) EDA does not exceed the levels specified in these provisions, is not considered a household.[21] The explanatory memorandum to the amendment quoted social considerations as the main reason for the introduction of that definition of a household. The framers of the amendment recognised that the subject-based and object-based exemption granted to ordinary consumers other than entrepreneurs may significantly contribute to reducing their financial costs.[22]

It might seem that the definition of a household introduced by the national legislator would be relatively straightforward as far as the literal framing of the term was concerned, so the letter and spirit of the excise duty exemption granted to households on the purchase of coal products for heating purposes would be fully preserved.

Due to the literal construction, which used the phrase 'shall not be considered', it should be deemed to be a real or an intralinguistic definition.[23] In terms of the

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18 For more see: T. Zalega, *Gospodarstwo domowe jako podmiot konsumpcji*, "Studia i Materiały – Wydział Zarządzania UW" 2007, 1, pp. 1–24.

19 See reply of the Minister of Finance of 14 May 2012, doc. ref. SPS-023-3951/12, concerning the exemption of coal products consumed by households from excise duty, to the inquiry doc. ref. SPS-023-3951/12 of 20 April 2012 over the written question by MP Jacek Bogucki concerning excise duty on coal and coke.

20 The definition was introduced under Article 1(11) of the Act of 27 September 2013 amending the Excise Duty Act (Journal of Laws of 2013, item 1231).

21 See: Article 31b(8) of the Act of 6 December 2008 on Excise Duty (consolidated text Journal of Laws of 2014, item 752, as amended), hereinafter the Excise Duty Act.

22 A. Wesołowska, *Komentarz do zmian wprowadzonych ustawą z dnia 27 września 2013 r. o zmianie ustawy o podatku akcyzowym*, 2015, Lex/el.

23 The literature on the subject argues that intralinguistic definitions are object language statements that characterise certain extra-linguistic objects. Through these, specific concepts that have existed before,

type, in turn, it meets the criteria of a negative extensional definition.[24] Thus, in the adopted framing of the definition, the legislator used a double negative, which is a construction permissible from the point of view of legislative technique, but one extremely difficult to interpret in the application of law. As a result, not only did the issues as regards the determination of the meaning of the term in question not disappear, but they have actually intensified and continue to exist to date, as most clearly evidenced by numerous individual interpretations of tax authorities and court decisions issued since 2013.[25]

Interpretative Arguments for the Normative Definition of a Household

In the Polish practice of applying the law, both at the administrative and judicial level, the literal rule invariably remains the dominant principle. This principle also applies to the interpretation of tax law.[26] Therefore, at a time when the definition of a household was still missing in the Excise Duty Act, tax authorities applied the literal rule and in the first place determined the dictionary meaning of the term to account for specific facts when issuing individual tax interpretations.[27] Taking this type of the literal rule as a starting point, they pointed out that a household is about all objects and activities that make up the keeping and running (i.e. 'holding') of the house.[28] Tax interpretations feature an even more detailed dictionary extension of the understanding of both elements of the term 'household'. So, in the Polish language, the understanding of a 'hold' includes, but is not limited to, a rural-area property including land and buildings, while the word 'house' denotes a dwelling, a place of permanent residence, but also all home affairs, matters and family duties. In essence, then, a household is mainly a dwelling, being a place of

whether in the language of legal doctrine or practice, are introduced into the system of law. Also, these definitions may be used to frame new legal terms. See: A. Malec, op. cit., pp. 30–31, 44–45.

24 An extensional definition is one that characterises the meaning of a word only partially, specifying a denotative condition where a determination is possible only if certain objects are actually members of the defined term. See also: A. Malec, op. cit., pp. 55–56.

25 A. Wesołowska, op. cit.

26 See: A. Bielska-Brodziak, *Wykładnia językowa według orzecznictwa sądów administracyjnych*, "Kwartalnik Prawa Podatkowego" 2008, pp. 4–70, http://www.trp.umk.pl/download/trp2008/TRP_2008.pdf (access: 29.01.2022); B. Brzeziński, *Podstawy wykładni prawa podatkowego*…, pp. 39–40.

27 See: letter of 28 December 2012 by Tax Administration Chamber in Łódź, doc. ref. IPTPP3/443A-144/12-2/KK, https://sip.lex.pl/#/guideline/184710182 (access: 29.01.2022); interpretation of the Head of Tax Administration Chamber in Łódź of 16 March 2012, doc. ref. ILPP3/443-6/12-3/TW, https://sip.lex.pl/#/guideline/184677449 (access: 29.01.2022).

28 See: https://sjp.pwn.pl/slowniki/gospodarstwo%20domowe.html (access: 29.01.2022).

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permanent residence, which is a principal place of all home affairs, matters and family duties.[29]

As a matter of course, the literal rule retained priority also after the concept of a household had been defined in the Act. Indeed, as a result of numerous inquiries filed by certain categories of taxpayers interested in acquiring the status of a household, tax authorities developed uniform interpretative lines for them.

Housing cooperatives and communities are the first in the list of these entities. Tax authorities relatively consistently qualify them as households, provided, of course, that the coal products that they purchase are actually used for heating their own housing stock, thus meeting the conditions specified in the provision regulating this exemption. However, a housing cooperative or a housing community may not take advantage of this exemption for any use of coal products for heating commercial, or business, premises.[30]

The 2013 amendment to the Excise Duty Act, with the introduction of the definition of a household, has since failed to provide the expected drop in the applications for individual tax interpretations by other entities, most probably due to the double-negative framing of the definition as described above. Applications for tax interpretations have continued to be filed by both housing cooperatives and communities as well as other entities. In the vast majority of cases, the authorities issuing these interpretations uphold the premises of previous decisions under which these entities were considered households.[31]

It should be noted that the above position of tax authorities as regards the application of the exemption in question to housing cooperatives, which, in fact, are not typical business entities, has met with criticism in the literature. It seems

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[29] See, for instance, the Interpretation of the Head of Tax Administration Chamber in Łódź of 28 December 2012, doc. ref. IPTPP3/443A-144/12-2/KK, SIP LEX, No. 160806. A similar position was given in the Interpretation of the Head of Tax Administration Chamber in Łódź of 16 March, 2012, doc. ref. ILPP3/443-6/12-3/TW, SIP LEX, No. 12873.

[30] See: interpretation of the Head of Tax Administration Chamber in Poznań of 14 February 2012, doc. ref. ILPP3/443-103/11-2/TW; Interpretation of the Head of Tax Administration Chamber in Poznań of 23 April 2012, doc. ref. ILPP3/443 36/12-2/TK, SIP LEX, No. 132814; interpretation of the Head of Tax Administration Chamber in Łódź of 26 April 2012, doc. ref. IPTPP3/443A-32/12-2/BJ, SIP LEX, No. 133155; Interpretation of the Head of Tax Administration Chamber in Łódź of 8 August 2012, doc. ref. IPTPP3/443A-97/12-3/KK, SIP LEX, No. 143274; Interpretation of the Head of Tax Administration Chamber in Łódź of 7 July 2015, doc. ref. IPTPP2.4513-6/15-4/KK, https://interpretacje-podatkowe.org/gospodarstwo-domowe/iptpp2-4513-6-15-4-kk; Interpretation of the Head of Tax Administration Chamber in Katowice of 30 September 2016, doc. ref. IBPPa/4513-255/16-1/LG, https://interpretacje-podatkowe.org/gospodarstwo-domowe/ibpp4-4513-255-16-1-lg.

[31] See, for instance, the Interpretation of Tax Administration Chamber in Łódź od 24 January 2014, doc. ref. IPTPP3/443A-71/13-5/BJ; Interpretation of the Head of Tax Administration Chamber in Bydgoszcz of 3 April 2014, doc. ref. ITPP3/443-624/13/AT; Interpretation of the Head of Tax Administration Chamber in Łódź of 14 October 2014, doc. ref. IPTPP3/443A-59/14 -4/BJ; Interpretation of the Head of Tax Administration Chamber in Warsaw of 25 November 2014, doc. ref. PPP 3/443-1036/14-2/SM.

that the interpretations cited are in some way inconsistent with the judgement of the Supreme Court, which emphasised the specific nature of business activity run by housing cooperatives as not-for-profit under Article 6(1) of the Housing Cooperatives Act.[32]

Other entities that continue to be prompted by the definition of a household as contained in the Excise Duty Act to file numerous applications for individual tax interpretations are superiors of monastic communities and parish priests. Their applications feature requests for an unequivocal recognition of a household status of monasteries, churches and parish houses. In multiple cases, decisions issued by authorities generally list these buildings, along with presbyteries, in the informal catalogue of households, where they are considered to be places used for residential purposes. Only a church building as a place of religious worship has never fallen within the meaning of a household.[33] On the other hand, parishes lose the right to take advantage of the excise duty exemption for the purchase of coal products for heating purposes if a business activity is run in the parish building.[34]

The entities that file applications for tax interpretations in view of the ambiguity in the definition of a household also include orphanages. Due to the social context, tax authorities, usually guided solely by the literal rule, grant the status of a household to these institutions.[35]

Overall, from the beginning of its operation under the Excise Duty Act, the meaning of the term 'household', whether defined or not, has been established on the basis of the literal interpretation of the law, and more specifically the dictionary meaning of the term. The use of this type of interpretation enabled the accommodation of not only housing cooperatives or housing communities, but also other

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32 See: judgement of the Supreme Court of 11 January 2006, case ref. II CSK 30/05, cited in: W. Modzelewski (ed.), *Problematyka podatku akcyzowego w prawie polskim. Praktyczne problemy*, Warszawa 2013, p. 15.

33 See, for instance, the Interpretation of the Head of Tax Administration Chamber in Poznań of 8 March 2012, doc. ref. ILPP3/443-2/12-4/TW; Interpretation of the Head of Tax Administration Chamber in Bydgoszcz of 22 March 2012, doc. ref. ITPP3/443-13/12/AT, SIP LEX, No. 135685.

34 See, for instance, the Interpretation of the Head of Tax Administration Chamber in Katowice of 1 June 2012, doc. ref. IBPP4/443-146/12/LG; this interpretation, although consistent with the spirit of the Act, is one example of its absurd framing. In line with it, theoretically, two places should be designated in the parish's boiler room, one for coal with excise duty and one for coal without excise duty. Further, the consumption of the product for heating purposes should strictly correspond to the share of heating energy for heating the 'exempt' spaces and 'taxed' spaces; see a critical discussion of this interpretation in: W. Modzelewski (ed.), op. cit., pp. 13–14.

35 See, for instance, the Interpretation of the Head of Tax Administration Chamber in Łódź of 7 January 2015, doc. ref. IPTPP3/443a-75/14-4/BJ. The tax authority agreed with the applicant that the Excise Duty Act lacked an exhaustive legal definition of a household. Thus, it accepted a legal opinion attached by the applicant, being an orphanage, arguing that a care and educational facility, which the orphanage in X-town is, operating under the Family Support and Foster Care Act, may be treated as a household and as such may benefit from the exemption from excise duty on coal products pursuant to Article 31a(1)(3) of the Excise Duty Act.

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entities, e.g. monasteries, under the term 'household'.[36] It would not be unreasonable to claim that the problem of the interpretation of the concept of a household has been resolved at the level of individual tax interpretations. Few judicial decisions that have been issued over this matter only confirmed the dominant role of the literal rule.[37] In a number of cases in the above-mentioned interpretations, tax authorities considered the positions presented by the applicants to be correct.[38]

In parallel to the literal interpretation of the definition of the concept of a household, seemingly established in the practice of applying the law, a completely different way of interpreting that definition has begun to gradually develop, one which rejected that interpretation altogether. That line of interpretation was laid out by the judgements of the Supreme Administrative Court and decisions of administrative courts. In March 2014, the Supreme Administrative Court ruled, in the context of the exemption for economic operators which had put in place systems enabling the delivery on environmental protection or energy efficiency objectives, that, due to the need to apply EU law, the teleological interpretation should be given priority, in place of the literal rule prevailing under the legal system conditions before.[39] Evidently, as indicated by the above-cited numerous tax interpretations, tax authorities have not followed that line of interpretation. However, provincial administrative courts did.

The courts have ignored the fact that none of the EU directives, neither the Excise Duty Directive nor the Energy Taxation Directive, actually provided for a definition of the concept of a household, and that the concept of a household was defined by the Polish legislator solely for the purposes of domestic legal transactions. In the opinion of the courts, the fact that excise duty is a Community-harmonised levy is a sufficient argument to conclude that the dominant rule in the interpretation of the Excise Duty Act should not be the literal rule, but the pro-EU (teleological, or purposive) interpretation. The obligation to apply this type of

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36 See: the Interpretation of the Head of Tax Administration Chamber in Katowice of 11 May 2012, doc., ref. IBPP4/443-78/12/PK, SIP LEX, No. 137229, www.mofnet.gov.pl (access: 29.01.2022).

37 See: the Judgement of the Provincial Administrative Court in Gliwice of 22 March 2016, case ref. II SA/Gl 1567/15, CBOSA.

38 It is worth noting that the Minister of Finance has never issued a blanket tax interpretation concerning the above-presented issues with the definition of a household.

39 See: judgement of the Supreme Administrative Court of 25 March 2014, case ref. I FSK 469/13, SIP LEX, No. 1488858. See also: M. Tchórzewski, *Sądowa wykładnia prawa w zakresie zwolnień wyrobów energetycznych i energii elektrycznej z podatku akcyzowego*, [in:] *Podatek akcyzowy: doświadczenia i kierunki ewolucji w czasach recesji. Konferencja Naukowa WPiA UW*, Warszawa 2011, pp. 84–86, https://www.wpia.uw.edu.pl/uploads/media/6011d10aab4b8/broszura-2021.pdf?v1 (access: 29.11.2021).

interpretation results from the assumption that EU law forms an integral part of national law.[40]

Guided solely by such considerations, one of the courts found that in making a pro-Community interpretation of Article 31b(2)(1) EDA an assumption should be made that the right to the exemption is vested in an entity which has the status of a household for the purchase by that entity of gas products specified in that provision. After all, the intent of the EU legislator was to cover with the exemption gas products used directly by households.[41] Another provincial court, in reliance on the same expository line, pointed out that national legislation should be interpreted in line with the purpose of EU directives, and not, as the (tax) authority claimed, taking into account the literal rule. When interpreting the disputed provision, the court was obliged to interpret the law in a pro-EU approach, that is, with consideration given to the purpose of the Directive and the Treaty. Further, in the justification to its decision, the court argued that the application of the literal rule by the authority referred to the period before Poland's accession to the European Union. Upon the accession to the EU structures, the Polish legal system underwent a transformation: it encompassed the Community (later EU) legal system, that is, the entire *acquis communautaire* of the European Union, including the case-law of the CJEU, to yield a multicentric legal system. As a consequence, the methods and interpretation rules to be applied by the courts changed. In view of the above, in the opinion of the court, the literal rule in interpreting Article 31b EDA could not be given priority.[42] The above-cited judgements confirm the published data, which show that the number of cases in which provincial administrative courts thoughtlessly use a pro-EU interpretation of the law provisions grows every year.[43] One should add that the same interpretation model of the concept of a household under the Excise Duty Act has been recently adopted by the Head of the National Tax and Customs Information Office.[44]

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40 See: D. Dominik-Ogińska, *Implementacja dyrektyw unijnych przez sądy krajowe*, Warszawa 2014, p. 177 ff, and the Judgement of the Provincial Administrative Court in Gliwice of 11 July 2017, case ref. III SA/Gl 429/17, SIP LEX, No. 2336444.

41 See: the Judgement of the Provincial Administrative Court of 6 August 2020, case ref. I SA/Kr 272/20, SIP LEX, No. 3078096.

42 See: the Judgement of the Provincial Administrative Court in Gliwice of 11 July 2017, case ref. III SA/Gl 429/17, SIP LEX, No. 2336444.

43 *Informacja o działalności sądów administracyjnych w roku 2015*, Warszawa 2016, p. 38.

44 Individual interpretation issued by the Head of the National Tax and Customs Information Office of 7 December 2018, doc. ref. 0111-KDIB3-,4013.254.2018.1.MS, https://interpretacje-podatkowe.org/gospodarstwo-domowe/0111-kdib3-3-4013-254-2018-1-ms?zaznacz=gospodarstwo+domowe (access: 29.11.2021).

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Conclusions

The main reason for numerous applications filed for tax interpretations concerning the meaning of the term 'household' is the fact, also raised in judicial decisions, that the EDA does not contain a full legal definition of a household, due to which any determination of the meaning of the term required that not only the letter of Article 31b(8) EDA but also the common understanding of the term are duly considered.[45]

The literature on the subject, except for a single commentary,[46] also argues that a legal definition of the term 'household' is still missing in the Excise Duty Act, and there is only an explanation of what is not a household. This demonstrates beyond any doubt that the commendable *ratio legis* that guided the legislator was not properly reflected in the lexical framing of the legislation discussed here. Thus, the legal definition of the legal term previously classified as extensional fails to fulfil its function related to ensuring the constitutional principle of the certainty and specificity of the law.[47]

Despite the shortcomings identified above, starting from 2012, tax authorities have gradually developed interpretation lines based on the literal rule to allow a rather limited group of entities to be granted the status of a household. In recent years, while achieving the same effect of interpretation, administrative courts have decided that the nature of excise duty, being a Community-harmonised levy, precludes the application of the literal rule. A pro-EU interpretation, in the opinion of the courts, is the sole proper one.

As is easy to note, the effects of applying a pro-EU interpretation are exactly the same as in the case of the literal rule that has been used by Polish tax authorities and excise taxpayers for years. Indeed, for both tax authorities and tax debtors, the literal rule is much easier to apply in practice than the principles of a pro-EU teleological interpretation. Therefore, a question arises whether the provisions of a Polish statute written in the Polish language, which regulates a tax subject to harmonisation, should be interpreted always and in any case with a deliberate and informed disregard of the basic rule for interpretation of the law, which is the literal rule, only because it is harmonised. More specifically, should this be the case

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45 See: the Judgement of the Provincial Administrative Court in Gliwice of 11 July 2017, case ref. III SA/Gl 429/17, SIP LEX, No. 2336444; Judgement of the Provincial Administrative Court of 6 August 2020, case ref. I SA/Kr 272/20, SIP LEX, No. 3078096.

46 W. Krok (ed.), *Opodatkowanie podatkiem akcyzowym wyrobów węglowych. Komentarz*, Warszawa 2012; SIP LEX 2013.

47 See: *Wyroby gazowe nabywane przez wspólnotę mieszkaniową*, http://www.poradypodatkowe.pl/artykul,746,7378,obrot-wyrobami-gazowymi-a-podatek-kcyzowy.html (access: 29.01.2022) and "Poradnik VAT" 20.07.2014, 16(376).

in situations where the effects of the exposition made are identical both with the application of the literal and teleological interpretation rules? This article provides only a small contribution to the inevitable scholarly discussion on whether excluding the primacy of the literal rule in favour of the priority of a pro-EU teleological interpretation in the judicial and administrative application of tax law is really reasonable.

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