

PUBLIC ENTERPRISES VERSUS PUBLIC CAPITAL

Introduction

The concept of enterprise involves problems with the differentiation whether it is public or private in character. Traditionally, the public character of enterprise results from the fact that it is financed by the state. The economic bases for the public character of enterprises lead to the distinction of two criteria of such division (apart from money supply) i.e. the provision of public goods and the public ownership capital. The paper defines enterprise as a form of economic activity performed by entrepreneurs, discusses public sector, separates pure and universal public goods and differentiates the capital of public and private entrepreneurs which facilitates the distinction between mass and individual consumption. Such knowledge is useful in the research on public finance and economy. The article exploits the author's long-term extensive research on public sector¹.

1. Enterprise as a form of business (economic) activity of entrepreneurs

Enterprise is a form of undertaking and conducting economic activities. Economic activity includes profit-making activity related to manufacturing, construction, trading, provision of services and prospecting, identifying and mining of minerals in deposits, as well as professional activity conducted in an organized and continuous fashion².

Economic activity is sometimes referred to as entrepreneurship. Entrepreneurship – despite varied views and approaches to its definition – is generally agreed to refer to the operations of people that can handle everything, are full of initiative, energy and ideas as well as resourceful and venturesome³.

As defined in the Civil Code, and then in the Act of 2004 on freedom of economic activity, the term *entrepreneur* denotes a natural person, a legal person, and a non-corporate organizational unit with legal capacity under provisions of a separate act, conducting economic activity on its own behalf. Thus, the term refers to all civil law entities with regard to public law relations if they meet particular conditions. Farmers who conduct agricultural

¹ i.a. J. Famielec, *Ekonomia przemysłowa i kierunki jej rozwoju*, w: *Ekonomia przemysłowa w warunkach kryzysu finansowego*, (ed.) P.P. Małecki, Fundacja UEK w Krakowie, Kraków, 2012, pp. 19-23

² Act of 2 July 2004 on freedom of economic activity, Journal of Laws 2004, No. 173, item 1807 as amended

³ St. Sudół, *Przedsiębiorczość – jej pojmowanie, typy i czynniki ją kształtujące*, w: *Uwarunkowania przedsiębiorczości – różnorodność i zmienność*, (ed.) K. Jaremczuk, PWSZ Tarnobrzeg, 2008, p. 29 et seq.

production activities or provide services to tourists in agricultural holdings are not regarded as entrepreneurs. The condition for an entity to have a legal status of entrepreneur is to undertake and conduct economic operations on its own behalf.

Enterprise – an organized set of tangible and intangible elements intended for conducting business activities as defined by the civil code – includes in particular:

- the name of the enterprise – a designation that distinguishes it,
- the ownership and other real rights to immovables or movables,
- rights under contracts for the tenancy and lease of immovables or movables and other rights to use immovables or movables under other legal relationships;
- receivables, rights attached to securities, and cash;
- concessions, licenses and permits;
- patents and other industrial property rights;
- copyrights and neighboring rights;
- secrets of the enterprise;
- books and documents related to the business activity.

A business name relates the category of enterprise to the entrepreneur. In the provisions of the Commercial Code of 1934 the term *business name* referred only to commercial companies. Currently, every entrepreneur operates under a business name; however, a distinction should be made between the name of the enterprise that is run by the entrepreneur and the designation of the entrepreneur under which the entrepreneur operates.

An entrepreneur runs an enterprise and operates under a business name. The entrepreneur's name should differ sufficiently from the names of other entrepreneurs conducting activity on the same market. A business name cannot be misleading, particularly regarding the identity of the entrepreneur, its objects and place of activity or supply sources.

Business name as the designation of an entrepreneur has several roles: a distinguishing, informative, advertising (promotional) and a guarantee role. Business name is treated as company's intangible goods that adds new value (good name). It is not included in its balance sheet components but its value is generated most frequently when a company or its organized part is sold and results in the valuation of the company that exceeds the value of its tangible assets (the net asset value). It should be added that business name evaluation (its position, credibility, trust, development risks) may decrease its higher asset value which is

reflected by the so called negative goodwill that decreases the net asset value, i.e. the company's equity value.

Entrepreneurs are entitled to fundamental rights which include the principles of economic freedom (the prohibition to restrict the freedom of entrepreneurship and service provision), equal rights of entrepreneurs (the assurance of autonomy and equal legal treatment for entrepreneurs), free competition and social solidarism (including the prohibition of competitive business), ownership protection and several other.

The undertaking and conduct of economic activities by entrepreneurs involves the fulfillment of several conditions such as the requirements of registration, concession and permits. One should also take into consideration the rules concerning the suspension of economic activity, its termination as well as the bankruptcy and recovery proceedings. These three situations are conceived as the decision-making process (the selection of administrators and the supervision of entrepreneurs) and – as the practice shows – they may be beneficial in terms of warning, remedy and/or restructuring.

Despite the fact that the Polish economic law has been adjusted to the basic EU regulations, there is still no basis to compare unambiguously the categories of enterprise and entrepreneur under the Polish and EU laws. The term *enterprise* is not clearly regulated in EU regulations.

In EU law, enterprise has a wide meaning and includes every entity that conducts economic activity irrespectively of its legal form, profit orientation or method of financing. Moreover, legally dependent entities or commercial agencies are not treated by European law as enterprises (but as parts of enterprises).

The criterion of ownership (authority) is one of the criteria that differentiate entrepreneurs. In this approach public (state, communal/municipal) and private entrepreneurs can be distinguished.

2. Public entrepreneur

The term public entrepreneur refers to every entity that conducts economic activity and is subject to a decisive, direct or indirect influence of a public administration body, in particular⁴:

⁴ Act of 30 April 2004 on the procedural issues concerning state aid, Journal of Laws 2004, No.123, item 1291.

- state-owned enterprise, sole-shareholder company of the State Treasury, sole-shareholder enterprise of local-government;
- joint-stock or limited liability company in relation to which the State Treasury, a local government entity or an entrepreneur have similar rights as parent companies within the meaning of the provisions on the protection of competition and consumers.

Public enterprises are related to the public finance sector but do not equate with it. The public finance sector includes⁵:

- public administration bodies, government administration bodies, institutions of state inspection and law enforcement, courts, tribunals and local government entities;
- budgetary entities and companies, auxiliary enterprises of budgetary entities;
- target funds;
- state schools of higher education;
- R&D entities;
- independent public health-care institutions;
- ZUS (the Social Security Institution), KRUS (the Agricultural Social Insurance Fund) and the funds managed by KRUS;
- NFZ (the National Health Fund) (former Kasa Chorych);
- PAN (Polish Academy of Sciences) and its administrative units;
- state or local government legal persons that are created pursuant to separate acts to perform public tasks, with the exemption of enterprises, banks and companies.

EU law clearly emphasizes the existence of public enterprises that are granted special or exclusive rights by the EU member-states (while EU prohibits in this sector any discrimination or actions on the single market that disturb competition due to the national origin)

Within the EU law, the term enterprise includes:

- state-owned and local government entities without separate legal personality that are engaged in commercial activities,
- companies and partnerships with legal personality,
- civil-law partnerships,
- co-operatives,
- associations, trade unions,

⁵ Act of 27 August 2009 on public finance, Journal of Laws 2013, No.15, item 885, as amended

- chambers of commerce,
- natural persons engaged in economic activity (including freelancers).

Pursuant to Polish regulations - among the above forms of enterprises - particularly companies and partnerships with legal personality, civil-law partnerships and co-operatives are considered entrepreneurs.

The Polish act on accounting does not differentiate between enterprises and entrepreneurs. The act uses the category of entity which covers legal entities and persons that apply the provisions of the act. It distinguishes:

- parent entities,
- major investors,
- subsidiaries,
- joint subsidiaries,
- associated entities,
- subordinated entities,
- related entities,
- capital groups.

Their main distinguishing criterion is the degree of mutual influence exerted by particular entities with regard to their capital share and number of votes in the decision making body. The following legal and organizational bodies are considered as entities by the act on accounting:

- commercial partnerships and companies,
- natural persons, civil partnerships of natural persons, general partnerships,
- organizational entities operating under the Banking Law, the provisions on trading in securities, the provisions on investment funds,
- *gminas, poviats, voivodeships* and their unions,
- branches and agencies of foreign entrepreneurs,
- organizational units without legal personality,
- organizational units that receive grants or subsidies from the state budget, local government entities or target funds to accomplish tasks assigned to them.

The act on accounting⁶ defines in the annexes the scope of information given in a financial report to the following four categories of entities, without the connection to the public character:

- entities other than banks, insurance companies, reinsurance companies and micro-entities (annex 1);
- banks (annex 2);
- insurance and reinsurance companies (annex 3);
- micro-entities (annex 4).

The first three annexes were regulated already in the act of 1994 (and later amended), while annex four which was adopted in 2014 refers to the long-established in EU and Poland division of enterprises by their size (the scale of activities).

3. Public goods

Economists are continuously making attempts to verify several theoretical canons by developing models and tools to describe economic and social processes⁷. One of the most significant achievements in this area in the last decades of the 20th and 21st century was the formulation of the paradigm of New Institutional Economics (NIE) which is appreciated mainly for the courage to undermine the neoclassical model as unrealistic and spoiling the notion of an ideal individual. NIE assumes a different interpretation of the determinants that influence social relationships, economic growth, the processes of setting up enterprises and making transactions. To the classical development factors i.e. ground, capital and labor, new elements are added such as the rules of conduct, restrictions introduced by legal and ethical standards and various organizations, particularly the state, which decrease uncertainty, guarantee the symmetry of information and the coordination between public and private relationships⁸.

There are three directions of research within NIE: the economics of transaction costs (of the functioning of various contracts), the theory of public costs and the new economic history⁹. All these approaches attempt at the description of the coordination of activities of an

⁶ Act of 29 September 1994 on accounting. Journal of Laws 2016, item 1047

⁷ A. Wojtyna, *Alternatywne modele kapitalizmu*, „Gospodarka Narodowa”, 2005, No. 9, p. 9

⁸ M. Lissowska, *Instytucje gospodarki rynkowej w Polsce*, Wyd. C.H. Beck, Warszawa 2008, p. 31 et seq.

⁹ Among them, the transaction costs theory, also referred to as the new theory of the firm created by O.E. Williamson, the Nobel Prize winner in 2009, is considered to be the most significant one. Cf. O.E. Williamson, *Ekonomiczne instytucje kapitalizmu. Firmy, rynki, relacje kontraktowe*, Wyd. Naukowe, PWN, Warszawa 1998, p. 30. According to O.E. Williamson, every case of a transaction can be interpreted as a contract and the criterion of transaction costs can be applied to all institutions of public life. O.E. Williamson's work is focused on the investigation of conditions for harmonious cooperation between enterprises and the solution of conflicts by well-structured institutions

entity that competes for rare resources, which involves transaction costs that depend on an institutional arrangement and constitute inseparably the institution's costs¹⁰. NIE *does not attempt at replacing the neoclassical economy but at extending its research area by the explanation of institutional factors conceived as data, such as ownership rights or governance structures*¹¹.

The NIE theory constitutes the source of formulation especially in the public sector economy. The classical theory of public sector economy¹²:

- identifies the public sector and its relations with the private sector, with regard to market failures and the necessary intervention of the state,
- determines the areas of the state activity and the indispensable revenues for their realization,
- develops the economy of welfare by the assessment of market effectiveness and failure, adds justice criteria to the assessment of the distribution of income and the scale of social injustice,
- develops the theory of public and private goods that come from public sources and distinguishes the so called pure and impure goods (from the point of view of the supply cost to a single end-user),
- determines and assesses the public mechanisms of the allocation of resources, with the particular consideration of political criteria that are related to the voting system and the development of democracy,
- develops the organizational and legal forms of public production, including monopolies and state-owned companies, by the identification of their sources of ineffectiveness and the reasons for privatization,
- analyzes external effects, particularly the ones in the environment, investigates their reasons, internalization and the steps taken by the state to reduce them,
- formulates the principles of the analysis of public expenditure from the point of view of their effectiveness and justice,
- expands the traditional cost-effectiveness calculation by defining the commonly applied cost and benefit analysis, with the consideration of the value of time, life and natural resources and the risk assessment,

¹⁰ B. Zbroińska, *Publiczne koszty transakcyjne instytucji systemu podatkowego*, „Gospodarka Narodowa” 2009, No. 11-12, pp. 97-116

¹¹ A. Wojtyna, *Nowe kierunki badań nad rolą instytucji we wzroście i transformacji*, „Gospodarka Narodowa” 2002 No. 10, p. 11

¹² J.E. Stiglitz, *Ekonomia sektora publicznego*, Wyd. Naukowe PWN, Warszawa 2004, pp. V - XVII

- formulates the basis for the functioning and the role of the state in such public areas as health care, national defense and technology, social insurance, education and social support,
- develops the taxation theory of work, savings, capital, companies, including distortions in these areas and tax shields,
- develops fiscal policy and the financing of the state from the budget deficit in federal states on a local level to provide social security and the support to senior citizens.

Such areas of interests of the public sector economy, i.e. of the most important field of NIE, are the topic of many other publications¹³ and they result, among other, in:

- the identification of goods produced by public sector,
- the analysis of the scope, development issues and the role of the state in the public sectors of other countries (EU, Germany, UK, USA¹⁴, and Saudi Arabia¹⁵),
- the attempts to assess the effectiveness of the public sector,
- financing the goods of the public sector by the state budget, households and the private sector,
- developing a model of the public sector and the mutual relations between the sectors of public and private goods.

A basic model of public sector distinguishes the sets of pure public and universal mixed goods (table 1).

Pure public good¹⁶ is a good that is not provided by the market or provided in an insufficient amount. It has two economic characteristics. Firstly, the consumption of pure public goods is not subject to rivalry, which means that their use by an additional person does

¹³ See: *Sektor publiczny w Polsce i na Świecie. Między upadkiem a rozkwitem*, collective work (ed.) J. Kleer, Wydawnictwa Fachowe CeDeWu.pl, Warszawa 2005

¹⁴ There are numerous institutional analyses of the US public sector. However, it is worth mentioning the analysis of the entrepreneurship of government and authorities in general that was published at the time of the disintegration of Eastern Europe and the development of the new EU framework before the Lisbon Strategy. The value added of the analysis is the identification and description of the mechanism of 36 market methods of public service provision by authorities and the indication how a government and the state can function as an entrepreneur with respect to its clients, i.e. voters, employees, manufacturers, consumers, citizens, private and public entities, NGOs, etc. Cf. D. Osborne, T. Gaebler, *Rządzić inaczej. Jak duch przedsiębiorczości przenika i przekształca administrację publiczną*, Media Rodzina of Poznań, Poznań 1992

¹⁵ Saudi Arabia is an interesting case study due to the dominating share of the state in the economy, a significant consent to the errors and ineffectiveness of the state policy, a strong impact of islam on social, economic and political life and – on the other hand – an extreme power as regards the country's share in the global oil resources (over 20%) and the resulting dependence on the part of the economies of other social, political and religious systems. Cf. *Sektor publiczny ...*, op. cit. pp. 245-270

¹⁶ This term also refers to goods that are ecologically pure, that is the ones that do not contain any impurities and do not pollute the environment. In the institutional analysis, the category of pure goods is appropriate to define goods that are provided by the state. Environmental goods and services can also be pure public goods that belong to mixed goods as they can be provided not only by the state but also by private sector.

not involve any costs. Secondly, the exclusion of anybody from the use of pure public goods is difficult or impossible¹⁷. In such cases, a free rider problem emerges, which means the reluctance of some individuals to finance public goods voluntarily as they can consume the goods without paying for them. Consequently, the problem of taxation of some public goods appears (including the use of natural environment).

Table 1 . Pure and universal public sector goods

Pure public goods	Universal mixed goods
<ol style="list-style-type: none"> 1. Defense of a sovereign state 2. Legal and institutional order that guarantees efficient functioning of the state, including environmental protection, in compliance with the rule of sustainable development 3. Internal security 4. Protection of private ownership and individual freedom that are guaranteed in a democratic society 	<ol style="list-style-type: none"> 1. Education 2. Health care 3. Economic infrastructure 4. Environmental protection (prevention of pollution and the elimination of the effects of pollution) 5. Research and Development 6. Welfare work 7. Local government sector

Source: Author's research based on: *Sektor publiczny w Polsce i na Świecie. Między upadkiem a rozkwitem*, collective work (ed.) J. Kleer, Wydawnictwa Fachowe CeDeWu.pl, Warszawa 2005, p. 277

Several characteristics differentiate universal mixed goods from pure public goods¹⁸. They involve only a partially obligatory participation in the consumption; their provision involves partial payment (but they may also be offered free of charge); they may be supplied both by public and private sectors, commissioned by the state as well as by the cooperation between public and private sectors (e.g. in the form of a public-private partnership); the interest in their consumption may differ among different social groups as regards professions or age; they are not constant (the civilization level and cultural system may change the set); the state – as an organization that bonds the society living in a particular territory - is interested in the supply of a complete set of universal public goods. They may be commercialized and supplied by private sector. The decisions in this respect can be made by the state and they depend on the economic level, the social and economic model and the political system.

Pure public goods are also referred to as common goods that – for various reasons – are available to every citizen and are financed through public resources. Within such meaning they create society collective consumption.

¹⁷ J.E. Stiglitz, *Ekonomia ...*, op. cit. pp. 94 and 156-157

¹⁸ *Sektor publiczny...*, op. cit., p. 275 et seq.

4. Public capital ownership

Apart from public goods, the science of economics also uses a different concept of the public character of entities. It is the form of capital ownership which can be either public or private. Thus, sectors can be distinguished and - within them - public entrepreneurs that offer goods which are public in character (that create goods of collective consumption, also referred to as public consumption) and private entrepreneurs (that create goods of individual and also of collective consumption)¹⁹. Public entrepreneurs are characterized by the state capital ownership (of the state treasury and state legal persons), community ownership (of local government and community organizational entities) and mixed ownership (with the dominating public capital). Private entrepreneurs are characterized by such forms of capital ownership as capitalist, small-scale and employee ownership. A private capital (property, enterprise) owner can exclude other natural and legal persons from using the resources that it owns and is able to transfer the ownership rights to them with or without a charge. The principle of exclusivity and transferability does not apply in the case of public capital ownership. The members of society, who are represented by public owners, have very limited influence on the decisions which are subject to the supervision of central and local authorities. Co-operative ownership is half-way between public and private capital ownership. Co-operatives, as legal and co-operative ownership entities, have their own characteristics which results from the shares that are contributed by co-operative members (i.e. the owners).

The relations between public (collective) and private (individual) consumption and the capital owners (both public and private ones) are coordinated by the state (table 2) and it is the state that should solve conflicts in this respect by means of providing such pure public good as the legal and institutional order (compare table 1).

Table 2. Matrix of the consumption and characteristics of public and private sector capital

Consumption	Capital	
	Public	Private
Public (collective) consumption Pure and universal Public goods	Supply of public goods (pure and universal public goods) Consumption of public goods	Supply of public goods (universal public goods) Consumption of public goods
Public (individual) consumption	Supply of private goods Consumption of private goods	Supply of private goods Consumption of private goods

¹⁹ A. Szewc-Rogalska, *Efektywność restrukturyzacji własnościowej przedsiębiorstw w Polsce. Ujęcie sektorowe*, Wyd. Uniwersytetu Rzeszowskiego, Rzeszów 2004, p. 48

Private goods		
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Source: Author's research

Conclusion

Conflicts between public and private sector may be caused by the fact that public owners are not the sole suppliers of public goods and private owners are not the sole suppliers of private goods. Moreover, both public and individual consumption may take place both in public and private ownership sectors. Consequently, there is a specific mixture of rights and obligations of these sectors and in both of them there is the phenomenon of free riders, i.e. the avoidance to finance the consumption of pure and universal public goods that are indispensable in the sectors of public and private owners. Environmental protection is the area where such conflicts emerge as it belongs to the constitutional obligation of the state but conservation measures and their financing are also the duty of private entrepreneurs and natural persons.

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