

Zdzisław Majkut

University of Warmia and Mazury

ORCID: 0000-0001-9766-8514

**ECONOMIC ANALYSIS OF LAW AS A GOOD QUALITY
OF THE LEGISLATIVE PROCESS**

Economic conditions both internal and external in every country of the world are subject to constant change, which are associated with the implementation of necessary changes in the existing policies of various operators as well as the mutual relations of influence.

Regulations and legal norms are institutions, that are created by the state to ensure the smooth functioning of the entire national economic process. Institutional structures affect the behavior of people and businesses. Regulations and legal norms in turn create a legal system.

The legal system is a specific set of standards of conduct, which must be sufficiently proficient to solve a number of potential problems. The legal system must also be able to make allocation as well as loads, solve actual conflicts, control and regulate human behavior. Legal systems around the world, from the very beginning of its existence tended to develop, so there were new methods and approaches to the above mentioned problems. The traditional approach to regulation should be extended through the use of tools and methods, that are used in economic sciences, such as transaction costs, game theory or analysis of costs and benefits. Today, the economic analysis of law is a very important area of interest of the new institutional economics and new political economy¹.

Legal norms, as formal institutions, provide a framework to ensure stability as well as transparency of solutions and relations in various areas of life, particularly in the economic sphere. The economy of a country can not function efficiently without an effective legal system, because there is a strong correlation between the quality of law and achieved economic results.

¹ J. Pomaskow, *Ekonomiczna analiza prawa – alternatywa dla głównego nurtu ekonomii*, „Zeszyty Naukowe Uniwersytetu Szczecińskiego” 2015, no. 858, „Współczesne Problemy Ekonomiczne” no. 11, p. 1.

Created law can have a negative impact on economic development or, on the contrary, create very favorable conditions for its development through the elimination of unnecessary and hampering economic development rules and legal procedures.

At this stage it is very important to describe the issues of economic analysis of law (Law & Economics). This discipline is the study of law with the use of economic tools. Currently, the economic analysis of law is developing very rapidly compared to other interdisciplinary social sciences. This analysis uses the relation between law and social norms. Whereas the New Haven school believes, that all the negatively functioning aspects of the economy must be removed or repaired using regulations based on the analysis of the potential benefits and costs, so-called economic models.

Currently, the economic analysis is used not only for research purposes, but also for other social sciences. It is possible to effectively evaluate the effectiveness of the new regulations by detailed analysis and interpretation in terms of economic feasibility before its implementation (ex ante analysis). Sometimes, however, it is impossible to use the tools of economic analysis for this type of research².

The quality of new laws, as well as its impact on the economy, is assessed in most countries in the world. Generally analyzed are only selected topics or specific laws, the importance of which is particularly important for the economy of the country. This article will discuss two examples of research from Germany and Slovakia.

In Poland, a number of quantitative and qualitative research of law was implemented, but it focused exclusively on a few specific issues – for example on the administrative burden or costs of economic activity resulting from the applicable legal regulations in Poland.

The purpose of this article is to discuss the legal factors, that affect economic processes. From this point of view, it is essential to identify the areas of the economy that in greatest point affect its smooth functioning and accelerate economic growth. Basically, there are three main areas of interaction, such as the labour market, institutional environment and business competitiveness and economic development³.

Studies on the lawmaking process, in vast majority, discuss issues of the process of legislation, because every country in the world uses other practices in the law-making process. In many countries in the world, before they start legislative work on a new legal act, first analysis of the baseline scenario is carried out,

² M. Jerzak, M. Kitala, *Prawo w gospodarce. Metodyka oceny oddziaływania prawa na gospodarkę*, „Materiały i Studia” 2012, no. 276, p. 4.

³ W. Walczak, *Analiza czynników wpływających na konkurencyjność przedsiębiorstw*, „e-Mentor” 2010, no. 5(37), <http://www.e-mentor.edu.pl/artykul/index/numer/37/id/784> (10.11.2016).

which contains the basic variables that are very important because of the matter of the Act. The consideration of several variants of the planned changes to the legal regulation is implemented, together with its potential future consequences, taking into account external conditions. It is also necessary to estimate the potential costs of the introduction of new legislation as well as the possible benefits. Though some countries carry out assessment of the economic impact of the introduction of new regulations, they still do not take them into account when adopting the final version of the Act.

More and more countries understand the economic importance of improving the process of lawmaking. Importance of this process for the functioning of the economy, was confirmed by the Organisation for Economic Cooperation and Development (OECD), which has developed specific recommendations for the process of creating new legal norms, which are used by a growing number of countries⁴.

According to the Polish procedure, proposal of Acts, that are submitted by the government, should be preceded by a thorough analysis and evaluation of the economic results of the proposed regulation. First, guidelines for the Act are developed by the government, which are then forwarded to the interdepartment and public consultations, which are the basis for the preparation of the Act. A proposal of the Act should be accompanied by a justification of legal change, as well as the regulatory impact assessment (RIA). If the project is approved by the government, the work on this Act will begin in the parliament. A disadvantage of the RIA is often a lack of or poor quality of the analysis of the potential economic costs or benefits. Basically, the designers focus exclusively on identifying the economic impact of the new Act on public finances.

Many countries around the world understand the great importance of the legislative process as well as its impact on the national economy. Below two examples of analyzes are presented, that have been developed in Germany and Slovakia⁵.

In Germany, in the years 2005–2007 special project “Gesetz-Check” was carried out by the Initiative New Social Market Economy, and in 2007 its results were published. In this study, a group of experts has analyzed about 700 Acts, that were passed by the Bundestag in 2005–2007. Several aspects of these laws were analyzed, i.e.: the key characteristics of the proposed solutions, durability, clarity of language, the economic impact on the national economy. Since 2005, the Institute

⁴ *Recommendation of the Council on Improving the Quality of Government Regulation*, 9.03.1995 r., C(95)21/FINAL, Organisation for Economic Co-operation and Development, *Regulatory Impact Analysis. Best practices in OECD Countries*, Organisation for Economic Co-operation and Development, Paris 1997; *OECD Guiding Principles for Regulatory Quality and Performance, Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for PolicyMakers*, Organisation for Economic Co-operation and Development, 2005, <http://www.oecd.org/dataoecd/24/6/34976533.pdf>; *Regulatory Impact Analysis: A Tool for PolicyCoherence*, OECD Reviews of Regulatory Reform, Organisation for Economic Co-operation and Development, Paris 2009.

⁵ M. Jerzak, M. Kitala, *Prawo w gospodarce...*, p. 7.

of the German Economy in Cologne (IW Köln) with Wirtschafts Woche (Economic magazine) created monthly evaluation of selected decisions of the Federal Government of Germany. The analysis was to determine the effect of new legal solutions to the socio-economic development of the country. The basic criterion in this study was the level of impact on the economic situation. Regulation, which was analyzed, could receive from 0 to 5 points, in addition to evaluation, justification was also necessary. This study has also been expanded to include additional materials, such as surveys of citizens, teachers and entrepreneurs on current economic issues, which were discussed at that time on the international arena.

Table 1. Exemplary assessment regulations, which were conducted by IW Köln

Activity	IW Kölnassessment (0–5)	Justification of assessment
<i>1</i>	<i>2</i>	<i>3</i>
<p>In 2011, the Bundestag approved the extension of the European Financial Stability Facility (European Financial Stability Facility – EFSF, the activity was evaluated in October 2011)</p>	5	<p>The high rating was due to the fact, that the strengthening of the EFSF reduces the risk to the stability of the financial market</p>
<p>In 2012 the draft of the Act was prepared, which provided the deduction of income tax expenses or the use of accelerated depreciation in the area of thermal isolation of buildings (the activity was evaluated in February 2012)</p>	4	<p>IW Köln estimated, that it was the appropriate instrument to introduce incentives to invest in order to reduce energy consumption. As the housing in Germany is, as well as in other countries, the economic sector with great potential to reduce carbon dioxide emissions.</p> <p>The introduction of tax changes could affect the reduction of external costs, which are linked to global warming.</p> <p>IW Köln proposed extending the group of potential beneficiaries because tax relief was provided only for citizens financing investments from own funds.</p> <p>The federal states were reluctant to this Act, because it feared a reduction in budget revenues.</p>
<p>The Act draft, which assumed the indexation of tax thresholds (the activity was evaluated in November 2011).</p>	3	<p>The decision of the Federal Government of Germany was positively assessed, however, it did not provide a permanent mechanism of indexation of tax thresholds. Since its introduction it was not announced, then its score was 3.</p>

1	2	3
<p>Draft of the Act on measures supporting economic growth (the activity was evaluated in February 2010). The most important proposals of the Act concerned the increase in child tax credit, child benefits and facilitations in the tax law (i.e. reduction in the VAT rate on accommodation services from 19% to 7%).</p>	2	<p>The vast majority of proposed activities in the draft of the Act was not related to stimulation of economic growth and social policy. Many doubts aroused about the extent, to which these expenses would be transformed into increased consumption. IW Köln decided, that the reduction of VAT on accommodation services represent a new form of grants. In the survey, which was carried out among 700 companies, only 7% considered that the proposed new regulations in a positive manner will affect their business, 49% considered it neutral and 36% said, that the effects of these regulations are difficult to predict. The proposed measures could delay the introduction of the reform of the tax system.</p>
<p>The decision, which was issued by the federal government for hastened, than originally planned, closure of a nuclear power plant as a result of failure of the power plant in Fukushima, the activity was evaluated in June 2011.</p>	1	<p>It was marked only one point because of the lack of an analysis of the costs and benefits of the proposals. Withdrawal from nuclear energy is a very expensive solution, because in such a situation the production of conventional or renewable energy or increase import from abroad should be increased. This is due to rising prices, reduced competitiveness of energy-intensive industries as well as the deterioration of the financial position of energy companies and a reduction in tax revenues.</p>
<p>The decision of the federal government concerning the withdrawal of elements of e-government: payroll documentation in electronic form – ELENA, the effect was evaluated in August 2011. The aim of the ELENA system was to replace the document in a paper form from 2012, which was sent by the German employers to the Federal Employment Agency and the social security system. There were a lot of doubts concerning the safety of the system, so the federal government has decided to abandon this project.</p>	0	<p>The decision to withdraw from the ELENA system hampered the development of e-government and widespread use of electronic signatures, as well as negatively affected the burden of public administration. The employers also suffered significant costs to adapt their systems to ELENA.</p>

Source: M. Jerzak, M. Kitala, *Prawo w gospodarce. Metodyka oceny oddziaływania prawa na gospodarkę*, „Materiały i Studia” 2012, no. 276, p. 29.

Institute of Economic and Social Reforms (INEKO) is an institution, that assesses new legal regulations in Slovakia. This Institute in the period from 2000 to 2008 within the framework of the project HESO published quarterly brief development as well as the annual shared summary, which contained a detailed assessment of the enacted legal measures, that essentially influenced the social-economic processes in Slovakia. Such an assessment was carried out by a professional team, which included: experts and economic journalists, academics, entrepreneurs, trade unions and non-governmental organizations⁶.

The assessment carried out by the above-mentioned experts was based on two main criteria: the acceptance of the measures by an expert, adopted as an effective solution to the problem (-3 as an overwhelming disapproval, 3+ means overwhelming acceptance) as well as the importance, that the new legal regulation can have an impact on the of socio economic conditions in Slovakia (the importance and need for changes in a given area). The indicator of significance of socio-economic conditions of Slovakia could be marked from 0% to 100%. The overall assessment INEKO is the product of these two indicators (scale from -300 to +300). This product was formed as the basis of periodical and annual rankings of individual actions. In some cases, the mechanisms and the expected effects with experts' opinion were also described. The analysis has included, apart from the legal regulations, also the decisions of the Slovak government (eg. government strategies, policy papers, decisions of privatization, regulation) and the decisions of state institutions, moreover, the decisions of the European Commission.

Table 2. Exemplary evaluation of the activities of socio-economic character, that have been implemented by INEKO

Activity	Total score (-300, +300)	Quality of activity (-3, 3)	Importance of action (0%, 100%)	Comment/justification of the assessment
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
1	2 = 3 * 4	3	4	5
Slovakia's accession to the European Union (ratification in the third quarter of 2003)	219,3	2,31	94,9	Joining the European Union has had a positive impact on the economic development of Slovakia, although in some areas the most favorable conditions for Slovakia had not been acquired.

⁶ D. Zachar, *Economic and Social Measures in Slovakia*, The HESO Project, Institute for Economic and Social Reforms, Bratislava 2008, www.ineko.sk/file_download/464/Slovakia-2008-web.pdf (10.11.2016).

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>
In the second half of 2007, Slovakia joined the Schengen zone	213,9	2,74	78,0	The changes have been very beneficial for Slovak citizens and businesses, thanks to the principle of free movement of persons. Unfavorable was the loss of part of tourists from the former Soviet Union territory due to the introduction of mandatory visas.
Activities were adopted related to the privatization of state gas company SPP in I quarter of 2002	173,1	2,02	85,6	With the privatization of this company, the influence of politicians on its activities was limited, the whole process had a transparent nature and the price was at a very satisfactory level.
In 2009, the euro currency was introduced in Slovakia.	165,6	1,91	86,9	Key benefits identified by the experts include: the elimination of exchange rate risk and transaction costs. Furthermore, the introduction of the euro abolished the ability to conduct own monetary policy by Slovakia. Adoption of the euro could negatively affect the growth of inflation.
In the fourth quarter of 2003 linear personal income tax – 19% was introduced	142,6	1,69	84,4	The introduction of a linear income tax was a flagship economic reform, which simplified the tax system and reduced the burden in income taxes, by which investment attractiveness of Slovakia has increased, as well as the purchasing power of citizens.
In the third quarter of 2004, reform of public finances was carried out.	137,1	2,09	65,5	The aim of this action was to increase the public finance discipline, tighter borrowing conditions and guarantees. Long-term and performance-oriented budgeting was introduced.

1	2	3	4	5
In I quarter of 2003 25 railway lines for passenger traffic were closed.				These activities had rationalistic character because of the need for a comprehensive reform of public railway transport.

Source: M. Jerzak, M. Kitala, *Prawo w gospodarce. Metodyka oceny oddziaływania prawa na gospodarkę*, „Materiały i Studia” 2012, no. 276, p. 29.

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Summary

The article attempts to discuss the economic analysis of law as a quality, that affects the legislative process. Regulations and legal standards are institutions, created by the state, to ensure efficient functioning of the entire national economic process. Institutional structures affect the behavior of people and businesses. The introduced changes in the law may negatively affect economic development or, on the contrary, create very favorable conditions for its development through the elimination of unnecessary and hampering economic development regulations and legal procedures. The article presents the most important issues of economic analysis of law on two examples: Germany and Slovakia. This discipline is the study of law with the use of economic tools. Currently, the economic analysis of law is developing at a rapid pace in comparison to other interdisciplinary social sciences. This analysis uses the relation between law and social norms. Furthermore, the objective of this article is to discuss the legal factors, that affect economic processes.

Keywords: the legislative process, economic analysis of law, economic development

ANALIZA EKONOMICZNA PRAWA JAKO DOBRA JAKOŚĆ PROCESU LEGISLACYJNEGO

Streszczenie

W artykule podjęto próbę omówienia ekonomicznej analizy prawa jako jakości, która wpływa na proces legislacyjny. Regulacje i standardy prawne to instytucje tworzone przez państwo w celu zapewnienia sprawnego funkcjonowania całego krajowego procesu gospodarczego. Struktury instytucjonalne wpływają na zachowanie ludzi i przedsiębiorstw. Wprowadzone zmiany w prawie mogą negatywnie wpłynąć na rozwój gospodarczy lub wręcz przeciwnie – stworzyć bardzo korzystne warunki dla jego rozwoju poprzez zniesienie zbędnych i utrudniających regulacji i procedur prawnych dotyczących rozwoju gospodarczego. Artykuł przedstawia najważniejsze zagadnienia analizy ekonomicznej prawa na dwóch przykładach: w Niemczech i na Słowacji. Ta dyscyplina to nauka prawa z wykorzystaniem narzędzi ekonomicznych. Obecnie analiza ekonomiczna prawa rozwija się w szybkim tempie w porównaniu z innymi interdyscyplinarnymi naukami społecznymi. Ta analiza wykorzystuje związek między prawem a normami społecznymi. Ponadto celem tego artykułu jest omówienie czynników prawnych, które wpływają na procesy gospodarcze.

Słowa kluczowe: proces legislacyjny, ekonomiczna analiza prawa, rozwój gospodarczy