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SPECIFICS OF LEGAL SOURCES GOVERNING JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

The state immunity from jurisdiction excludes the possibility for one country to exercise its jurisdiction over another, to stretch the power of one country over another and to seizure their property. At the beginning, the sovereign immunity referred to the possession of a ruler, but over time and with the progressive development of state institutions, it was extended to other representatives of a state[1]. A state as a person upon international law and its authorities cannot be sued in courts of another state, while its property may not be a subject to seizure or confiscation. State immunity from jurisdiction, like other immunities in general, is to guarantee entities of international law freedom from external interference and ability to function effectively. Therefore, there is a link between the immunity and the equality of states, as well as their sovereignty and mutual respect.

The state immunity from jurisdiction is believed to be based on the very essence of sovereignty and equality of all states, noting that these rules do not allow for the subordination of one state to the law and the jurisdiction of another state. But it cannot be ignored that upon the principle of restricted immunity, the immunity does not cover state activities performed in the ordinary course of civil and commercial law, which proves that, in fact, not the principle of equality and sovereignty of states alone is a source of immunity of a foreign state, but certain principles that have been developed and then gradually modified by treaty provisions and international customs. This article aims to answer the question what are the specifis of sources governing the modern institution of state immunity not allowing to reach for state property to satisfy foreign clamis and to suit a state at courts of another state.

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The beginning of immunity is usually placed in the fourteenth century, when its nucleus was the principle of *par in parem non habet iurisdictionem*. The concept and rules regarding the use of state immunity, developed originally - in the absence of *lex scripta* – in the case law of national courts, involving the doctrin of international law. The doctrin seeked, on the one hand, to identify the source of state immunity, and, on the other hand, to define its scope[2]. The first act of an international character, and already historical significance, which sought to settle issues of sueing a state before foreign courts, was the resolution of the Institute of International Law jurisdiction of courts in proceedings against foreign States of 1891[3]. The inadmissibility of proceedings against a state has been there recognized as a principle, with a few exceptions: (1) in matters relating to commercial and industrial enterprises performed within the forum state, (2) in cases where a foreign state is acting as the heirs of an estate opened in the forum area (3) in matters of contracts that have been concluded on the territory of the forum and which should be performed in that state, (4) certain matters arising from torts or quasi-delicts committed in the area of the forum state. This resolution, even though theoretically aimed to constitute achievements of contemporary doctrin of international law, in fact, tended more towards the binding force of an absolute immunity. Further evolution of sources of state immunity from legal proceedings occured gradually, thanks to the emergence in some countries of acts of statutory rank, and internationally - tribunals and international agreements.

Currently, the sources of international law governing the institution of state immunity are scattered and they require to be determined on several levels. As indicated by the UN Working Group, evidence of rules of international law on state immunities are available primarily in judicial and governmental practice of states, in judicial decisions of national courts, in opinions of legal advisers to governments, and partially in regulations embodied in national legislation, as well as international conventions of universal or regional character[4]. The issue of having or not having jurisdiction by the court of first instance and the scope of powers of a national court is first determined by the decision of the court or tribunal itself, because it is the presiding judge who decides in the first instance to the limits of its own jurisdiction. While ruling on the jurisdiction, the judge's decision is taken based upon the law defining powers of his own court. In consequence, the international judicial practice or customary international law concerning state immunity arose on the basis of the jurisprudence of states, even though the current practice has adopted principles of international law in the course of their evolution[5]. Other sources also contributed to the evolution of the international law of state immunity. They can be cathegorised, distinguishing among them (i) the practice of states, (ii) international conventions, (iii) international jurisprudence, (iv) opinions of the doctrine.

Ad. i)

Referring to the practice of states in the area of state immunity, the following points have to be examined: (1) national legislation, (2) judicial decisions, (3) the practice of governments.

Jurisdiction of the court of first instance is generally defined by law upon which the court itself is established. Legislative acts governing the justice system can be found in the Constitution, in general laws governing the political system as well as in special laws defining the organization of courts and the judiciary hierarchy of the whole or a

particular court. In turn, the national legislation governing powers of first instance courts may determine the ability of the state or state agencies to be a party to a legal action pending before that court. This applies in particular to cases where a foreign state agreed to carry out the process or otherwise voluntarily surrendered to territorial jurisdiction. In such a situation the court's decision on national jurisdiction is the legal basis to maintain immunity from the jurisdiction of a foreign state. Thereby these decisions create a specific practice of states regarding the formulation of standards on state immunity, which are widely recognized in the international forum.

Among national laws governing a large range of issues of state immunity the most influential are the US' Foreign Sovereign Immunities Act of 1976[6] (entered into force on 19 January 1977) and the British State Immunity Act of 1978[7] (entered into apply from 22 November 1978). United States of America introduced into their legal statutory regulations that do not provide immunity in the forum state in relation to torts, if the effect of the tort also occurred in that state. A foreign state shall not be immune from the jurisdiction of courts of the United States in any case in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official employee of that foreign state while acting within the scope of his office or employment. The application of this provision has been excluded, however, in relation to: (1) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused; (2) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract rights[8]. Also the British State Immunity Act provides for exceptions from the immunity of a state. Under the provisions of this Act, the principle of state immunity only applies if none of the exceptions listed in the law regarding personal injury and property damage occures. A state is not immune as respects proceedings regarding (1) death or personal injury or (2) damage to or loss of tangible property, caused by an act or omission in the United Kingdom. This provision is very much in line with the rules on liability in tort contained in the US Foreign Sovereign Immunities Act. In accordance with the wording of the British State Immunity Act, it is not even important whether the effect of the damage also occurred in the state of the forum, as long as the act causing the damage took place in that country[9]. Laws, which in its content largely correspond to British law on state immunity and, in relation to liability in tort are to be completely compatible, apply in Singapore (State Immunity Act of Singapore from 1979[10]), South Africa (Foreign States Immunities Act of The Republic of South Africa from 1981[11]) and Pakistan (Pakistani State Immunity Ordinance of 1981[12]). Moreover, numerous legislative acts affecting certain selected aspects of State immunity have been particularly enacted, such as immunity of (1) premises of foreign embassies and the residence of an accredited ambassador[13], (2) premises of the mission accredited to an international organization[14], (3) warships and vessels representing state ownership in government or non-commercial service[15], (4) foreign princes[16] and (5) the property of a foreign state[17]. As indicated by H. Fox, the only previously enacted act of national law, which expressly stated that acts contrary to international law and, in particular, acts in violation of certain fundamental human rights, justify an exception to state immunity, is the Foreign Sovereign Immunities Act, Title 28 U.S.C. § 1605 (a)[18].

Principles of international law on state immunity are often practically applicated in national case law. It is impossible to carry out comprehensive research, taking into account the practice of all states, if only because of the diversity of legal procedures and the divergence of judicial practice, regarding legal systems as such, as well as in relation to their functioning at specified intervals. However, national courts usually make an attempt to unify and harmonize the development of the judiciary, familiarize themselves with rulings of the courts of foreign states' courts, issued on the subject in matter[19]. This efforts resulted in the release of significant decisions in which courts explicitly relied on the precedent decisions of other national courts, although decisions of foreign state courts are in normal mode a part of a foreign legal system. Such a "unitarization" of legal and comparative techniques can provide significant help if the court of first instance encounters difficult and sensitive issues from the scope of international law. For example, the Egyptian Mixed Cort of Appeal in the case brought by Turkish Tobacco Monopoly in support of its ruling noted that its decision is consistent with the practice of the Italian and the Belgian court[20]. The states' case law is thus an indispensable element of studies on state immunity. However, the problem referres to the availability of courts decisions that are necessary to conduct comprehensive studies. In some states there are reports prepared by private representatives of the doctrin of law, although it is to be expected, that their scope is limited[21]. The Secretary General of the UN, however, is entitled to demand from the individual states that do not make such reports publicly available to submit materials related to judicial practice of their courts[22].

The practice of governments is also an important source of principles of international law regarding state immunity, because, in some cases, opinions of individual executive or government authorities on the issue on recognition or non-recognition of state immunity, are determinative. Government policy in terms of exclusion or inclusion of immunity from the jurisdiction of another state should also illustrate the extent to which the state being represented by the government would wish to grant immunity by a court of a foreign country under the same circumstances. One of the primary duties of the executive is not only to provide appropriate guidelines, but also to take action in regard to its decision granting or refusing to grant immunity from jurisdiction to another state. The official, internal or intersectoral opinions of legal advisors, as well as the positions contained in the diplomatic correspondence reflect the position of the state itself as an entity providing immunity and at the same time as an entity, which is itself protected by immunity[23].

The executive authority operates on three levels, contributing to the evolution of the states' practice in the respective area. First of all, it can initiate, implement and ensure compliance of legislation relating to state immunity

with opinions and the policy of the government that is currently in power. Secondly, in many countries, the executive shall give guidance to the jurisprudence regarding the state immunity[24]. Depending on the jurisdiction, the courts may be bound by decisions of the government. For example, in the United States of America all issues related to the recognition of immunity are no longer to be left to the jurisdiction once the State Department admits a foreign state immunity[25]. Moreover, the government issues statements and certificates binding on the courts, confirming the status of an individual or the state, or determinating other relevant issues of international law or some facts of international importance, that could have a direct impact on objection of having immunity raised by a foreign state in the respective case. In the case Republic of Mexico v. Hoffmann, the State Department explained that although they admit that the ship that is subject to the claim is owned by Mexico, it cannot be said that the ownership without a posession is a basis for maintaining immunity. This position was binding in the case in question[26]. Thirdly, representatives of the executive or administrative bodies provided with adequate competences are in fact state agencies who are directly responsible for the recognition, rejection or suspension of certain types of immunities[27].

While the term "immunity from jurisdiction" refers primarily to the immunity from the authority of a judicial court of another state, other particular immunities could be also regarded to be subject to the executive authority, such as immunity from search, from arrest, form detention or from court orders. As a result, performance or non-performance of the administrative authority of the forum state is tantamount to recognition or express authorization to maintain immunity that has a different extent that the than immunity from jurisdiction in the strict sense, or to the denial or the refusal to recognize such immunity[28].

In practice, decisions of national courts are not always consistent with the views expressed by the executive. Sometimes, to achieve some coordination it is necessary to seize the initiative to the government, by identifying specific areas of activity in which immunities should be recognized and allowed. This can occur through the issuance of general guidelines for the courts. An example of this was the Tate letter[29], that is a letter of 19 May 1952 addressed by Jack B. Tate, Acting Legal Adviser at the US State Department, to Philip B. Perlman, Acting US Attorney General. Its contents indicated that sovereign immunity is to be granted – according to the restrictive theory as adopted by the Department – in relation to public and sovereign activities (*acta jure imperii*), while excluding private activities (*acta jure gestionis*)[30]. The letter listed the grounds on which this concept was adopted by the State Department. Moreover, it i salso possible to coordinate the executive authority with the judicial authority by issueing *ad hoc* opinions that are binding in individual cases[31].

ad. ii)

With regard to international legislation, there is no general treaty or international agreement that regulates the issue of state immunity in a comprehensive manner. However, states signed a number of conventions of a universal nature, which contain provisions directly affecting specific aspects of this subject. These are i.a.:

– Geneva Conventions on the Law of the Sea[32] (1958); immunities on warships and vessels that are owned by the state, remaining in government and non-profit service, under certain circumstances, have been incorporated into the Convention on the Territorial Sea and the Contiguous Zone[33] (1958) and into the Convention on the High Seas[34] (1958). Moreover, the Convention on the Law of the Sea[35] (1982) contains, among other, provisions governing criminal and civil jurisdiction relating to merchant ships and government ships used for commercial purposes (Art. 28 and 29), as well as liability rules for damage and immunities of warships and other government vessels used for non-commercial purposes (Art. 31 i 32).

– Vienna Convention on Diplomatic Relations (1961)[36]; governing partly state property immunities applied in connection with a diplomatic mission.

– Vienna Convention on Consular Relations[37] (1963); governing partly state property immunities applied in connection with a consular mission.

– Convention on Special Missions[38] (1969); governing partly state property immunities applied in connection with a special mission.

– Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character[39] (1975); governing state property immunities applied in connection with premises, offices or missions of the representatives of states in their relations with international organizations.

Important issues of state immunity law were first regulated in the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matter[40] (1971, entered into force 1978). This Convention applies only between three states. It excludes state immunity in respect of tortious claims of personal or property injury under the following conditions, which must occur concurrently: (1) facts which occasioned the damage occurred in the territory of the state of origin, (2) the author of the injury or damage was present in that territory at the time when those facts occurred. Under the provisions of the Convention, subject to deprivation of immunity is thus an injury to persons or property on the territory of the forum, which was caused by the resident offender.

Inconsistent case-law on state immunity has become an impulse to undertake further work on making relevant codification. For this purpose the Basel Convention on immunity[41] (1972) has been adopted, which was prepared under the auspices of the Council of Europe. The Convention applies to civil cases where the parties are an individual and a state, with the exception of matters relating to: social security; damage or injury in nuclear matters; customs duties, taxes or penalties (Art. 29). Its parties are Austria, Belgium, Cyprus, the Netherlands, Luxembourg, Germany, Switzerland and the United Kingdom, but its provisions may also be recalled by third-country nationals[42]. Terms and conditios as for raising immunity by a state are identical to those provided for by the Hague Convention.

Art. 11 of the Basel Convention provides for that a contracting state cannot claim immunity from jurisdiction of a court of another contracting state if the case involves compensation for personal injury or compensation for damage to tangible property and if the facts which occasioned the injury or damage occurred in the territory of the State of the forum, and if the author of the injury or damage was present in that territory at the time when those facts occurred. The preamble to the Convention reported intention to limit the immunity from jurisdiction of states.

Pursuant to Resolution 32/151 of 19 December 1977, the General Assembly mandated the International Law Commission to prepare draft legislation concerning state immunity. Although the first draft was adopted in November 1991, it was not approved by states. It was only in March 2004, when the third working group developed a final draft of the UN Convention on the jurisdictional immunity of States and their property. It contains a very similar adjustment to regulations carried out in the Basel Convention. Art. 12 indicates namely, that unless contracting states agreed otherwise, the state cannot invoke immunity from jurisdiction in proceedings before a court of another state if the proceedings relate to compensation for death or injury of a person or compensation for damage or loss to tangible property caused by an act or omission which is alleged to be attributable to that state. The additional condition is that this act or omission in whole or in part occured in the territory of that other state and the author of the act or omission was present in that territory at the time of the act or omission. In the explanatory memorandum to the draft, the International Law Commission explained that the basis for jurisdiction in respect of tort or civil liability for injury or damage to property of the material is the *locus delicti commissi*[43]. Furthermore, the Commission considered that the distinction between *acta jure imperii* and *acta jure gestionis* is not appropriate in the case of tortious claims. The Convention has not yet entered into force, due to the fact that it has not been ratified by the requisite number of states.

ad. iii)

International case-law is an important source of state immunity law[44]. It is however to distunguish between the judgements of European Court of Human Rights (afterwards ECHR) and the judgements of the International Court of Justice because of their different views on the matter in question.

The issue of state immunity was the subject of judgments of the ECHR, pursuant to art. 6 of the European Convention for the Protection of Human Rights[45]. Initially, the case law of the Court upheld the concept of absolute state immunity. Such decisions were taken in cases Fogarty v. United Kingdom[46] and Mc Elhinney v. Ireland[47], in which the Court rejected the plea alleging infringement of the right to trial and upheld state immunity. In these cases, the Court did not find that invoking immunity by the state led to difficulties of access to the courts in a way that violates the essence of the right or to the extent denoting such a breach. In the case Fogarty v. United Kingdom, the Court declared outright that the Convention should be interpreted as far as possible in accordance with other principles of international law, that is also those relating to state immunity. The Court also indicated that the limitation of the right to trial by applying the doctrine of state immunity is permissible because it serves to promote good relations between states. The Court recalled, however, a tendency that is notable in international law, to restrict state immunity in disputes relating to employment and mentioned that in matters relating to employment in foreign missions or embassies, international practice varies depending on whether the resulting disputes relate to all staff or only to senior members of the mission. A breakthrough on this issue proved to be the case of Al-Adsani v. United Kingdom[48], with a complainant beeing a military pilot – Kuwaiti and British citizen, tortured in the Kuwaiti prison. In this case, the Court held that there was indeed no violation of State immunity, but the arbitration award was a predominance of only one vote. The jurisprudence changed in the case Cudak v. Lithuania[49]. In January 2009, the case was referred to the Grand Chamber, which is possible when there is a serious question affecting the interpretation of the European Convention on Human Rights, or if the resolution of a question can lead to a conflict between the ruling and a sentence that has been previously issued by the Court. In March 2010, the Court, composed of 17 judges considered a violation of the right to a fair trial as a result of a findings made by the Lithuanian courts (including the Supreme Court) that they have no jurisdiction because of the reference to the immunity from jurisdiction made by Poland[50]. The development of human rights and the related change of an individual's position in the arena of international law is of great importance as for the recognition of state immunity. It is currently determined by two basic principles, that is the law to court and the prohibition of discrimination. The implication of these rules is the thesis that sometimes appeare in the doctrine that the violation of human rights excludes the immunity[51]. The judgment on Cudak v. Lithuania is an exemplification of the latest line of jurisprudence based on this concept.

The issue of state immunity was also subject to few rulings of the International Court of Justice. In the Arrest Warrant case, the Court ruled on the issue of immunity from jurisdiction of the foreign minister of Congo. The Court made a distinction between the immunity from legal proceedings and the individual criminal responsibility and concluded that immunity can block prosecution for a while, but cannot release from responsibility. It was decided, however, that the highest officials are enabled to enjoy immunity from the jurisdiction of other countries. A radical judgement was reached in the case Germany v. Italy[52], when Germany raised its complaint alleging Italy's infringement of rights derived from the principle of sovereign equality of states and a breach of legal proceedings. The complaint was addressed in response to a rulling of an Italian civil court in 2004[53] admitting compensation from the Federal Republic of Germany for Luigi Ferrini, a worker sentenced to forced labor during the Second World War.

On 3 February 2012, the International Court of Justice eventually ruled that Italy was in breach of its obligation to respect the immunity of Germany under international law and that lawsuits for damages incurred as a result of the Second World War may be submitted only in German courts. This judgement had a precedent character and broke the trend towards taking into account the concept of the primacy of human sovereignty over state sovereignty.

ad. iv)

Describing the sources of state immunity, one can not ignore the role of recognized associations of international law doctrine, in an effort to codify and systematize the existing customary law. The most important of them are the International Law Association and the Institut de Droit International.

An important source of state immunity are als respective opinions of representatives of the doctrin of law, who are in practice consulted on many forums. This is to ensure the continuity and the uniformity of relative trends in the development of legislation and case law.

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Because of the dynamics in the development of international relations, the collimated connotations within states and beyond their borders, as well as the regional and global trade conducted by states it is reasonable to question the scope of the functional immunity of states. The doctrine of international law have long been presenting opinions on the necessity to establish stable, functional "limitations" of the immunity of states[54]. In fact, a reflection of such doubts is the classification of state actions of the state distinguishing between *acta iure imperii* (beyond the control of other states), and *acta iure gestionis* (civil, commercial acitivies - not covered by state immunity). This division is reflected in two aforementioned documents of international law, which , however, do not have the asset of universality.

The case law of international courts drew actually a circle when it comes to the application of state immunity from jurisdiction. As a general rule, national and international courts uniformly defended the concept of the absolute state immunity, considering that the state immunity is to benefit international relations. That position was also upheld in early rullings of the ECHR. A breach in this unique position was forced, however, by the doctrine of human rights and the need to develope the protection of these rights. One of the human rights covered by all international agreements in this area is the right to a fair trial, being an integral part of the right of access to a court and an obstacle to upheld the state immunity. Against this background, the conservatism of the International Court of Justice expressed in its judgment of 2012 is to be seen as one of these specific rulings, which are primarily intended to alleviate disputes between states and to normalize relations between them. The reason for this is probably the radicality between recognition and refusal as for the state immunity and that fact that the accommodating position of the Court would open the way for claims for damages raising from the events of the conflict of war, brought by victims. This would be a factor supporting political disputes in the international arena, thus diverging from the objective of the existence of state immunity itself. The interpretation of the institution of immunity in the spirit of human rights has now been confronted with the interpretation consistent with the nature of sovereignty. There are disjoint paths, therefore, the judicial practice in this area will be forced to go one of them for the sake of consistency.

Sources of state immunity law are both: a part of international law and a part of domestic legislation. In addition, their substance and applicability are significantly determined by judicial practice and material circumstances, such as socio – economic world and political relations between the respective states. The analysis of sources of law on state immunity undoubtedly points to the possible collisions between the institution of state immunity from the jurisdiction (as it was formed and as it has functioned for centuries) and from international obligations that the state adopted voluntarily. Sources of state immunity law are characterized by a lack of consistency and inadequate regulation. The consequence of this is the presence of heterogeneous and, incidentally, even contradictory rulings, arising from disagreement as to whose rights should be actually protected. Sources of law on state immunity cannot therefore be named a system, because even though it is possible to characterize them functionally, their range of content still remains unstable.

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[2] P. Grzegorczyk, *Immunitet państwa w postępowaniu cywilnym,* Warszawa 2010, p. 31.

[3] *Project de règlement international sur la compétence des tribunaux dans les procès contre les Etats, souverains ou chefs d'Etat étrangers*, AIDI 1889, nr 11, p. 436, cited in: P. Grzegorczyk, op. cit., p. 99.

[4] Document A/CN.4/323, Preliminary report on the topic of jurisdictional immunities of States and their property, by Mr. Sompong Sucharitkul, Special Rapporteur, 18.06.1979, p. 231.

[5] ibidem, p. 232.

[6] An Act to define the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit and in which execution may not be levied on their property, and for other purposes. *United States Code, 1976 Edition,* Washington, D.C., U.S. Government Printing Office 1977, vol. 8, title 28, section 1330, in: American Society of International Law, *International Legal Materials,* Washington, D.C., vol. XV, No 6 (11.1976), p. 1388.

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[11] http://www.dfa.gov.za/chiefstatelawadvicer/documents/acts/foreignstatesimmunitiesact.pdf (2015-10-30).

[12] pakistancode.gov.pk/.../admine76fcf01a8103c67d13.pdf (2015-10-30).

[13] *Diplomatic Immunities and Privileges Act,* http://www.jamaicalawonline.com/revised-laws/statutes/150-DIPLOMATIC%20IMMUNITIES%20AND%20PRIVILEGES%20ACT.html (2015-10-30).

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Summary

Osiejewicz J. **Specifics of legal sources governing jurisdictional immunities of states and their property.**

The immunity from jurisdiction of the state in international law excludes the possibility for one country to exercise its jurisdiction over another, to stretch the power of one country over another and to seizure their property. The analysis of sources of law on state immunity indicates the possibility of a collision between the institution of state immunity from the jurisdiction and certain obligations of the state resulting from international obligations that the state adopted voluntarily. This article aims to answer the question what sources of law govern the modern institution of state immunity not allowing to reach for state property to satisfy foreign clamis. It has been demonstrated that sources of law on state immunity can not be called a system, because even though it is possible to characterize them functionally, their range of content remains unstable.

Key words: state immunity, legal sources, sovereignty, jurisdiction, state property.

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REGULACJE PRAWNE DOTYCZĄCE ZASAD OPODATKOWANIA SUSZU TYTONIOWEGO

Na zmiany w obszarze wpływów budżetowych z tytułu wyrobów tytoniowych i suszu tytoniowego ma wpływ kilka czynników. Należą do nich m.in. spadek zapotrzebowania na wyroby tytoniowe oraz wzrost popularności wyrobów zastępujących papierosy, spadek liczby osób palących, a z drugiej strony także pozbawienie rolników płatności za tytoń, czy wreszcie zobowiązanie Polski dostosowania do przepisów Unii Europejskiej oraz reakcji na zidentyfikowane zagrożenia wysokości stawek akcyzy na tytoń, susz tytoniowy i inne wyroby tytoniowe.

Światowa produkcja tytoniu szacowana jest na poziomie 6 190 tys. ton w skali roku (prognoza zbiorów w 2012 roku). Wśród światowych plantacji dominują dwie główne odmiany tytoniu:

1. Virginia, określana też często jako FCV (*Flue Cured Virginia*), której udział w światowych uprawach kształtuje się na poziomie prawie 75%,
2. Burley z udziałem 10% w światowym rynku upraw.

Uprawy FCV dominują na kontynencie azjatyckim i stanowią blisko 70% światowej produkcji tego surowca, z tego największy udział przypada na Chiny – 55%. Produkcja na kontynencie europejskim, w Rosji oraz republikach ościennych (CIS) to jedynie 3% światowej produkcji. Uprawy tytoniu w EU stanowią jedynie 2% jego światowej produkcji.

Polska jest na 37 miejscu w światowym rankingu producentów tytoniu (0,32% produkcji światowej). Odnotowywana jest natomiast znakomita, druga pozycja Polski w Europie (4,16% produkcji europejskiej) – tuż po Włoszech. Produkcja tytoniu w minionym dziesięcioleciu zawierała się w przedziale od 31 do 42 tys. ton w skali roku. Klimat w Polsce nie jest korzystny dla uprawy tej rośliny. W naszej strefie klimatycznej zbiór liści dokonywany jest raz w roku. Jeśli uwzględnimy istotne różnice klimatyczne między obu krajami, dostrzeżemy szczególną pozycję Polski jako producenta tytoniu[1].

Opodatkowanie tytoniu do palenia – drobno krojonego i suszu tytoniowego wynika m.in. z Dyrektywy Rady 2011/64/UE w art. 14 ust. 2 która opisuje wysokość podatku akcyzowego na tytoń drobno krojony:

Biorąc pod uwagę deregulację rynku tytoniu w Unii Europejskiej, która miała miejsce w 2010 r., podjęto działania na narastający problem związany z dostępem do surowca tytoniowego będącego w niekontrolowanym obrocie i Polska, jako pierwszy kraj w Unii Europejskiej, zmieniła przepisy dotyczące obrotu suszem tytoniowym, który od 1 stycznia 2013 roku został opodatkowany podatkiem akcyzowym.

W Polsce natomiast tytoń można uprawiać zgodnie z rozporządzeniem ministra rolnictwa i rozwoju wsi tylko w wyznaczonych regionach Polski[2]. Do takich regionów zaliczamy: lubelsko-podkarpackie, świętokrzysko-małopolskie, kujawsko-pomorskie, mazurskie oraz dolnośląskie. Województwami o największym procentowym udziale w produkcji są: lubelskie (ok. 46,7%), małopolskie (ok. 13,8%), świętokrzyskie (ok. 11,7%) oraz kujawsko-pomorskie (ok. 10,6%)[3].

W Polsce opodatkowanie akcyzą tytoniu drobno krojonego (tytoniu do palenia) funkcjonuje adekwatnie do regulacji UE. Natomiast susz tytoniowy, który nie jest objęty regulacjami unijnymi, został w Polsce opodatkowany zgodnie z ustawą z dnia 7 grudnia 2012r. o zmianie niektórych ustaw w związku z realizacja ustawy budżetowej (Dz. U. z 2012 r., poz.1456) dokonano nowelizacji m.in. ustawy z dnia 6 grudnia 2008r. o podatku akcyzowym (Dz. U. z 2011r. nr 108, poz. 626 ze zm.) poprzez rozszerzenie katalogu wyrobów tytoniowych o susz tytoniowy. Od 1 stycznia 2013r. Ministerstwo Finansów informując o stanie prawnym dotyczącym suszu tytoniowego, podkreśla, że przepisy unijne nie regulują kwestii opodatkowania akcyzą suszu tytoniowego. Susz tytoniowy, w takim znaczeniu,