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pt. "Offset Agreement"

The subject of the dissertation is the issue of offset agreements in Polish law. For over 20 years, Poland has been conducting an institutionalized offset policy in which an offset agreement plays a key role. Nevertheless, the offset agreement has not been the subject of much interest of Polish legal doctrine. Therefore, the goal of this work is a comprehensive analysis of civil law aspects of the functioning of offset agreement in the Polish legal order, verification of the existing views of the legal doctrine, and providing answers to questions concerning the practice. In order to achieve the research goals, the dogmatic method was used primarily, in addition to which the empirical method was also utilized, using the author's professional experience.

The analysis has led to the confirmation of the thesis that the current offset law in Poland has created a new legal model taking into account the rigors of EU law. Despite numerous similarities with the previous law, the new offset law requires that offset is used in a completely different manner, which is manifested primarily by the new requirements for offset obligations and the need to justify their use from the point of view of the derogation clause of Article 346.1.b TFEU. The analysis culminated in the adoption of a position rejecting the view that the offset agreement is a framework agreement. The offset agreement should be considered as a definitive contract, which only in a certain secondary dimension should need to be supplemented at the implementation stage by the offsetor and the offsettee. Furthermore, the position which classifies an offset contract as a compensatory contract was rejected, primarily because it is not acceptable to justify economically the need for offset agreements.

The work was divided into ten chapters, an introduction and a conclusion. The first two chapters describe the general issues of offset in order to present the international and historical context of offset agreements. In this respect, mainly the relationship between EU law and offset practices is presented, as well as the meaning of the derogation clause of Article 346.1.b TFEU. The third chapter illustrates the general characteristics of the current offset model in Polish legal transactions. The fourth chapter presents entities involved in the offset, i.e. parties to an offset agreement (the State Treasury and a foreign supplier), as well as key third parties (offsetees and offsetors). The fifth chapter was devoted to
the subject of the offset agreement, i.e. the characteristics of the offset obligations. The sixth chapter explains the legal situation of offsetee and offsetor, mainly taking into account the views of the legal doctrine on agreements relating to third parties (Articles 391-393 of the Civil Code). The seventh chapter deals with issues concerning liability for damages arising under an offset agreement, while the eighth chapter describes in detail the procedural issues concerning an offset agreement. In the ninth chapter the offset agreement is described as a named, bilateral, unilaterally binding agreement, which is concluded as a result of reaching a consensus by the parties in the course of freely conducted negotiations. At the same time, it is stated that the agreement is causal and remunerated and is an agreement of result. The last chapter rejects the position of a framework and compensatory nature of offset agreement.