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OUT LOOK

**on law and business
in Poland**

Warsaw, 1 September 2017

INTRODUCTION

In Poland we are witnessing legislative inflation, often leading to overregulation. This is nothing new and not an exclusively local phenomenon, but it has clearly dominated the Polish legal landscape in recent years.

Obviously, not all changes in law can be regarded the same way. Many of them provide necessary solutions long-awaited by stakeholders. But when overregulation does arise, it increases the risk of abuse of power and generates uncertainty about what the law is today and what the law will be tomorrow or a year from now. This gives rise to further uncertainty about the legal framework in which we live, work and do business. And vital business decisions, like building a factory or acquiring an existing enterprise, are taken with a view to the longer term. The point is not just whether an activity can be conducted lawfully today, but whether it can be done tomorrow and if so, under what rules.

In the flood of entirely new regulations and successive changes to existing regulations, it is not easy for people to keep their footing—even legal professionals. So it's no surprise that our business clients ask us lawyers a lot of questions.

The inquiries from our clients operating or considering business here have inspired us to reflect not so much on specific changes in law as on the trends sketched out on the horizon that can impact future business operations in Poland. The fruit of that reflection is this publication.

Specific observations on particular legal changes and, more broadly, phenomena underway in the law can be grouped into a wider cross-section of trends, forming the framework for this study.

We have supplemented the descriptions of these trends when possible with concrete examples from practice, as well as general and cross-sectional conclusions involving the observed or anticipated consequences of these phenomena.

The authors of this publication are lawyers. While many of us also possess a solid theoretical background in macroeconomics or finance, we decided to focus on the legal perspective, leaving financial or market analysis to other experts.

This Outlook on law and business joins the lengthy catalogue of existing publications by our law firm designed primarily for businesses operating in Poland or expanding their activity here. Even when at times the best we can do is to pose questions that do not have any clear answers yet, we nonetheless believe that these deliberations can help develop a better understanding of the legal environment we all operate in.

Tomasz Wardyński



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and their symptoms

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**Protectionist and interventionist
tendencies**

For some time there has been an apparent reinforcement of calls for, and adoption of, legal instruments of a protectionist or interventionist nature. Although it is not a uniquely Polish phenomenon, and these instruments vary, they seem to share a common denominator of on one hand limiting the ability of foreign persons to invest in certain assets or entities, and on the other hand seeking to protect native, primarily small or micro enterprises, against confrontation with larger and—the proponents of some solutions argue—economically stronger foreign entities.

Protection of strategic companies and new rules for administering state assets

It seems that the most direct expression of the pursuit of such tendencies is the regulations already in force imposing limitations on acquiring control of companies operating in sectors of the economy deemed to be of key importance for the state, as well as limitations on the sale of shares or significant property of companies in which the State Treasury holds a stake.

These regulations should be analysed together. Their common characteristic is that de facto they allow the public authorities to block transactions involving shares or assets of entities regarded as strategic. In late 2016 a planned transaction was blocked on this basis, involving the sale of shares of power company EDF Polska to IFM Investors and the Czech group EPH.

The scope of application of these restrictions is broad and the consequences of violating them are harsh. Suffice it to say that failure to follow the procedure provided for transactions involving strategic companies renders the transaction void.

The Polish regulations track similar restrictions already functioning in other countries in the EU and elsewhere. While the Polish regulations are intended to apply to a set of entities limited by sector (key companies) or ownership (companies in which the State Treasury or state legal entities hold an interest), they also give the state authorities broad discretion in how to construct the catalogue of “key” companies. So far the list of key companies includes just seven names, and indeed they could be considered to be of strategic importance: EDF Polska, ENGIE Energia Polska, Grupa Azoty, KGHM Polska Miedź, Polski Koncern Naftowy ORLEN, PKP Energetyka, and TAU- RON Polska Energia.

Nonetheless, under current law, in essentially any M&A transaction it should be checked whether the target is subject at the given moment to either of the regimes discussed above.

Restrictions on trading in agricultural land

In real estate as well, there is an evident legislative trend toward intensifying existing restrictions or introducing new instruments into Polish law allowing state authorities to control trade in agricultural and forest land.

The amendment of the regulations governing trading in agricultural land was primarily meant to head off the risk associated with lapse of the protective period following EU accession for purchase of Polish land by foreigners, while strengthening the position of Polish individual farmers and promoting family farms.

On the other hand, the act responded to negatively evolving agrarian trends, including degradation of the productive properties of soil, increasing urbanisation, and environmental da-

mage. The lawmakers stressed the key role of the land as a means of agricultural productivity, intended to ensure the security of the country's food supply.

It seems that at least the last of these aims falls within a general European trend to control the qualifications of persons operating farms and to concentrate land into a smaller number of farms.

The effect of this amendment was to halt for 5 years, with certain exceptions, trading in agricultural land included in the State Treasury Agricultural Property Reserve, i.e. a portion of the nearly 1.5 million hectares of arable land owned by the state.

But the most important changes concern trading in privately held agricultural land with an area above 0.3 hectare and trading in state-owned agricultural land apart from the State Treasury Agricultural Property Reserve. Acquisition of such properties was in practice limited almost exclusively to individual farmers residing in the commune where the land being sold is located.

Meanwhile, the greatest concerns of businesses were raised by introduction of the right of pre-emption on behalf of the Agricultural Property Agency (currently National Support Centre for Agriculture). The right of pre-emption does not apply directly only to the sale of agricultural land, but also to the sale of shares in a company that owns such real estate (or the right of acquisition in the case of alienation through a legal act other than sale). This change is of vital importance for companies owning agricultural land and planning a share deal, as they must face the risk that the shares will be bought by the State Treasury.

This aspect deserves special attention. In practice, the owners of agricultural land are quite frequently companies not conducting any agricultural activity. In such cases the land is only formally classified as agricultural, but is located for example in an industrial zone not suited to agricultural production. Sometimes the land was acquired with an eye to potential expansion of existing manufacturing or logistics infrastructure. It may be assumed that the aim of the restrictions imposed on trading in agricultural land was not to restrict the trading in shares of companies holding properties of this sort, but to some extent that has been the result.

Over a year after entry into force of the amendment, it can be said that concerns about a total halt of trading in agricultural land have turned out to be somewhat exaggerated, but undoubtedly the change has contributed to a slowdown in the market for agricultural land in Poland and dampened land prices.

In practice, these regulations have also had a similar impact on share deals. They require additional caution from the parties (as the sale of shares of a company holding agricultural real estate without following the pre-emption procedure is invalid by operation of law), or require the parties to seek more complicated legal solutions to achieve the intended economic result.

Changes in the regulations governing trading in forest land should also be mentioned. These lands were also subjected to a right of pre-emption on the part of the state, exercised for the State Treasury by the State Forests. This change is particularly important because it can also apply to transactions involving land of a mixed nature, only part of which constitutes forest land within the meaning of the amended

regulations. This is a serious risk because a transaction carried out in violation of the act carries the sanction of invalidity.

Repolonisation of banks

Marching in step with instruments limiting the possibility of acquiring shares or assets are measures seeking to increase the share of Polish capital in certain sectors of the economy. The consequences of these actions are illustrated by the latest changes in the banking sector in Poland and “repolonisation” of banks.

Following the system transformation in Poland, foreign capital increased its involvement in the country’s banking sector, partly through privatisation and partly as a result of the opening in Poland of banks belonging to international financial institutions. Banks with Polish capital took a much smaller share of the market. Consequently, the idea arose of increasing the Polish capital in the banking sector to at least 50/50. This concept appears to be based largely on the belief that a greater presence of domestic capital in the banking sector has a positive influence on the country’s economic situation.

The last financial crisis provided an opportunity to realise the notion of restoring Polish capital to the banking sector. As a result of the crisis, some foreign parent banks seeking to improve their liquidity offered assets for sale, including stakes in Polish subsidiary banks.

But the Polish market doesn’t seem developed enough for private owners to commit heavily to acquiring foreign-controlled banks. Sufficient capital is held, however, by the State Treasury and companies in which it holds a majority stake, such as insurer PZU and the country’s lar-

gest bank, PKO Bank Polski.

Consequently, opportunities to bring the concept of repolonisation to life began to be exploited one by one by PZU, beginning with its acquisition of Alior Bank in 2015 from the Italian group Carlo Tassara. Another transaction of this type by PZU was the acquisition of a controlling interest in Bank Pekao from Italy’s UniCredit. Thus reinforced, PZU also intended to acquire Raiffeisen Bank Polska from its Austrian owner (via Alior Bank), but the latest reports are that Raiffeisen Bank International AG, which controls Raiffeisen Bank Polska, will not decide to sell its Polish unit. Nonetheless, a clear trend continues in the form of an increased interest by Polish entities in acquiring controlling stakes in banks, and entities actively interested in increasing the involvement in the banking sector indicate that the state will be in a position to directly or indirectly influence the policies of certain banks operating in Poland.

Other measures

Measures connected with limiting the scale of involvement of foreign capital in Poland are accompanied by calls to de facto privilege certain categories of home-grown businesses at the expense of foreign undertakings.

In mid-2016 a retail tax (levied on turnover) was adopted in Poland. In practice, the main goal of the tax was to increase the state’s revenue to finance the state’s social policy and raise the competitiveness of micro enterprises and SMEs with Polish capital in relation to big retail chains with foreign capital. This solution was motivated by the assumption that unlike domestic undertakings, foreign retail chains have capital at hand enabling them to apply optimisation practices on a broad scale. But the

retail tax could not be effectively launched. Before the deadline for making the first payments of the tax, the tax was suspended due to doubts by the European Commission on its compliance with EU law.

Similar motives seem to be driving the proponents of introducing a Sunday trading ban in Poland. Although the form and scope of the eventual ban has not been determined yet (more on that below) one of the main assumptions is that the ban would not cover individual businesses (small shops personally operated by sole traders).

Even more controversy is stirred by the announced intention to deconcentrate the ownership of media companies in Poland, particularly publishers of press titles and television broadcasters, although so far the plan has only been tentatively outlined. According to press reports, a limit of a 20% share by any one entity in the capital of companies conducting this sensitive activity would be introduced. Because the media sector worldwide is characterised by large capital groups that rarely enter into joint ventures, the changes in law signalled here could squeeze foreign investors out of the media sector in Poland. Another consequence of the proposed changes could be to weaken the position of print publishers and TV broadcasters, as they would be cast out of any larger capital group structures and left more vulnerable to external influences, particularly political influences.

CONCLUSIONS

The common denominator of the phenomena mentioned above is undoubtedly their far-reaching protectionism. An evaluation of the aims of the planned or introduced changes is

beyond the scope of this publication (extending to issues of politics, economics and even social engineering). But an assessment of the legal aspects of these changes leads to three main conclusions.

First, in many instances it is evident that no comprehensive analysis of the consequences of the changes was made at the legislative stage. An example is the regulations limiting trade in agricultural land, which not only narrowed the group of entities capable of acquiring such land but also generated a number of problems for transactions involving companies holding agricultural land.

Second, not only were the consequences of the changes often not fully identified, but legal instruments were created in plain violation of law. An example is the retail tax which was immediately squashed by the European Commission.

Finally, there is a significant problem in the limited possibility of assessing the influence the changes would have on the legal environment. Even if this was not the intent of the lawmakers, it creates a sense of uncertainty on the part of businesses operating in Poland or planning to operate here.



Increased regulatory pressure

The protectionist trends noted above are clearly accompanied by an increase in regulatory pressure. This is visible across various fields of administrative law, taking different forms depending on the subject of legal protection.

Competition policy—a preference for punishment

The data protection regulations discussed later in this report are accompanied by notable trends in competition and consumer protection. In April 2017 the Office of Competition and Consumer Protection (UOKiK) introduced a whistleblower programme for employees, contractors, customers and suppliers, who can notify the regulator anonymously of competition violations. The programme is based exclusively on instructions published on the UOKiK website providing a telephone number and an email address. A potential whistleblower can report to UOKiK about prohibited arrangements or abuse of a dominant position. But there are no regulations governing the programme or even specific guidelines issued in official form by the president of UOKiK.

In terms of penalisation of cartels, stiffening of antitrust penalties, and changes in the leniency programme, the regulator's plans have so far been limited to declarations. There is no draft yet of any specific legislative solutions. If new legislation is proposed and adopted, it will tend to increase the antitrust risk of businesses operating in Poland and the risk of related civil enforcement actions.

The Act on Claims for Redress of Loss Caused by Violation of Competition Law entered into force on 27 June 2017. The act is designed to eliminate existing difficulties, particularly of an evidentiary nature, and facilitate pursuit of civil claims for violation of competition law. This is to

be achieved primarily by introduction of a presumption of injury, easier estimation of the amount of loss, and the possibility for the court to order disclosure of evidence. The act applies to antitrust claims arising after entry into force of the act. However, the procedural rules indicated in the act, including the possibility to demand disclosure of evidence, can be used in proceedings commenced after the effective date of the act, regardless of when the alleged violation of competition law occurred.

In line with the predictions by the president of UOKiK, with introduction of the whistleblower programme and entry into force of the civil claims act, more frequent and higher penalties should be expected to be imposed on undertakings and their managers. The risk that undertakings and managers will suffer real consequences for anti-competitive practices should also rise accordingly. Moreover, it is likely that criminal liability of managers for cartel practices will be introduced. It may also be easier to pursue civil claims against entities applying such prohibited practices.

Finally, it should be noted that under the regulations combating unfair exploitation of contractual advantages adopted at the end of 2016, UOKiK will be vested with the authority to exercise oversight of contracts between undertakings in the supply chain for agri-food items. Thus if UOKiK finds that the terms of a contract are unfair because, for example, they provide for over-long payment terms or impose additional obligations on a supplier unconnected with the subject of the contract, the regulator can impose a fine on the undertaking unfairly exploiting its contractual advantage equal to up to 3% of its annual turnover. The new oversight system is patterned on the system for protecting consum-

ers against unfair market practices, extending it for the first time to cover B2B dealings.

Greater rigour of the tax system

Significant changes are apparent in tax law and tax enforcement. The practice shows that the treasury administration has taken active steps in three areas.

The first area is income tax, where the administration is focusing particular attention on the correctness of settlements between related undertakings. Abusive practices by taxpayers in this respect are supposed to be identified by the customs/treasury offices during customs/treasury audits, with tasks including verification of whether there is any artificial allocation of income to low-tax jurisdictions. The frequency and thoroughness of audits conducted in 2016–2017 may be rated as much greater than in earlier years. Regulations supporting international exchange of information on transfer pricing have been implemented in this field.

The second field of particular interest to the Ministry of Finance is effective VAT enforcement. Given the scale of tax crime, a significant portion of the resources of the treasury administration, law enforcement authorities and the courts are devoted to combating VAT fraud. The intensified efforts by these authorities are accompanied by major legislative changes. In particular, a VAT sanction has been introduced in the form of an additional tax obligation for incorrect settlement of VAT, which can be assessed as high as 100% of the normal tax. New types of offences closely related to tax law have been added to the Criminal Code (as discussed below).

The third area of interest among the tax authorities is tax avoidance by individuals. In this field

as well, the tax authorities have apparently stepped up their efforts against tax optimisation. This is accompanied by introduction of a general anti-avoidance rule to defeat advantages resulting from activities conducted in an artificial manner, primarily to achieve tax benefits which under the circumstances are inconsistent with the subject and aim of tax regulations. Along with this there is a change in how the existing regulations are interpreted, to achieve a result similar to the anti-avoidance rule under circumstances that lie outside the scope of the rule.

Other quasi-tax burdens

Alongside “classic” forms of taxation of businesses, introduction of other instruments fulfilling a similar role is being discussed. Thus, although it may seem inconspicuous at first glance, one of the key elements of the reform in water management in Poland introduced by the new Water Law should not be overlooked. This has to do with the new system of fees for water services. These fees will mainly be charged to businesses abstracting groundwater or surface water, discharging sewage to water or earth, or discharging wastewater or rainwater to water or earth. The level of the fees for water services will depend not only on the quantity and quality of the water abstracted or the waste discharged, but also on the industry in which the abstracted water will be used. The level of the fees will also be affected by the terms of the permits obtained by businesses: the greater the permissible quantity of abstracted water or discharged waste, the higher the fee will be. The detailed rates for the fees will be specified in a regulation. The new rules may significantly increase the costs of doing business.

Overhaul of immigration regulations

An act amending a number of immigration regulations is planned to enter into force on 1 January 2018. A fundamental element of the act is to introduce into the Polish legal system new solutions enabling easier and faster hiring of citizens of third countries for seasonal work, to meet the growing demands of the Polish labour market.

The bill is still undergoing work in parliament and may still change, but the main aims also include elimination of abuses by tightening the system and increasing the oversight of registration of simplified declarations of the intention to hire citizens of certain countries, such as Belarus, Russia and Ukraine.

The positive side of the planned changes will also include clarification of certain provisions that have raised doubts in practice. For example, periods for resolution of certain matters by the authorities are to be fixed, and the types of actions regarded as performing work in Poland requiring a permit are to be made more explicit.

Amendment of Administrative Procedure Code

The increase in regulatory pressure is accompanied by a reform of the procedure before administrative authorities. The main aim of the reform is to expedite and streamline administrative proceedings. The amendment introduces new regulations modifying some of the general rules of administrative procedure and rules governing *inter alia* simplified proceedings, tacit decision of matters, resolution of doubts in interpretation in favour of the party, the new institution of a “reminder,” detailed rules for imposing administrative fines, the possibility of waiver of a fine, administrative mediation, the institution of an

“objection” in proceedings before the administrative courts, and European administrative cooperation. Some of the new procedural solutions will require changes to other laws (e.g. for silent settlement decision of administrative matters, specific regulations will have to be introduced identifying what types of matters are suitable for this type of resolution), but the changes nonetheless appear to be favourable for citizens and businesses.

The amendment of the Administrative Procedure Code is expected to improve the situation of citizens and businesses in relation to state authorities, which is particularly important in the face of the growing trend to increase the regulatory burdens on industries. But this amendment is too new to assess clearly at this point (it entered into force on 1 June 2017 and only applies to new cases).

Data protection

Although it is an issue affecting all EU member states, a description of the increased regulatory pressure would not be complete without a brief discussion of the data protection regulations entering into force shortly.

Legal action was taken in April 2016 to reform data protection law. The new regulations enter into force in May 2018. The approach under which they were adopted—the General Data Protection Regulation (GDPR)—means that they will apply directly across all EU member states, but they will also require entities generally subject to the laws of other jurisdictions to comply with the provisions of the GDPR if they process data of persons to whom they offer goods or services in the EU or monitor their behaviour occurring in the EU.

A significant element of the new regulation is the very high sanctions for violation of the GDPR. They can reach as high as EUR 20 million or 4% of the total worldwide turnover of an undertaking. Although only the practice will show what real impact the GDPR has on operations in numerous industries, it is clear that in the near future many businesses will have to undertake extensive measures to prepare for entry into force of the new data protection rules—and this applies not only to businesses processing personal data on a mass scale.

Competition Law will lead to an increase in private actions commenced by businesses injured by cartels, providing private plaintiffs effective tools greatly facilitating the enforcement of private antitrust claims.

The increased penalisation of businesses and managers should also be noted. We address this issue in more detail in the next section of this report.

CONCLUSIONS

The changes indicated above and newly introduced competition regulations may lead to greater activity by Poland's competition authority and consequently an increase in the number of administrative and judicial proceedings in this area. Entry into force of the Act on Claims for Redress of Loss Caused by Violation of





Greater penalisation of commerce

Although criminal law has intervened in commercial relations for a long time, and criminal regulations are found in hundreds of acts, not just in the Criminal Code or the Fiscal Criminal Code, greater penalisation of commercial dealings has been observed recently. This appears to be another area where there is an observable trend toward toughening of regulations and stepped-up enforcement.

New types of offences connected with tax abuses

The Polish parliament has introduced two new offences in the Criminal Code:

- Falsifying or forging an invoice under factual circumstances that may be material *inter alia* for determining the amount of public charges or a refund thereof, or use of such an invoice
- Issuing an invoice providing false information as to factual circumstances that may be material *inter alia* for determining the amount of public charges or a refund thereof.

Both of these offences carry high potential penalties: if the invoice or invoices are for an amount exceeding PLN 5 million (EUR 1.2 million), the maximum punishment is 15 years in prison, or if the amount exceeds PLN 10 million (EUR 2.4 million), up to 25 years.

The introduction of these types of offences into the Polish legal system is connected with the battle against tax crime, particularly practices aimed at defrauding the State Treasury of undue VAT refunds (known as “VAT carousels”). This effort is also apparent in an increase in the sentences imposed by the courts for tax offences (e.g. 10 years in prison for a person who headed a group that obtained over PLN 40 million (EUR 9.5 mil-

lion) in fraudulent VAT refunds). But the attitude of prosecuting tax abuses on the broadest scale may claim innocent victims—honest businesses sometimes forming a link in a fraudulent procedure without their knowledge.

Expanded confiscation

Another manifestation of the penalisation of commerce is the attempt to expand the set of entities whose assets can be attached as security for potential sanctions, and the creation of a legal framework for new methods of security against property. This is related to regulations enabling courts to order the forfeiture of a broader range of assets of perpetrators or persons who benefit from criminal offences. The legal rules making up these changes are referred to collectively as “expanded confiscation.”

The measures introduced provide among other things for the possibility of securing assets by ordering involuntary administration of the enterprise of the accused or of a collective entity and appointing the administrator. Meanwhile, forfeiture of the enterprise of the perpetrator and in certain instances other individuals may be ordered. Persons whose assets may be attached as security or may be subject to forfeiture can participate in the criminal proceeding to a certain degree and defend their rights. Thus we are likely to witness growing involvement in criminal proceedings by corporate entities appearing as participants in the case, forced to actively defend their rights to assets which may be held as security or against which forfeiture may be ordered as a consequence of the perpetrator’s actions.

Corporate criminal liability—a new approach

The current Act on Liability of Collective Entities for Punishable Offences enables sanctions of

a criminal nature to be imposed on corporate entities for acts by perpetrators (individuals) acting on behalf of the entity. A condition for imposing such liability is prior issuance of a judgment convicting the individual perpetrator, conditionally discontinuing the proceeding, permitting the perpetrator to voluntarily submit to liability, or discontinuing the proceeding against the individual due to circumstances excluding punishment.

This model has proved ineffective and dysfunctional. Very few such cases are conducted against collective entities, and the sanctions imposed are low and barely felt by the entities even though they may have benefitted from the offence. Legislative initiatives have thus been undertaken seeking to increase the effectiveness of prosecution of collective entities and to impose more severe sanctions on them.

The hope is to achieve improved effectiveness in prosecution of collective entities by uncoupling the possibility of imposing criminal liability on a collective entity from conviction of the individual perpetrator, and consequently enabling criminal proceedings to be conducted simultaneously against the individual perpetrator and the collective entity. Sanctions would be raised to make them more painful. Although a draft of the amendment to the act on liability of collective entities has not been published yet, in light of the current criminal enforcement policy it may be predicted that the number of indictments against corporate entities will grow. This will make it necessary to develop new standards for protection against the risk of sanctions being imposed

on collective entities, and if criminal proceedings are initiated against them, to ensure that they obtain a professional legal defence.

CONCLUSIONS

The examples given display a trend toward greater regulation of commerce using instruments of criminal law. In practice this means an expansion of the possibility of pursuing business assets during criminal proceedings and fiscal criminal proceedings. This could impact the proper functioning of businesses. It also leads to the conclusion that in their operations, businesses will have to place greater emphasis on preventive measures, for example closely checking their prospective business partners.

Meanwhile, given the evident pressure on law enforcement authorities to uncover and prosecute economic, financial and tax offences, it can be anticipated that the unintended victims of actions by these authorities will be honest businesses unfairly punished for becoming caught up in criminal schemes of third parties. This applies to both individual business owners and large corporate entities.

It may be anticipated that the effect will be increased involvement in criminal and fiscal criminal proceedings by third parties who are not perpetrators of prohibited acts but will be forced to defend their financial interests and reputation during such proceedings.



New approaches to judicial and administrative practice

In the face of growing regulatory pressure and increased penalisation of commerce, the role of the courts as guardians of the freedoms guaranteed to businesses in Poland will also undoubtedly grow. The functioning of the courts and administrative authorities in practice is also vital. Whether and to what extent specific changes in law are enforced in reality depends on the practice.

Improvements in administrative proceedings

With respect to the practice of administrative bodies, certain hopes should be tied to the amendment of the Administrative Procedure Code discussed earlier. Changes have been introduced aimed in particular at simplifying, expediting and streamlining administrative proceedings, as well as instructing the authorities that doubts should be resolved in the citizen's favour—which in itself is highly promising. But will these changes translate into improvement in the situation of businesses involved in proceedings? This we will learn only as the new administrative practice develops in this area.

New approach of the administrative courts

Two trends in the relations between administrative authorities and the administrative courts are particularly notable.

First, although over two years ago a regulation was adopted enabling the administrative courts to order an administrative authority to issue a decision with specified content, the courts rarely follow this path. This shows the far-reaching caution and hesitancy on the part of the courts to intrude on the administration's role of considering the merits of each matter (while the role of the administrative court is only to determine

whether the case was given due consideration under the procedural and substantive regulations). But it does not seem that this was the aim when vesting the administrative courts with this authority.

But, secondly, the province administrative courts have recently become more inclined to apply self-review when a party files a cassation appeal with the Supreme Administrative Court. Self-review essentially means that the province administrative court can correct its own ruling, particularly if it finds that the grounds for the cassation are clearly justified, by setting aside the existing ruling and reconsidering the matter. Considering the average duration of proceedings before the Supreme Administrative Court, this is undoubtedly a tool making it possible to expedite the resolution of cases before the administrative courts.

More widespread use of mediation in civil and administrative proceedings

Turning to the actual practice of conducting proceedings, recent changes in civil procedure and administrative procedure should be mentioned—specifically, the changes aimed at encouraging more common use of mediation. In theory, this should make proceedings faster, more efficient and less costly.

In civil proceedings, the court is obliged to instruct the parties of the possibility of mediation, and may direct the parties to mediation at any stage. The parties are required to take part in an informational session concerning mediation, and the plaintiff must state in the statement of claim whether attempts were made to resolve the matter amicably before commencing litigation. A party that unjustifiably refuses to participate in

mediation can be charged with the costs of the proceeding.

Striving for amicable resolution of disputes and support for this process by the court has become a fundamental principle of civil procedure. Mediation offers confidentiality and flexibility. Promoting it as a method of dispute resolution, particularly among businesses, should lead to the development of a more widespread culture of amicable dispute resolution enabling the parties to maintain their commercial dealings.

The possibility of conducting mediation has also been introduced in administrative proceedings— with other parties before the administrative authority, or with the administrative authority itself. This change is far-reaching and may bring about a change in the distinct culture of public administration and public officials' attitude toward businesses. The regulations that have been introduced appear to be headed in the right direction, but by its nature mediation is voluntary and it will remain so in administrative cases. More frequent use of mediation across various types of cases will take time, as well as a change in the approach of the administration, if these regulations are to avoid becoming a dead letter.

Changes in the functioning of the common courts

Far-reaching work to reform the judicial system has been carried out recently. The changes already introduced include new regulations governing the functioning of the common courts. Al-

though the shape of further planned changes is not known yet, the regulations already adopted and the scope of further changes have already generated reservations on the part of the European Commission, which has issued recommendations for the Polish authorities on maintaining the rule of law.

CONCLUSIONS

It appears that the trend discouraging courts from issuing rulings substituting in practice for decisions by administrative authorities will continue.

With respect to dispute resolution methods, we can anticipate that mediation will be more broadly used in civil cases and will also be applied in administrative proceedings, which would be a favourable trend. Amicable resolution of disputes should become a realistic alternative to litigation. Encouraging mediation should shorten proceedings and reduce their costs.

The near future is expected to bring further changes in the organisation of the justice system. The importance of these changes for businesses in Poland will depend on the details of the solutions adopted.



A new tax reality

The process of transformation in tax law and enforcement, consistent with the broader trends noted above in other fields of law, has clearly picked up steam in the last three years.

The symbolic start of the formation of a new tax reality was marked in Poland by the decision to impose corporate income tax on joint-stock limited partnerships (SKA), which were commonly used for tax optimisation, introduction of taxation of controlled foreign corporations (CFC), and renegotiation of the tax treaties that were most often exploited by taxpayers to escape taxation in both jurisdictions.

This process has accelerated in the past year or so. The initiative of lawmakers and the tax administration has been catalysed by the growing fiscal needs of the state connected with increased social spending (particularly implementation of the Family 500+ child benefit programme), a gaping shortfall in VAT receipts, and pressure from the international community to combat unfair tax avoidance.

This policy is being realised through numerous actions: introduction of a tax on certain financial institutions and the so-far unsuccessful attempt at introducing a tax on retail sales (discussed above—collection suspended pursuant to a decision by the European Commission, which Poland has challenged before the Court of Justice), stepped-up controls on transfer pricing, review of selected optimisation schemes currently functioning, introduction of a general anti-avoidance rule, harsher sanctions (under both tax law and criminal law), and many others. Greater international cooperation and reform of the tax administration should also result in increased effectiveness of tax collections.

VAT, the state's darling

VAT receipts play a key role from the perspective of the national interest, accounting for 40% of the Polish state budget. The way VAT is structured opens it up to a high risk of abuse, particularly carousel fraud. This awareness is shared by taxpayers, some of whom have exploited the weakness of the existing solutions, and the authorities.

The approaches applied to solve this problem can be divided into two categories: organisational and punitive. The first group includes introduction of the single audit file for tax (SAF-T), an electronic record of tax books and accounting documents which should help the authorities to verify the correctness of tax settlements on an ongoing basis; expansion of the use of the reverse charge mechanism in domestic transactions; verifying taxpayers prior to VAT registration; and the split payment mechanism for VAT now under consideration. The second group includes introduction of VAT sanctions in the form of an additional obligation for improper settlement of VAT equal to up to 100% of the original obligation, and enactment of new offences in the Criminal Code—falsification of invoices and providing false information in invoices—punishable by up to 25 years in prison.

Climate change—chilly weather in tax havens

Lawmakers observed that CIT receipts were not keeping pace with the economic growth achieved in Poland. This was one of the reasons for revisiting the income tax enforcement policy.

Strict literal interpretation of tax law guaranteed legal safety for taxpayers but sometimes was used for aggressive tax optimisation. Now this

approach is giving way to interpretation of tax laws in accordance with their spirit. The erosion of legal certainty is manifest in the introduction of a general anti-avoidance rule founded on a number of vague concepts. Along with adoption of the GAAR, the protection once offered by individual tax interpretations has also weakened. Individual interpretations no longer ensure protection insofar as the circumstances in question constitute tax optimisation. Transfer pricing documentation has also come in for closer scrutiny to verify the correctness of settlements between related entities.

Reform of the tax administration

2017 has brought a reform of the tax administration. The new consolidated National Treasury Administration (KAS) is expected to enforce tax law more effectively in Poland. KAS merged the Customs Service, tax administration and treasury audit functions, previously operating in three separate divisions.

The reform has led to significant changes in “hard” controls (customs/treasury inspections). The procedure in tax cases conducted by the customs/treasury offices has been simplified: the taxpayer’s right to formally address the results of the inspection by submitting reservations has been eliminated, and the path for seeking review has been shortened, as the customs/treasury office also examines the case at the second instance. This reform has also limited taxpayers’ right to file amended returns to correct irregularities.

A Polish view on global tax thinking

The international Base Erosion and Profit Shifting (BEPS) project pursued by the OECD, targeting

reductions in the base of taxable income and shifting of profits to low-tax jurisdictions, has largely been enacted in Poland. Poland has adopted most of the 15 actions making up the BEPS Action Plan, thanks to changes inspired earlier by the EU or through the BEPS project. These include introduction of CFC regulations, amendments to the thin capitalisation rules, and first and foremost new reporting rules for related entities. Poland has also signed the Multilateral Instrument, a convention enabling easy modification of numerous bilateral tax treaties by adopting fixed modules designed to close loopholes in existing tax treaties exploited to avoid taxation.

CONCLUSIONS

Given such major changes in the tax environment, every business should examine its current tax practices. Foreign investors still planning investments in Poland should maintain particular caution, as they will have to face a decidedly conservative approach by the Polish tax administration.

Moreover, as the last year or so has witnessed a great increase in the number of audits of settlements from prior years, every taxpayer should also assess the risk associated with that period. Their prior settlements may be evaluated under new criteria in both tax and criminal aspects. This is particularly vital since the new criteria are often much more restrictive than those that were in force at the time decisions and actions were taken in the past.



Social measures

At the opposite pole from the trend toward tightening the tax system stand the state's efforts at income redistribution.

Family 500+

The flagship instrument in this trend, the government's Family 500+ programme, consists of payment of a monthly cash benefit of PLN 500 (EUR 120) for the second child in each family and each child after that. The benefit is exempt from income tax. Families with the lowest income receive the benefit also for the first child. Introduction of this programme has measurably improved the financial condition of many families, driving growth in consumer spending. On the other hand, participation in the Family 500+ programme has given some recipients an incentive to withdraw from the labour market entirely instead of taking the lowest-paid jobs. This in turn is driving pressure for higher wages at the bottom of the pay scale. Additionally, the low unemployment rate, running in July 2017 at 7.1% nationwide and barely 2–3% in the largest urban centres, is practically strengthening the negotiating position of employees, thus contributing to higher wages. For example, retail chains have had difficulty recruiting workers, leading them to raise salaries.

Implementation of the Family 500+ programme is causing a serious strain on the state budget. To generate greater revenue to cover the expenses of financing the state's social policy, the Ministry of Finance has sought the introduction of new taxes: the tax on retail sales and the tax on certain financial institutions. However, the retail tax will not be collected until 2018 at the earliest. The bank tax has generated revenue lower than government projections, but in 2017 should nonetheless contribute about PLN 4 bil-

lion (PLN 950 million) to the state budget.

Tax support for families

Families are also supported by the tax system through pro-family tax relief. The relief allows a certain amount to be deducted from income tax when filing the annual tax return, depending on the number of children, and sometimes also a deduction from the income of the parents or legal guardians. For example, a family with three children can deduct over PLN 4,200 (EUR 1,000) from their income tax each year. However, this relief is not available to parents with one child and an annual income exceeding PLN 112,000 (EUR 26,000). This relief is also not available to individual business owners who elect taxation at the flat rate of 19%.

Protection of employees

Efforts by businesses to cut labour costs connected with conclusion of employment contracts has contributed to the popularity of hiring of workers on the basis of civil law contracts. Some workers also prefer civil law contracts in the belief that they can increase their take-home pay. But this phenomenon means that some working people are deprived of the protections characteristic for those hired under employment contracts, even when the actual circumstances under which they work greatly resemble those of employees.

The legislative response to the widespread use of civil law contracts is gradual expansion of legal protections of labour law to cover additional groups of workers and expansion of those covered by social insurance obligations. From 2 January 2016, persons hired under civil law contracts enjoy broader parental benefits. On 1 January 2017 a minimum hourly wage entered into force for persons working under civil

law contracts. Before that change, minimum wage protections applied only to persons hired under an employment contract. And in line with an earlier ruling by the Constitutional Tribunal, a change is planned which would enable persons working under civil law contracts to form and join trade unions. The trend toward expanding the coverage of mandatory social insurance is reflected in the modification in 2016 of the rules for coverage by social insurance under a contract of mandate (*umowa zlecenia*), as well as the introduction in June 2017 of procedural changes making it easier for the Social Insurance Institution (ZUS) to determine which entity is benefiting from the work of a given person and should be treated as the remitter of social-insurance contributions. These changes are expected to increase the amount of contributions paid in to ZUS.

Additionally, attempts are being made to combat the unjustified replacement of hiring under employment contracts with hiring under civil law contracts. An example is the introduction in 2016 into the Public Procurement Law of an obligation by contracting authorities to require that contractors and subcontractors for most types of public contracts hire their workers under employment contracts if the work is to be performed in a manner characteristic of an employment relationship. Previously, such employment clauses could be imposed by contracting authorities optionally, but this was rarely done, among other reasons because it might strain the authorities' contracting budgets.

Drawing the line between employment and other forms of work and defining the scope of protection for those earning a living outside of an employment relationship is a current issue particularly in the context of the work of the Codifica-

tion Commission, which is supposed to draft two new employment codes by the end of the 1st quarter of 2018, covering individual and collective labour law.

Apart from the foregoing changes in legislation, ZUS is taking notable audit measures aimed at limiting the conclusion of contracts carrying lower social insurance contributions and thus generating lower benefits for insureds. This includes reclassification of contracts for performance of a specific work (*umowa o dzieło*), which are generally exempt from mandatory retirement and disability insurance, as service contracts which are covered by those obligations. An example of this restrictive approach is ZUS's challenge to contracts for performance of specific works involving creation of musical works and other work of an artistic nature, deeming them to be service contracts. The position of ZUS on this issue has been upheld in recent rulings by the Supreme Court of Poland.

Sunday trading ban

Social motives also lie behind the government's support for work on a civic draft of an act limiting trading on Sundays. Essentially the proposal calls for a ban on trading at commercial locations on Sundays as well as a ban on performance of other trade-related jobs on Sundays, such as sorting and packing. The draft provides for certain exemptions from the trading ban. Adoption of the act would have a major impact on the retail sector, but given the large number of comments on the proposal by social organisations and by the government, it is hard to predict what the scope of the limitations actually introduced will be. Recent indications are that the ban will probably apply only to certain Sundays (two or three per month).

CONCLUSIONS

In connection with the favourable situation for workers on the labour market, an increase in payroll expenses and greater employee turnover should be expected. Growing competition among businesses to seek out qualified staff is encouraging aggressive measures to obtain workers, including at the cost of existing employees. Appropriate steps should be taken in good time to retain key staff through tailored incentive programmes and contracts limiting actions by employees conflicting with the employer's interests.

The prospect of easily finding other work or launching one's own business is sparking frequent disruption of employee discipline and undertaking of activity infringing the employer's interests. This makes it worthwhile to examine the organisational and legal measures in place for protection of the key resources of the enterprise, including for example protection of confidential information and intellectual property, to ensure that the protection is adequate to meet the consequences of potential violations.

The favourable situation on the labour market and the apparent increase in legal awareness also encourage a sense of entitlement on the

part of employees. It can be anticipated that disputes over protection of employees' interests, including their privacy and dignity, will become more frequent. It should be ensured that the employer is properly performing its obligations to counter mobbing and discrimination, and has introduced procedures for notification of potential irregularities, and if the employer does apply control measures with respect to employees, the appropriate procedures are followed.

Hiring on the basis of a civil law contract will always carry some risk of reclassification as an employment contract, or in the case of a contract to perform a specific work, reclassification as a service contract. But work in the modern economy is largely knowledge-based, often justifying hiring under civil law contracts, and with efforts to optimise employment costs for both parties, this form of hiring can hardly be excluded. In many industries it is indeed becoming the predominant form of work. But considering the initiative being taken by oversight authorities in this respect and the serious financial consequences of reclassification of contracts, conclusion of civil law contracts should be preceded by a legal analysis and the contracts should be framed in a manner that takes account of the case law issued by the courts.





Support for entrepreneurship

Alongside the trends in legal changes discussed above, which are not all advantageous for businesses, it is also essential to point to changes reflecting political declarations of the intention to update the law and eliminate barriers to doing business. But when analysing the new regulations, true changes must be distinguished from mere declarations or nominal changes with little chance of improving the legal environment for business. We perceive the seriousness of threats arising out of certain trends in changes to the law, as well as the doubtful quality of some legislative initiatives. Thus it is important to identify and support the changes that are indisputably valid and needed.

Responsible Development Plan

The Responsible Development Plan was drafted in the first half of 2016. It is popularly known as the “Morawiecki Plan” after its author, Deputy Prime Minister Mateusz Morawiecki. One of the key proposals in the plan is the Business Constitution, intended to set forth comprehensively the rules for doing business in Poland.

The Business Constitution contains guarantees of the freedom to conduct economic activity and establishes standards for actions by the public authorities in cases affecting businesses, based on the principle “what is not legally prohibited is permitted,” a presumption that businesses are operating honestly, a canon of business-friendly interpretation of regulations, and the rule of public officials’ liability for violations of law. The core of the Business Constitution is made up of proposals for the Business Law, the Act on Rules for Participation in Commerce by Foreign Businesses, and the Act on the Central Registration and Information on Business. These would re-

place the Business Freedom Act of 2004 and accompanying acts, the earliest of which was adopted in 1989 at the very beginning of the economic transformation in Poland.

The Business Constitution represents an evolution and expansion of the existing regulations. It seems that although the Business Constitution does embody fundamental principles of commercial law, it does not contain instruments for protecting businesses against violation of some of the indicated standards for the exercise of public authority. This must be borne in mind when assessing the legislative proposals. Only implementation of the acts will confirm how effective the announced changes are.

In addition to the Business Constitution, an important element of the Responsible Development Plan is the acts and proposals aimed at eliminating barriers to conducting business in Poland. In this respect, the Morawiecki Plan represents a continuation of numerous previous attempts to deregulate the economy and eliminate barriers to entrepreneurship in Poland. These have included such initiatives (named after their proponents) as the Hausner Plan, the Kluska Package, the Szejnfeld Package, and Piechociński’s Constitution. Despite a positive reception from the business community, all of these legislative efforts encountered serious resistance at the stage of inter-ministerial consultations; none were adopted in their entirety, and most of them never got beyond a first reading in the parliament. Preparations for the Business Constitution have also dragged out, and the bills in question have yet to be considered by the Council of Ministers. Consultations between the relevant ministries and work by government committees are underway.

Polish Development Fund and support for SMEs and innovation

The Responsible Development Plan provides for support for growth of innovation in the Polish economy and support for small and medium-sized enterprises. The Polish Development Fund (PFR) was established recently with the aim of supporting the activity of startups deemed to be vital to the innovativeness of the economy. The fund will also coordinate the granting of support to all SMEs via existing specialised public institutions.

A notable initiative is the umbrella brand Start In Poland, combining instruments for supporting start-ups in Poland. The total value of the Start in Poland programme is PLN 3 billion (EUR 700 million). The programme relies on venture capital support as well as partnering between start-ups and big companies, including state-owned companies.

Tax instruments fostering innovation

Innovation is also being encouraged through changes in tax law. For example, expenditures on research and development enjoy tax preferences in the form of innovation relief. Innovation relief enables an additional deduction from the tax base (effectively lowering the income tax owed) for selected expenditures on R&D activity (the amount of the deduction depends on the size of the taxpayer and the type of expense). These include expenditures on acquisition of materials directly connected with R&D activity, fees for use of R&D apparatus, costs of acquiring R&D results, and employment costs. Micro enterprises, SMEs and large businesses are all eligible for this relief, regardless of their business form.

Tax preferences for commercialisation of intellectual property

Stepping up the commercialisation of intellectual property and cooperation between academia and business, thus boosting the innovativeness of the Polish economy, may be achieved by elimination of taxation on corporate contributions of commercialised intellectual property (e.g. know-how, patents, and economic copyrights to software). In practice this solution should benefit start-ups, for whom operating in corporate form is a natural phase in their development, often dictated by the need to raise external financing.

Polish Investment Zone

It was recently announced that the Ministry of Development is beginning to draft an act that would ultimately replace the Special Economic Zones Act. The projected new act would be aimed at improving the conditions encouraging location of investments in Poland. Unlike under the existing SEZ Act, investment incentives would be available throughout the territory of Poland, while maintaining the principle of particular support for investment in less-developed regions. The plans of the Ministry of Development apply only to new investments or reinvestments meeting certain quantitative and qualitative criteria (yet to be defined). Investment incentives are to be awarded by the companies currently managing SEZs, which will operate through a division into regions based on counties. It is claimed that this change will greatly cut the duration of the procedures. Investment support decisions are to be issued for a definite period of 10 to 15 years.

This change in law has been presented only in broad outline and can hardly be assessed at this point. If the change is adopted, certainly the sys-

tem for operation of SEZs in Poland will change dramatically, and this is an important instrument of the state's development policy. We should note that from the initial phase, the Polish Investment Zone was dubbed the "New Morawiecki Plan"—a dubious distinction considering the ongoing delays in implementation of the key acts of the original plan.

Tax preferences for small enterprises

In a notable incentive, the corporate income tax rate has been cut from 19% to 15% for small enterprises. The reduced rate applies to taxpayers whose sales, including VAT, did not exceed EUR 1.2 million in the prior tax year, including taxpayers launching their activity. According to projections by the Ministry of Finance, as many as 400,000 firms may enjoy this preferential CIT rate in 2017.

Simple stock company

An interesting legislative proposal which the Ministry of Development has been working on for over a year is to create a new type of company in Poland known as the simple stock company (*prosta spółka akcyjna*—PSA). This construction, patterned on the French *société par actions simplifiée* (SAS), could be a convenient vehicle for doing business of all types. Many of the features of the PSA are designed with an eye to the needs of start-ups and innovation.

It is planned to reduce the minimum initial capital to a token zloty, from the PLN 100,000 (EUR 24,000) now required to establish a classic joint-stock company. The regulations governing the PSA would also allow knowhow and sweat equity to be contributed to the company in kind, and new classes of non-par shares could be created. The PSA would be tailored to newly devel-

oped methods of financing such as crowdfunding.

The proposal to amend the Commercial Companies Code by introducing the simple stock company also contains a number of solutions eliminating existing drawbacks in the rules for operation of joint-stock companies and limited-liability companies. The proposal would enable the new type of company to operate much more flexibly, in a manner tailored to the nature of contemporary commerce. It can be forecast that the simple stock company will soon become the most frequently established form of company in Poland, relegating the use of a joint-stock company to a few instances, exclusively as a vehicle for raising capital on the stock market or conducting regulated activity requiring use of the traditional form of company.

Succession of businesses operated by individuals

In early 2017 the Ministry of Development drafted a proposal for the Act on Succession Administration of a Natural Person's Enterprise. The act is aimed at preserving the continuity of enterprises operated by individuals when the owner dies and his or her estate enters administration. The bill would supplement existing regulations governing inheritance and joint ownership and also introduce numerous changes in rules for taxation and administration. The bill has a realistic chance of facilitating the continuation of inherited businesses.

Support systems for selected energy technologies

The support provided from public funds for selected generators of green energy (dictated by Poland's need to comply with international obligations) should also be noted. Without this support, given the nature of renewable sources of

electricity and the high costs for launching production, generation of power at renewables installations and sale under strictly market mechanisms would not be feasible.

The current support system includes “prosumer” solutions for entities interested in generating power for their own needs and selling the surplus to the power grid. Such entities have a right to demand that obligated sellers (appointed by the president of the Energy Regulatory Office) buy power from them at a market price. The previous mechanism of green certificates has been replaced by an auction system in which interested entities may offer defined volumes of electricity generated from renewable sources at specially organised auctions.

Alongside the system of support for producers of energy from renewable sources, until the end of 2018 the system of support for producers at high-efficiency cogeneration plants will continue to function, i.e. installations producing both electricity and heat. Additionally, in order to increase funding for modernisation of the Polish power industry and raise the level of energy security, legislative work is underway on introduction of a power market, i.e. a system of support for power generators guaranteeing them income not only for power actually produced and supplied but also for maintaining capacity in readiness to generate energy.

Second chance for businesses in crisis—statutory support for restructuring and debt relief

The Restructuring Law in force since the start of 2016, enacted by the previous parliament, introduced a number of mechanisms not previously found in the Polish legal system for in-court restructuring of enterprises that are insolvent or threatened with insolvency. The lawmak-

ers’ aim was to introduce alternative mechanisms into the Polish legal system for addressing a debtor’s insolvency other than liquidation of the debtor’s enterprise. In the first year and a half since the new law entered into force, there has been growing interest in judicial restructuring as a means of heading off bankruptcy. The course of restructuring proceedings also indicates that in-court restructuring has become an important instrument for reorganising enterprises.

Along with entry into force of the Restructuring Law, major amendments were made to the Bankruptcy Law. Apart from expediting the traditional models for liquidation of insolvent firms, debtors are now authorised to conduct a pre-packaged sale of their entire enterprise, an organised part of the enterprise, or significant assets. Now, along with its bankruptcy petition, the debtor can file an application for approval of the terms of sale of its enterprise to a designated buyer, even an affiliate of the debtor. In such a “pre-pack,” the debtor’s enterprise is essentially sold free and clear of the debtor’s obligations and encumbrances on its property. The new owner can take control of the operating enterprise the same day as the debtor’s bankruptcy is declared. The entire pre-pack procedure can be completed within just a few months.

CONCLUSIONS

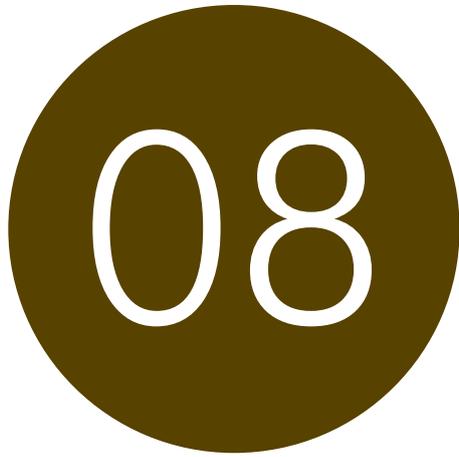
It is hard to resist here an overall assessment of the various changes in law connected with eliminating barriers to entrepreneurship, and other forms of support for businesses, but the changes planned or already implemented are mixed and multifaceted.

Most of the changes should be recognised as aimed in the right direction, and we have high hopes that some of them will bring effective improvement.

But the most important changes have yet to be adopted, and past experience from attempts to

introduce legislative packages aimed at eliminating barriers to entrepreneurship counsel refraining from an assessment of the changes until the relevant acts enter into force and the practice of applying them develops.





**Digitalisation, innovation
and new technologies**

It is still too early to guess whether the public instruments for supporting economic growth generate concrete, measurable effects in the form of a major increase in the innovativeness of the Polish economy. But undoubtedly there is an increasing interest in innovation in Poland.

Digitalisation and growth in innovation should contribute to greater and more sustainable economic growth. The aim is not only to achieve rapid growth over the short term, but to lay the foundations for high competitiveness of the economy based on innovative goods and services, replacing the model of an economy built largely on cheap labour.

This strategy is manifested in numerous initiatives by the state, largely supported with European Union funds. This is accompanied by grass-roots innovation efforts, mainly among businesses. Many of these initiatives are still at the stage of conception or implementation, so their results or their true long-term impact in the form of structural changes in the Polish economy cannot be fully assessed yet.

Electronic identification

One of the main manifestations of the coming changes is construction of electronic identification systems enabling major areas and processes of social and economic life to move to the digital reality.

This involves construction of a universal electronic identification system as well as measures undertaken on a more modest scale.

The central nexus of this system will function as a kind of digital identity hub. It will integrate individual electronic identification systems constructed for example by banks or telecoms based on

their existing knowledge of their customers which can translate into creation of digital identities. This will give businesses a real influence on construction of the public electronic identification system. Another element of this project is remodelling of the existing ePUAP system mainly used for communications between the state and citizens or enterprises, and development of trust services.

Other projects in this area include mDocuments, enabling simple mirroring of documents such as personal ID cards or driver's licences in an electronic version for various official purposes.

An effect of development of digital identification instruments will be to create new business models and to move existing models into a fully digital reality. In many instances this will require significant changes in how businesses operate. Even now we observe increased interest on the part of businesses in the possibility of using new instruments for business needs.

Cash-free commerce

Another driver of the digitalisation of the Polish economy is measures to popularise cash-free commerce in place of traditional cash transactions. This is also significant for the government's efforts to combat the underground economy and tax avoidance, as we discussed earlier.

These measures include equipping all public offices with payment terminals and encouraging financial institutions to offer businesses more widespread and attractive options for accepting cash-free payments. A project for construction of a national payment card scheme has also been considered.

This is also having positive impacts for the finan-

cial technology industry—not only start-ups, but also Polish financial institutions such as banks regarded as world-class innovators (which also accounts for their strong involvement in building the universal electronic identification system discussed above). The government and financial regulators are also working toward development of FinTech in Poland.

We anticipate that in connection with these initiatives, the FinTech sector will continue its dynamic growth in the upcoming years.

Digitalisation of the state

Many measures for digitalising the state are now in the phase of design or implementation. This involves digitalisation of state offices, registers and courts, as well as construction of telecommunications infrastructure ensuring universal access to the digital economy.

One of the aims is to facilitate access to data by citizens and businesses through creation of state databases and registers. This also means expansion of the catalogue of e-services available to citizens and businesses. An example of an e-service providing improved access to registers for citizens is the recently launched system for drivers to electronically check the penalty points on their record.

A major project in the course of implementation is the electronic system for public procurement in line with the requirements of Directive 2014/24/EU. Electronisation should expedite and facilitate procedures for awarding of public contracts. The contracting authority is required to provide a platform enabling communications with contractors on a non-discriminatory basis, without limiting contractors' access to the procedure. The electronic communications also must not

lead to violation of other rules for conducting tenders. The means employed by the contracting authorities should first and foremost ensure that applications and offers remain confidential until the time they are scheduled to be opened, and also guarantee that certain information is accessible only to authorised users. The contracting authority must also ensure data security and prevent unauthorised access to the platform. In this respect, the EU directive stresses far-reaching unification across the internal market.

Complete electronisation of public procurement is expected to occur by 2018. The Ministry of Development is working on further electronisation, particularly for e-invoices.

Poland is undergoing relatively dynamic development of telecommunications infrastructure and digitalisation of the country, as witnessed by investments in broadband networks and projects like high-speed internet for schools, which will involve creation of a nationwide educational net.

Support for key industries

State support for digitalisation and innovations is carried out with a focus on recognised key industries and areas. Examples include computer games and electromobility. Blockchain technology and applications are also treated to a certain extent as a key area.

Cybersecurity

Considering the threats flowing from universal digitalisation and innovations, the government has adopted a cybersecurity strategy. It is designed to achieve comprehensive protection of the state in the electronic sphere and to ensure that new tech solutions created in other projects for fostering innovation and digitalisation comply with applicable cybersecurity standards.

Incentives for innovative solutions in enterprises (R&D)

The planned changes are intended to eliminate or reduce barriers to conducting innovative activity and to raise the tax attractiveness of instruments supporting innovative activity in Poland. One of the aims is to establish intellectual property courts. These would be specialised divisions of the regional courts handling disputes involving IP rights. There is also a proposal to improve access to legal services by enabling advocates and legal advisers to appear in cases involving filing and consideration of applications for registration and continued protection of patents, medicinal products, utility models, industrial designs, trademarks and other IP rights.

Digital means—beneficial for the treasury, convenient for the taxpayer

The exchange of information between taxpayers and the tax administration is moving online. Taxpayers may, and sometimes are required to, file tax returns and other tax information electronically. This is the route businesses are required to use when filing the standard audit file for tax (SAF-T), a record of the taxpayer's tax books and accounting documents enabling the tax authorities to verify that taxes are correctly settled. Communications with the tax authorities during proceedings have also moved online, allowing taxpayers and their representatives to communicate with tax offices by email.

Digitalisation has been identified as a convenient tool for combating tax abuses and white-collar crime, particularly VAT fraud, as it enables oversight on a real-time basis using available diagnostic instruments, and every action taken using

a computer leaves a digital trail. This is one of the reasons B2B transactions exceeding PLN 15,000 (EUR 3,500) are now required to be conducted cash-free. These measures are intended to facilitate the work of the tax administration and cut the significant VAT shortfalls in state budget revenues.

CONCLUSIONS

We have recently observed a clear increase in interest in developing the innovativeness of the Polish economy. In our view, this is due to three principal factors.

First, growing innovation in the economy stems from regulatory changes introduced at the European level. This involves in particular regulations governing trust services and electronic identification, which have sparked a number of interesting initiatives in Poland aimed at digitalisation of commerce. New trust services and digital identity can fundamentally transform many business models.

Second, we observe a growing number of public programmes aimed at developing the innovativeness of the Polish economy. These programmes attempt to stimulate innovation at many levels, from acceleration of start-ups to regulatory changes supporting the FinTech industry.

Third, the innovation ecosystem in Poland—in terms of a space for cooperation between key areas for the growth of innovation, such as science, business and the public administration—

displays increasing maturity. More and more grassroots initiatives are being launched aimed at advancing cooperation in favour of innovation.

The effects of the measures currently being taken can only be evaluated in the longer term. But

undoubtedly the factors indicated above are now making Poland a more attractive location for investment and expansion of innovative activity.



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