

Entrepreneurship in Poland - factors facilitating and hindering its development

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Abstract

The aim of this work is to present the direction of anticipated and announced changes to the Polish commercial law in its most vital areas concerning the freedom of conducting economic activity by entrepreneurs in Poland. Legal regulations always have a great degree of influence on the behaviour of all entities and economic decisions they make. Thus, they also affect the number, type and course of economic transactions which such entities enter into. These in turn have a bearing on the development of the entire economy. The freedom in conducting business activity which is guaranteed by the legislation of the European Union is not currently fully exercised in Poland. Thus the planned reform of the fundamental legal regulations in this area is first and foremost aimed at creating for Polish entrepreneurs conditions which would genuinely allow them to freely compete on the common EU market.

The paper presents various aspect of widely announced proposals aimed at reforming the regulations, which once launched would facilitate economic activity by entrepreneurs also by simplifying the law.

Key words: business activity, entrepreneurs, employment, development.

1. Introduction

The aim of this work is to present the course of proposed changes in Polish law regulating the conducting of business activity. Business community today is putting forward for legislation a number of demands aimed at modifying the law in a way which would motivate entrepreneurs to intensify business activity, as well as support those who are considering starting their own business. At his point, it is useful to note that in Poland there are over 2.2 million firms conducting business¹. Changing the legislation may in the opinion of this group, lead to further increase of this number, as well as encourage a large number of people to refrain from immigrating - especially those young and talented

¹ M.Bednarek, "In Poland economic activity is conducted by about 2.2 million enterprises", Supplement to *Gazeta Prawna* – June 2007.

individuals who could become entrepreneurs in Poland, contributing in this way to the economic development of their own country.

As it is well known, regulations always have an influence on decisions taken by business people and on the course of economic transactions conducted by them. The need for changing the regulations stems from the right to conducting entrepreneurial activity as outlined by current law. This right which is guaranteed by the legislation of the European Union is still not being exploited to a satisfactory degree, which is why it is necessary to conduct reforms in this area in our law². After all, it should first and foremost create for Polish entrepreneurs authentic conditions for competing freely on the common European market.

The fundamental legal act regulating business known as “The Entrepreneurial Constitution”, i.e. the Act on the Freedom of Conducting Business Activity of July 2nd, 2004³ (which has already been amended several times), is not fully satisfactory to the business community and has been subject to an ongoing debate regarding the scope of changes which should be introduced to it. The vital issue here is to determine what the legislator may and wants to modify and what changes it is resisting. In this context, one should take a look at the proposals which were presented under the collective name of the “Kluska Packet” - that is those proposals which were partially taken into account in preparing current amendments to the above mentioned Act on the freedom of business. Although within the framework of the works on changing the regulations another non-governmental proposal appeared - the so called “Szejnfeld Packet” encompassing nine changes in the pieces of legislation concerning the economy, it was nevertheless very close in content to the proposals presented in the “Kluska Packet”. As a result, there were even appeals to join the works on both packets, the Parliamentary - Szejnfeld and the Governmental - Kluska, in order to establish a single position. Both packets called for elimination of a number of administrative and tax barriers⁴. However, since it was the “Kluska Packet” which was prepared first, and since in the prepared amendments to the Freedom of Conducting Business Activity Act it was mostly the proposals of Roman Kluska - which were taken into account (although not in their entirety), the remaining observations of this paper apply exclusively to the content of the “Kluska Packet”.

In assessing the need for legislative changes in Poland, it is worth adding at this point that they are necessary not only in relation to the content of the law, but also essential to conducting a decisive reform of the lawmaking process itself. Pieces of legislation which are created in large quantities and in a hurried way quite often contain numerous shortcomings which resulting in problems in practical application of the law. This applies also to the laws concerning entrepreneurial activity (which, among others, include the taxation issue which is of vital importance to entrepreneurs). Although, today’s favourable economic situation, as well as access to EU funds have resulted in entrepreneurs readily investing in their enterprises, with the increase in investment accompanied by systematic increase of fixed asset levels, one should bear in mind that this trend is not going to continue forever. Thus, it can be said that good law and proper solutions it offers comprise one of the foundations for current and future development of business activity among both those who are already conducting it and those who are planning to start.

² For more info see: E.Grzegorzewska-Mischka, “Wolność gospodarcza przedsiębiorców w Polsce a bariery ich rozwoju. [W:] Spółdzielcze kasy oszczędnościowo-kredytowe – charakterystyka, rozwój, otoczenie”. Library of the Science Quarterly “Pieniądze i Więź”. Sopot 2007, p. 352 and on.

³ *Journal of Legal Acts*, No 173, Item. 1807 with subsequent amendments.

⁴ A.Fandrejewska, “Szejnfeld podgryza Kluskę” *Rzeczpospolita* Newspaper, Economic Supplement. “Ekonomia”, 19th April 2007.

2. Barriers to the development of entrepreneurship

Among the numerous barriers which hinder the development of entrepreneurship in our country there are various elements which are often mentioned. The leading ones include the cost of labour which continues to be too high, the overcomplicated taxation system and the constantly growing administration.

The cost of labour is considered to be excessive since it places significant burden on entrepreneurs in the non-wage component. Using as an example the relation of the burden in its wage to non-wage component, one can state that within the lowest tax bracket each 1 Polish zloty (PLN) of employee's net wage equals 1.70 - 1.80 Polish zloty of total cost.⁵ Obviously, this does not support the process of increasing the level of employment. As a result, entrepreneurs do not expand their activity in a way which should lead to generating greater profits. Such situation does not encourage greater levels of investments and expanding the scope of activity. However, it should be added that for foreign investors, this element does not play such a decisive role as for example, lack of access to R&D base and highly-qualified personnel, aside of course from the bothersome to the same degree as to Polish entrepreneurs - bureaucracy, frequent changes in legal regulations, as well as lack of political stability in the country.⁶ As far as scientific and research institutions, which can constitute such base for them, a good solution may turn out to be the Amendment to the Act on Research & Development - valid as of August 10th⁷, allowing these institutions to conduct business activity of their choice, and not just the one connected with their area of specialization.

The complicated Polish taxation system is mentioned because, among others, it contains a large amount of various taxes, including as many as nine direct ones and three indirect ones. The high level of complication is also frequently criticised because it allows for a wide range of taxation methods and ways of settling taxes. According to the authors of the report prepared by the World Bank and PriceWaterhouseCoopers - Polish entrepreneur on average settles annually as many as 43 taxation payments⁸. According to this report, for example, in Sweden this number is only 5 and in Ireland 8. The above mentioned institutions which prepared the report, place our country as low as in the 71st place out of 175 countries in the ranking describing the level of "friendliness" of taxation systems⁹. Another frequently criticised element consists of the high costs of calculating and collecting taxes connected with, for instance, the filling out of tax forms - which on average require entrepreneur to dedicate to the process 175 hours annually¹⁰. For comparison, one can mention Singapore where 30 hours are sufficient and Ukraine with over 2000 hours needed¹¹.

The overdeveloped administrative system in Poland is cited since it is made of a great number of public units which the entrepreneur must unfortunately come in contact with on frequent basis. Among those one can mention: the Central Statistical Office (GUS), the Social Insurance Office (ZUS), the Tax Office, the Municipal Office, the Sanitary Epidemiological Service (SANEPID), the National Labour Inspectorate (PIP), and other ones.

First and foremost, however, it is commonly stressed that the regulations do not contain the changes whose introduction was previously announced in the above mentioned Act on the Freedom of Conducting Business Activity and which are awaited with high hopes. They concern, among others, simplified procedures of registering new business in the form of

⁵ D. Stacherski, "Podatki w małych i średnich firmach" (eGospodarka.pl from 26.07.2007).

⁶ G.Gacki, "Inwestycje zagraniczne: Polska nadal atrakcyjna?" (eGospodarka.pl from 20.07.2007).

⁷ *Journal of Legal Acts*, No 134, Item 934.

⁸ K.Skrzypek, "Podatki w Polsce na 71 miejscu". (eGospodarka.pl from 24.03.2007).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ W.M.Orłowski, "Liga tygrysów" Magazine *Wprost* No 32/33, 12th-19th August 2007, p. 46.

the so called “single stop”, as well as the absence of legal regulation allowing entrepreneurs to suspend their business activity.

Another significant barrier consists of the new, less beneficial, regulatory approach to self-employment. Since January 1st 2007, such type of activity ceased to be considered business activity¹², within the framework of which the liability towards third parties for the result of activity and its performance, with the exception of the liability connected with illegal acts, rests with the ordering party, and when the activities are simultaneously carried out under the supervision and at the location and time specified by the ordering party, while the party conducting the activity does not bear any economic liability connected with the conducted activity. Obviously, such solution gives rise to significant consequences in the areas of taxation and insurance, both for the self-employed and the ordering party. For the self-employed it means losing the right to the linear tax rate of 19%. In turn, the entity which uses the services of such a person is required to function as the “payer” and in this role collect advances on income tax and settle social and health insurance contributions. This also creates consequences for the entity connected with failure to collect the required contributions. Such types of consequences created by this solution have a detrimental effect on increasing the flexibility of employment. Although, it is possible in such a case (i.e. self-employment), to avoid the unfavourable tax and legal consequences by an appropriately constructed agreement, but this in fact means resorting to an undesirable practice of searching for legal loopholes which of course was not in any way the intention of the authors of this regulation. The acceptance of such a solution does not support, as is already partly apparent, the elimination of the grey zone on the labour market.

In general, what really creates barriers in the work of entrepreneurs and the development of their firms is the frequently changing, excessively lengthy procedures connected with conducting business activity, as well as the still widespread corruption, the scale and character of which is difficult to eliminate.

The above mentioned obstacles often result in either resignation from conducting business activity or transferring activity to other countries of the European Union - a phenomenon which has been observed recently. This process was made possible by Polish accession to the EU which took place on May 1st 2004. Although, the migration of entrepreneurs has not reached mass proportions, it is nevertheless noticeable and a clear signal that Polish law has to be reformed both more rapidly and more effectively than has been the case so far.

At this point, it is worth adding that the fact of entrepreneurs relocating their activities to other EU countries after 2004 is the effect of not just the factors “pushing them out” from Poland, but also those which “pull” them to other European countries. Among the “pulling” factors which one can mention are: the ease of setting up an enterprise, lower currency rate risk, access to new technologies, better infrastructure¹³, as well as others. This of course leads to a rather significant conclusion that in Poland we should to the greatest possible extent strive to introduce exactly those system changes which make other countries attractive to our entrepreneurs and which at the same time have a good chance of proving themselves in our country.

However, first and foremost, there should be an appropriate, favourable climate around entrepreneurs themselves and their activities since the environment and atmosphere in which they operate always exerts influence on their attitude and activity. For this reason, it should be remembered that the current rate of economic growth in our country and its future

¹² Based on the new definition of this activity in the Personal Income Tax Act.

¹³ For more see: E.Grzegorzewska-Mischka, *Proces „migracji” przedsiębiorców* [W:] Editor E.Grzegorzewska-Mischka, Politechnika Gdańska. Gdańsk 2006, p. 29.

maintenance will be possible only with introduction of further pro-economic legislative changes, and with faster elimination of various barriers which may effectively hinder our economic growth. In order to introduce such changes, it is also necessary to obtain active support by politicians and parliamentarians in the form of legislative initiatives. The result will be advantageous to entrepreneurs themselves, as well as being beneficial to the entire country in general.

3. Proposed regulation changes

In June 2007, the Government accepted the bill on changing the Freedom of Conducting Business Activity Act of 2004. The modifications originate from the partially recognized proposals included in the previously mentioned “Kluska Packet”.¹⁴ The packet consists of a set of changes to economic legislation, aimed at removing the barriers hindering business development. So far, the packet includes amendment to the Freedom of Conducting Business Activity Act, and the National Tax Identification Number (NIP) Act which is less vital. Further fragments of the “Kluska Packet” are supposed to take the form of regulations which according to the Prime Minister, are to be established at a later date¹⁵.

Significant among the new pro-entrepreneurship arrangements is, among others, the simplified form of registering business activity in the form of a “single counter”. The “single counter” is to be located in a tax office, and the municipal registry of economic activity is supposed to be eliminated. Registering is to be free of charge. However, fee (in the amount of PLN 25) is going to be collected by the tax office for each additional change entered into the register. In addition to registering business activity at the same “single stop” desk one will be able to apply for registration in the Social Insurance Institution (ZUS), receive National Tax Identification Number (NIP), as well as the National Business Register Number (REGON). Through such a solution, the time of registration will be significantly shorter than the approximately 30 days it currently takes. Unfortunately, the change is going to be introduced starting in October 2008, since it is dependent on the conclusion of works on public administration reform (of an IT character). Currently, the PESEL 2 System is at the stage of being planned to be initiated. The system will allow for verification and making available on the Internet information from the governmental data bases including safe identification of each inhabitant of the country. It will also allow for verifying the documents used by every citizen.

In accordance with the planned amendment, the registration carried out by tax offices in the form of a “single stop” is supposed to include only physical persons conducting business activity. Registers maintained by Registry Courts (KRS), in addition to the entities recorded in them so far, are to register also those physical persons whose net income in the last two years was in excess of Euro 800,000. In addition, it is expected that the data on entrepreneurs from the entire country will be placed in the Business Activity Information Centre, from which it will be made available on the Internet free of charge. This measure is to ensure undisturbed flow of information which is essential to all those involved in the process of economic turnover.

Another simplification for entrepreneurs available as part of the registration process is to be the possibility of submitting registration applications both in traditional way, as well as in electronic form. The process of processing the applications is to be shortened¹⁶. The

¹⁴ The term comes from the name of its author, an accomplished businessman, whose company collapsed due to lack of clarity in legislation and its disadvantageous interpretation.

¹⁵ R.Omachel, “Przyjeta część Pakietu Kluski” *The Wall Street Journal* [W:] *Dziennik*, July 6th-7th 2007.

¹⁶ Applications submitted in the traditional way are processed in 30 days on average.

applications will be processed within 5 days (traditional method) or 3 days (electronic method).

Further facilitation aimed at entrepreneurs, although presented in a form cut down in relation to their expectations, is to be the possibility of suspending the conducting of economic activity. The solution is somewhat limited as the possibility covers only those entrepreneurs who settle with their tax office in the form of a tax card. It is also “cut down” due to the fact that it will allow the entrepreneurs to suspend activity for a limited period of time, ranging from 1 to 10 months. Furthermore, the suspension will be possible only in the case of entrepreneurs not having any employees at the time. Thus the possibility of suspending activity will be available only to chosen few. The suspension will result in certain benefits to the entrepreneur connected with no longer being required to pay social insurance contributions, make advances on income tax, and submit tax declarations.

The amendments to the Act on Freedom of Conducting Business Activity, also includes solutions introducing binding interpretations regarding social and health insurance contributions. This is similar to the already existing regulation on binding interpretation on taxation matters. The solution, just as the tax one, is considered by entrepreneurs to be a step in the right direction.

Governmental proposals of changes to the Act include also somewhat modified rules of conducting inspections and their duration. Those conducting inspections, in addition to official identification, will also have to present a permit for its execution. Currently, there exists a certain “loophole” in this area¹⁷, allowing for conducting inspections simply with presenting the official ID in a situation when the regulations allow it¹⁸. Although, in such a case, the permit is also required to be presented to the entrepreneur, it can be done at a later date within the time span specified in special regulations.

According to the new proposals, entrepreneurs will not be obliged to maintain the so called “inspection journal”, unless they wish to do so. Currently, entrepreneurs are required to maintain such a journal and to make it available at inspecting body’s every request.

The changes in regulations also foresee shorter periods of inspection. The periods are to vary depending on enterprise size. In micro-firms (employing up to nine people), they are to last no longer than 12 working days a year, in small enterprises (maximum 49 employees) - up to 26 working days a year, in mid-size ones - 20 days, and in the case of others the maximum of 40 days. In the event of the regulation specified inspection time being exceeded, the inspection will be considered non-valid. Independently of these changes, there will still apply the rule of not conducting multiple inspections of a single enterprise at the same time. It is worth adding, that the duration of inspections carries out in micro-enterprises, as well as small and medium ones, may not exceed 4 weeks within a single calendar year (Article 83, Item 1 of the Freedom of Conducting Business Activity Act).

Significant in the context of inspections which have been carried out in firms so far, is also the tax reform currently under preparations which calls for the creation of National Tax Administration. The plan of the reform is to bring together tax services, customs services, and tax inspection bodies. The reform should be advantageous to entrepreneurs, since it will probably allow for the elimination of the unneeded double controls of the same operational segment of an enterprise, such as, inspection carried out by tax inspection body, conducted after a previous investigation of the same matter by tax office.

In the context providing analysis of recent reforms in Poland, among those business-friendly ones which have already been launched but which do not originate from the “Kluska

¹⁷ J.Paczocha, “Swoboda gospodarcza – tak, swoboda legislacyjna – nie”. *Rzeczpospolita* Newspaper No78, 2004. Legal Supplement “Prawo co dnia”, p. C3

¹⁸ E.Grzegorzewski-Mischka, *Przedsiębiorca po nowemu*, Scientific Publishing Group. Gdańsk 2004, pp. 40 and on .

Packet” the following can be mentioned: the ones in the legislation introducing lower disability contribution levels (two-tier, from 1st July for employees, and from 1st June 2008 - also for entrepreneurs, from 6.5% to 4.5% - the value of disability contribution to be paid by an employer for an employee¹⁹), in the legislation accelerating enforcement procedures, as well as in the regulations simplifying public order procedures). Despite legal reforms, both planned and currently executed ones, one may observe certain, stable trends among those entrepreneurs who conduct economic activity. As it stems from the data of the Central Statistical Office (GUS), in Poland entrepreneurial economic activity is most frequently started by young people with only secondary school level education²⁰. They usually choose commercial activity, followed by enterprises connected with servicing commercial real estate, as well as construction and industrial sector. From the data it stems that in recent years, on average 200 thousand new enterprises are created every year²¹. However, after a year of activity, statistically one third of them stop operating. This may be the result of the inability to overcome temporary difficulties which usually appear in any firm, regardless of the existing legal regulations.

4. Conclusion

The Governmental Bill amending the Freedom of Conducting Business Activity Act, which in the intentions of its authors is to make it easier for entrepreneurs to conduct their activities, is evaluated by the recipients of the proposed changes as a step forward, but only a small and limited one. The amendments are described at best as cosmetic changes to the current regulations which still leave doing business within the realm of difficult operations. According to Mr Roman Kluska - the initiator of changes to the Act on the Freedom of Conducting Business Activity, there are certain differences between the content of his proposal and the content of the Bill. Among others, he pointed the attention to the continuing need for simplifying investment access, streamlining the procedures of real-estate distribution and issuing building permits²². In his view, as D.Styczek reminded us, construction of a production facility is connected with obtaining 40 separate documents, and the time from the investment decision to actual breaking of the ground is about 12 months²³. If such and other numerous bureaucratic barriers would be eliminated, the economic growth of Poland could be higher by as much as 0.9% - according to the study conducted by the researchers at the University of Łódź. Regardless of that, one should assume that each and every proposal meant to ease the life of entrepreneurs, even if limited in scope, is always of benefit to economic development.

Regardless of the less than enthusiastic opinion about the amendments to the Act on the Freedom of Conducting Business Activity, which are currently being prepared on the basis of the “Kluska Packet” proposals, it should be said that it is the continuingly excessive State fiscalism which significantly holds back entrepreneurial initiative. In practice, in the event of legal uncertainty regarding fiscal liabilities of an entrepreneur, the decisions which are issued are always in line with fiscal interest of the State Treasury. This situation is facilitated by the informal principle of freedom of adjudication which applies to administrative courts and taxation bodies. At this point, it should be emphasized, that any

¹⁹ B.Marczuk, “Analiza GP: kto i ile zyska na obniżce składki rentowej”, *Gazeta Prawna*, No 116, 18th June 2007.

²⁰ “Raport GUS: po roku upada jedna trzecia powstałych firm”, *The Wall Street Journal.Polska*. [W:] “*Dziennik*”, 25th July 2007.

²¹ Ibid.

²² M.Piasecka-Sobkiewicz, “Rejestracja firmy bez opłat”, *Gazeta Prawna*. No 109, 6th June 2007

²³ D.Styczek, “Biurokratyczne utrudnienia pozbawiają Polskę inwestycji”, *“The Wall Street”* [W:] “*Dziennik*”, 12th July 2007.

and all business barriers always tend to delay the process of investment, which unfortunately is synonymous with a slower rate of country's economic development.