POLAND 2019

GLOBAL CHALLENGES
ECONOMIC FORECASTS
NEW REGULATIONS

LEWIATAN

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WORLD AND EUROPE – CHALLENGES 2019

The European economy is getting ready for tougher times

After years of economic growth, the world is to face a slowdown in 2019. The World Bank forecasts that the increase of GDP in developed economies will reach 2.2% in 2018 and merely 2% in 2019. It is enough to remind that in 2016 it was 2.9%! The Polish economy is going to slow down too.

Its GDP growth rate will still be higher than in the so-called Old EU Member States, but the links of Polish trade with Europe will cause that cooling down of its economy will be instantly reflected by ours. According to the World Bank, the dynamics of Poland's GDP growth will reach 4.7% in 2018, but in 2019 it will be just 3.9%. It perfectly shows how strongly we depend on the European and global prosperity.

The Union must find its place in the turbulent world

The European economy faces a strategic question: How to find its places in the new global economic order? **The relative economic stability and peace in Europe are not sufficient to give the Union a safe position in the global mess.**

The unpredictability of the global economic and political situation is even amplified by the specific manner in which Donald Trump's administration conducts its foreign policy. The European Union has lost its most important political partner and ally in the world arena for over half a century – the United States, which today perceive Europe as a threat to the American economy and put it in a row with China.

And in the meantime, China is strengthening its position in all rankings. **In 2007, i.e. shortly after Poland's accession to the European Union, the EU was responsible for 20.85% of the global GDP, followed by the USA (18.3%) and China (11.27%). Last year, these figures were radically different – China was the leader with 18.11% of global GDP, followed by the EU (16.46%) and the USA (15.56%).** What is more, among European societies, but also among Europe's political elites, there is a conviction that the Chinese economy is just a global manufacturing subcontractor. In fact, this economy is becoming increasingly innovative. The data presented by WIPO (operating within the UN World Intellectual Property Organisation) leave no doubt – among companies, the largest number of international PCT patent applications in 2017 were submitted by enterprises from the "Middle Kingdom" (Huawei and ZTE). Such technological moguls with traditions as Intel or Mitsubishi Electronics were behind them. Among states, the top position is still held by the USA, but China, which recorded the increase of the number of applications for international patent protection by 13.7% in just one year (2017 to 2016), breathes down their neck.

Brexit will leave its mark on global trade

The threats for the European Union come not only from outside, but also from within the Community. The United Kingdom – a country present in the Union for over 40 years – is going to leave it in March 2019. The transition period should last until 2021, but entrepreneurs have to prepare for the increase of the costs of trading with the UK due to the customs duties, the reorganisation of the supply chains, and the increased costs of transport of goods and logistics now.

Brexit will be dramatically reflected by the European and global trade, but it will also cause changes to the EU budget. We have to get ready for lower than in the previous perspective subsidies from the cohesion fund. Their lack will be noticed in particular by such states as Poland, which implements huge investments using European funds.

The eurozone will face Italian populists

The European economy is also facing the risk of loss of credibility of the eurozone on the financial markets. It may be the result of the conflict between Brussels and the government in Rome, focused on the budgetary discipline of the Italian finance. The Italian coalition of right and left-wing populists shows that instead of the implementation of their programmes, these type of political parties think exclusively of their need to stay in power. It is difficult to build a dialogue based on rational economic arguments with them. Additionally, **European right and left-wing populists are united by their common conflict with Brussels game**, which is used by them to antagonise societies.

The European economy is also facing a difficult dilemma of reconciliation of the production efficiency and costs with the climatic goals. The experience shows that European entrepreneurs approach the issue of reduction of greenhouse gas emissions, as well as waste and packaging recycling, or the need for ecological transport with understanding. However, we cannot afford putting additional burdens on the European businesses, while other global players, such as the USA or China, do not impose such restrictions on their companies.

New challenges appear all the time. Today we speak about industry 4.0, but industry 5.0 is ahead, with significantly different business models and thinking about the future. Artificial intelligence is an immense, but to large extent unpredictable, ocean of new possibilities. It requires a different education, a different labour market and a transition to sharing with the added value.

In the face of the new challenges, the tasks that Europe has been talking about for a long time are still to be dealt with. It becomes clear that we have to build our own defence system, which is costly, but also can be the source of innovation and development. Also the issues of Ukraine or the expansion of the EU to the Western Balkans remain unsolved. Fortunately, the peak of the migration crisis seems to be behind us. For the last few years, it was used by some circles to heat up social concerns. The influx of migrants has lowered, and the Union has implemented solutions helping to deal with the most urgent challenges in this sphere.

Election campaigns will increase the risk of uncertainty

2019 will be difficult for the economy for one more reason. In spring, there will be the elections to the European Parliament, and in the autumn to the Polish one. **The process of formation of the government in Poland will not stabilise the atmosphere, and the establishment of the new European Commission after the elections in May can last as long as until the end of 2019. This will be the source of further uncertainty**. We know from experience that election campaigns are not the best time for making reasonable and difficult decisions. It is rather an occasion to meet various expensive promises. Hopefully, the European and Polish entrepreneurs will not have to pay for them. But if not them, than who will?

Henryka Bochniarz, PhD
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Vice President of BusinessEurope

ECONOMIC FORECASTS 2019

After two years of rapid growth, changes are coming

At the end of November, when we are making our forecasts, available data on a 5.1% GDP growth rate in Q3 2018 come as a pleasant surprise. This is a historical result, although worse than the highest one (5.4%). However, looking-forward business indicators leave no doubt that we experience a downward trend: logistics managers are recording lower purchases, inventories are growing, and the cost estimate of commenced investments is decreasing. **It seems that private investments have accelerated, which would mean that entrepreneurs themselves write a scenario of a mild slowdown. There are reasons to expect 4% GDP growth in 2019.**

However, the growth may not be as dynamic if entrepreneurs are strongly affected by barriers limiting their business operations. In the light of the research of the Central Statistical Office and own research of the Lewiatan Confederation, companies are most concerned about the lack of qualified labour, the rising costs of wages, the scale of contributions to the budget and changing laws. In these studies, the potential effects of an increase in energy costs are not yet visible, and a downward trend in demand for products and services cannot be ruled out.

A growing labour problem

The most serious issue will be the shortage of labour – both in the short and in the long term. The economic boom observed in 2017 and 2018 increased the demand for labour. But unlike the previous economic upturns, the labour market offered a much smaller number of employees. In the meantime, more than two million people of working age have migrated to other countries. The mythical aging of the population, discussed by demographers, has now become a reality. It will not be easy to fill this gap. We will be faced with earlier entries and later exits from the labour market, activation of occupationally inactive people, the work of migrants, and the replacement of labour with machines.

In recent years, especially in the face of strong wage pressure, the inflow of citizens of Ukraine and Belarus (and later also from more distant countries like Nepal and India) to our labour market has been quite beneficial. However, it is obvious that many of them treat work in low-paid sectors of the economy as temporary occupation.

Our ability to compete with the Western European countries, despite relatively lower wages, will depend on the quality of Polish migration and integration policy. The competition will undoubtedly become more acute – the societies of European countries are aging just like Poland. The first test will be the new Migration Act in Germany, which refers not only to labour, but also to the immigration management strategy, recognition of qualifications or language learning. In 2019, we will see how powerful these tools are.

The continuing low level of activity (especially of older Poles) will be a problem in the next year, and the fight for them will be crucial for further prosperity. Lowering the retirement age did not contribute to reducing the pressure on the labour market, but increased the burden related to the financing of benefits. We will have to ease the pressure on the labour market not only in terms of quantity, but also in terms of quality, e.g. through lifelong learning. Today, there is no flexible tool to upgrade skills in response to the changing needs of the economy. Meanwhile, a demand for labour means even now the deficit of skilled people in many industries.

An increase in energy prices will cause the costs of enterprises to rise

Labour costs are not the only ones that will jeopardise the profitability of business operations. The year 2019 will be marked by the increase in energy prices. Wearing out power generation units require reinvestment, cheap energy resources had to become more expensive, and in the market of emission rights, in the face of a growing demand and a falling supply, the price increase was unavoidable. What we are now witnessing is not a one-off jump in prices, but a new trend. **If Poland does not switch to renewable or nuclear energy, energy costs will grow and be quite high compared to neighbouring countries**.

Therefore, compensation for the increase in the energy price – whose final levels are unknown – certainly does not constitute a systemic solution. There is an unanswered question: To what extent will higher energy costs be passed on to consumers? In some industries (e.g. the steel industry), they constitute a significant component of costs. On the other hand, in low-margin sectors, a shock price increase will contribute to a higher risk of bankruptcy. The increase in energy prices may, however, become an opportunity in the long run if it translates into an increase in investment or business reorientation.

An increase in energy prices from 2019 will also cause inflation to rise. It will be closer to the inflation target of the MPC, but it will probably not exceed it permanently, therefore we should not expect interest rate changes. This means unchanged, relatively good conditions for business operations.

There is only one solution to a long-term increase in costs – a leap forward or the modernisation of the economy. The change of its structure, increase of capital resources, implementation of high-margin tasks, creative work and use of innovation. This is a long way to go, but only then will the economy reduce its vulnerability to shocks, also to higher wage expectations.

Investments should slightly rebound

From the point of view of modernisation, investments – primarily private ones – will be very important. **After weak 2016 and 2017 and limited improvement in 2018, we expect a rebound in private investments in 2019.** It results from the depreciation of existing fixed assets, the lack of spare capacity and the need to reinvest profits from the peak of the cycle. A cheap bank loan will help those few enterprises that will not do it with their own funds, but there is no reason to expect that a shallow capital market will become an alternative to it.

Less favourable international environment

In 2019, external factors will not be in favour of Polish entrepreneurs. In Europe, the slow-down in the Western European industry (including the German automotive sector) has already been visible, the Brexit whose details are still unclear will cause substantial problems, and this picture is additionally complicated by the turbulence around the Italian budget.

A lot will also happen outside of Europe. The United States will experience the fading effects of the fiscal package, the political stalemate in the parliament and the effects of growing protectionism. The Chinese economy will cool down further. The overall picture will be complemented by a slowdown in the emerging countries, often indebted in the dollar or basing their development model on the export.

The budget of wasted opportunities

The next year's state budget will be a continuation budget – both in terms of the structure of expenditures and the trend for its tightening. Due to a relatively high economic growth, the revenue will not be affected, and new items on the expenditure side – such as pay rises for selected professional groups, indexation of pension benefits or subsidies to Employee Capital Programmes – will not pose a risk to its implementation.

It seems, however, that we have lost the chance to reduce the structural deficit and to make the tax system simpler and more friendly. We have also lost the chance to implement beneficial changes to the budget, in particular to reduce fixed expenditures (pension privileges of selected professional groups) or to implement reforms that bring long-term benefits but have some initial costs, such as the Qualification and Skills Improvement Fund. There are, however, attempts to implement measures aimed at short-term benefits and long-term costs, such as the abolition of the limit of thirty contributions. It cannot be ruled out that this topic will come back in 2019.

In a less favourable macroeconomic environment, the shape of public policy will be even more important. Long-term thinking, efficient and effective decision-making and taking care of the quality of the law, can help us weather the expected slowdown and civilisation challenges.

Sonia Buchholtz,
economic expert

BUSINESS REGULATORY ENVIRONMENT

TAXES

Passenger cars in the company

Key changes › From the beginning of 2019, the rules will change for recognizing the expenses to acquire and use passenger cars in the company as tax deductible costs. The new limits will apply to contracts concluded effective from 1 January 2019.

Limits for depreciation and lease of a passenger car

	DEPRECIATION		LEASING	
vehicle	2018	2019	2018	2019
internal combustion and hybrid	EUR 20,000 (approx. PLN 86,000)	PLN 150,000	none	PLN 150,000
electric	EUR 30,000 (approx. PLN 130,000)	PLN 225,000	none	PLN 225,000

A limit will be introduced for recognizing operating expenses as tax deductible costs (fuel, oil, spare parts, tolls, service fees) where a company car is used for both business and private purposes.

In the case of mixed use, only 75% of the expenditure will be deductible. The full deduction entitlement will apply only where a record of the vehicle mileage for VAT purposes is kept.

Opinion › Despite the increase of the car's depreciation limit to PLN 150,000, the overall changes in the cost accounting of passenger cars in the company will worsen the situation of businesses. All businesses will be at a loss over operating costs, and further those leasing higher-class cars. In general, these changes are fiscal in nature, and their purpose is to increase budget revenues. Unfortunately, they will also increase the accounting burden, and thus the associated costs.

Effects on the economy › Who will lose? All businesses that use passenger cars in their operations with a share of use for private purposes (only 75% of operating expenses will be tax deductible). Businesses that after 1 January 2019 lease or rent a passenger car more expensive than PLN 150,000 (PLN 225,000 in the case of electric cars). Who will benefit? Businesses that have or want to buy a passenger car more expensive than about PLN 86,000, but cheaper than PLN 150,000 (225,000 if the car is electric).

9% CIT rate

Key changes › In 2019, the CIT rate for small taxpayers will be reduced to 9% from 15% in force until the end of 2018, as well as taxpayers starting a new business. The tax will amount to 9% of the tax base in the case of taxpayers whose revenues earned in the tax year did not exceed EUR 1.2 million (according to the average EUR exchange rate published by the NBP on the first business day of the tax year, rounded to PLN 1,000).

Not all taxpayers will benefit from the preferential treatment! The Act provides for restrictions, for example if the company was established as a result of transformation of an entrepreneur running a business.

Opinion › Every reduction in the tax rate is good surely news for taxpayers, all the more so that companies carry the burden of double taxation. They are first taxed at the company level (19% or 15%), and then on payment of dividends to shareholders (19%). It is a pity that the legislator did not decide to extend the preference over the majority of SMEs, that is, the self-employed subject to PIT. It is a pity that no mechanism for a “smooth” transition to the higher (19%) rate after exceeding the preference limit was put in place. No such mechanism means that exceeding the revenue limit even slightly will result in a very severe penalty in the form of an extra 10% tax obligation.

Effects on the economy › Application of the preferences to small taxpayers only in accordance with the CIT Act means that this change will not affect most businesses and that its impact will thus be limited.

Innovation Box

Key changes › Innovation Box is yet another solution, after the R&D tax relief, aimed at supporting innovation in businesses. IP Box is designed to make the conditions for research and development work in Poland more attractive. The relief consists in preferential taxation (5% rate) of revenues earned by the taxpayer from intellectual property rights, which are protected based on, for example, a patent.

Opinion › IP box is a component of pro-development policy operated in many countries that have focused on innovation as the driving force of the economy. IP Box-type solutions have been put in place, among others, in Israel, the Netherlands, United Kingdom, Ireland or Luxembourg. Patent indicators in Poland have remained at a very low level for years. In order to improve this situation, the Polish Confederation Lewiatan has long recommended the introduction of a relief based on the R&D work outcomes.

Effects on the economy › The relief should have a positive impact to increase the innovation rating of Poland and the number of patents registered in the country, which in turn will contribute to strengthening Poland's competitive position internationally.

New Tax Code regulations

Key changes › 1) Reporting tax schemes. Tax advisers, attorneys and legal advisers, banks, as well as entrepreneurs themselves will be obliged to notify the Minister of Finance of the applied optimization schemes. 2) Strengthening the general anti-avoidance rule (GAAR) by introducing penalties of 10% and 40% of the amount of disclosed tax savings achieved through optimization. 3) Limitations in issuing individual tax law interpretations. The Minister of Finance will refuse to issue an individual interpretation where the facts presented in the inquiry itself indicate that the GGAR may apply.

Opinion › Changes introduced to the Tax Code, which will enter into force in 2019, serve to tighten the tax system and eliminate aggressive tax optimization, in particular in income taxes. These are tools that, if misused, carry a high risk for businesses. Reporting tax schemes carries the risk related to disclosure of the professional secrets of advisers and attorneys, or business trade secrets. The penalty on GAAR application is primarily to deter and discourage the use of optimization. However, when applied, it can find a business in big trouble, not only having to pay the tax unpaid, in the MoF's opinion, but also having to pay the penalty. Refusal to issue a tax interpretation in case of suspected use of optimization. Experience shows that the Minister of Finance readily exercises the option to refuse an individual tax interpretation, wherever possible. These regulations will actually limit the access to individual tax interpretations.

Effects on the economy › The proposed changes will introduce significant business risk, with tax-beneficial transactions being widely challenged. Businesses will be forced to thoroughly analyse their operations in terms of tax risk. Deprived of transaction security, businesses may need to extend their decision-making processes for investment projects.

SOCIAL SECURITY AND PPK

Lifting the limit on Social Security contributions

Key changes › The Constitutional Tribunal decided that the Act adopted by the Polish Parliament, lifting the upper limit of Social Security contributions, is contrary to the Constitution. Thus, it will not be effective from January 2019. The regulations enforced by the government provided that the best earners would have to pay contributions for disability pension and retirement insurance even after exceeding the upper limit, that is thirty times the average wage and salary. Lifting the limit was designed to bring PLN 5.5 billion to the budget. Currently, businesses are exempt from this obligation. It may be that the government will put this idea back on the agenda next year.

Opinion › Lifting the Social Security contribution limit would be detrimental to employees and businesses, and would contradict the government's Responsible Development Strategy, which assumes the creation of high-quality and high-salary jobs. There is a serious risk that a significant increase in the cost of work of high-class specialists would make the conditions for creating such jobs in Poland less attractive, and prompt investors to revise their current investment and employment policies.

Effects on the economy › A repeated attempt to introduce the new regulations would pose the risk of a deepened deficit of the Social Insurance Fund in the future, instability of the Social Security system, a dramatic increase in employers' burdens (for some businesses, the costs would increase from several to several dozen million zlotys per year), and make employment contracts less attractive compared to other forms of employment. Lifting the Social Security contribution limit would also result in reduced revenues of local governments and the National Health Fund. For businesses themselves, a question arises about the sources of funding the cost of workforce employment so increased.

Employee Capital Plans (PPK)

Key changes › PPKs are established for employees to systematically collect savings, with the funds to be paid out after the employee reaches 60 years of age. The new regulations will enter into force on 1 July 2019. In particular, these will apply to employees and persons employed under civil law contracts, members of supervisory boards, those subject to compulsory retirement and disability pension insurance.

The contributions will be funded by the employer and the saver, at a share of 2% on the part of the latter and 1.5% on the part of the former. The employee will be able to opt out from payments to the PPK, and the employer will be bound by the decision of the employee.

Opinion › The problem lies in the low level of household savings and the potentially low level of future benefits, which may be true for a significant pool of employees. The response to the new solution will depend to a large extent on how it is introduced into practice, and if appropriate instruments are developed (employers' support). The establishment of PPKs should be accompanied by building trust and cooperation between all stakeholders, to which a guarantee of predictability and certainty of the law and business regulatory environment may be key. The introduction of PPKs should further be hedged by initiatives to reduce the burden on employers and make employment contracts a more attractive, preferred option.

Effects on the economy › The introduction of PPKs is designed to increase the savings rates, especially long-term ones. As international experience shows, the private nature of the funds involved, the component of vital life circumstances and the measures advocated by behavioural economics (self-registration, extra contributions, etc.) can be conducive to achieving this goal. The impact of PPKs on wages and salaries is multidimensional: in the short term, it will be conditional on the bargaining power of employees, which is varying across industries and occupations (in some segments will offer a kind of benefit); in the long run, the increase in labour costs will have to be set off by increasing productivity. Ultimately, the investment policy and the method of disbursement will be key.

WORKFORCE

Competence and Qualification Development Fund (FPKK)

Key changes › This is the initiative by the Polish Confederation Lewiatan. Employers will have the option of set aside part of the Labour Fund contribution on a separate bank account. These amounts, supplemented with employers' funds, will be dedicated solely to improving employees' qualifications in line with the needs of employers.

It will be possible to accumulate FPKK funds over a statutory period, which will allow for planning the process of employee competence development in the short and medium term.

The main advantage of the new solution will be predictability and high availability of funds for businesses, at a limiting formal and administrative burden.

Opinion › The Polish Confederation Lewiatan initiative has met with a positive response from other social partners within the Social Dialogue Council. FPKK is an indispensable instrument for strengthening the process of adapting employees' competences to the changing requirements of the labour market resulting, among others, from technological progress.

Effects on the economy › Who will benefit? The economy as a whole, as better educated workforce will improve the competitive position and innovation ranking of Polish businesses. All businesses, which will get a real opportunity to finance employee competence development programs from easily accessible and predictable funds, and employees, who will get a wider access to various forms of education within the workplace.

The new Labour Market Act

Key changes › The draft Act presented by the Ministry of Family, Labour and Social Policy entered the stage of social consultation and discussion within the Social Dialogue Council. However, it was unexpectedly withdrawn by the Ministry. The work on the draft will be most likely resumed.

The new Act provides for changes expected by employers, regarding the options for foreigners to work legally in the territory of Poland, and the support for SMEs in recruitment of workforce (job offer voucher). In a significant part, the draft reiterates regulations included in the currently applicable Act on employment promotion and labour market institutions.

Opinion › Our assessment of the regulations concerning foreigners is positive.

The draft Act does not bring significant changes regarding the labour market policy. With new regulations adequate to the changing labour market missing, we cannot take advantage of the good situation on the labour market to introduce changes that would mainly serve to increase the rates of professional activity or mechanisms of effective activation of the unemployed. The provisions of the Act do not limit the freedom to spend Labour Fund resources, derived from contributions paid by employers for purposes other than those directly related to an active labour market policy.

Effects on the economy › Who will benefit? Employers, if the changes for work options available to foreigners are enacted, as this solution increases the supply of workforce. The job offer voucher, due to its low value and application restrictions, will not significantly contribute to resolution of the issued with workforce recruitment experienced by employers.

Who will lose? In an economic slowdown, both unemployed and employers using the Labour Fund under the subsidized employment or the National Training Fund instruments, among others, as the current practice of posting expenditures unrelated to the objectives for which the Fund has been established may limit the possibility of pursuing an active labour market policy in the future.

Shortening the period of records retention and e-files

Key changes › From January 2019, the Labour Code is amended to shorten the period of employee records retention from 50 to 10 years and enable employers to keep ans store documentation in matters related to the employment relationship, as well as personal employee files in electronic form.

Opinion › We assess the initiative to shorten the period of records retention and allow for keeping and storing documentation in electronic form as positive. Unfortunately, during the transition period, the changes introduced will increase the burden on HR departments.

Effects on the economy › According to the results of the survey “Measurement of administrative burdens in economic law regulations”, commissioned by the Ministry of Economy in 2010, annual administrative expenses related to the keeping and storage of employee records back then amounted to PLN 117 million, of which PLN 44 million for administrative burdens; that amount was highlighted for the population of businesses with employees.

Employment of foreigners

Key challenges › The importance of foreigner workforce for the Polish labour market should be rather obvious. The basic task is to develop a migration policy and improve the systemic procedures related to the employment of foreigners. Employers have long been calling for changes concerning the employment of foreigners and the adoption of a migration strategy. New initiatives are necessary, bearing in mind that the growth of businesses and the economy depends on the availability of workforce and there is a need to make Poland more attractive as a first-choice destination for qualified employees, especially in the context of policies operated in this regard by other countries.

Opinion › Employers negatively assess the lack of systemic policies and the suspension of work on the draft Labour Market Act, which, among others, provided for extending the period of work performed without a work permit on the basis of a statement on entrusting work to foreigners from selected countries to up to 12 months within the coming 18 months, or allowing employers to entrust work to a foreigner in another workstation once certain conditions has been fulfilled.

Effects on the economy › The number of foreigners on the Polish labour market is estimated at several hundred thousand. Employers' problems with recruiting workforce indicate that in the absence of new solutions to facilitate the recruitment and retention of employees from third countries businesses have a limited room for manoeuvre in their routine operations or new investment projects. Problems may affect a number of industries, but in particular those strategic for the economy, i.e. transport, construction, manufacturing or trade.

Trade Unions Act

Key changes › The act will enter into force on 1 January 2019. It has taken a record-long time to pass in the Parliament, raising fierce controversy among employers from the very beginning. Although the key change lies in the scope extension of the right to associate and organize trade unions, the draft Act contains a series of unfavourable regulations originating in that assumption.

The Act now provides that the right to associate and form trade unions vests not only in employees but also in other persons remaining in a non-employment relationship, i.e. contractors, self-employed, and even volunteers. In line with the freedom of association, the legislator granted those under other forms of employment all union rights, including the right to special protection and the right to job positions of unions. Moreover, the Act widens the scope of economic and financial information that the employer is required to submit at the request of trade unions. Among the few favourable changes, there are also the prohibition of double membership and the mechanism of verification of the union member numbers by the State Labour Inspection.

Opinion › From the perspective of employers, we assess the draft Act very critically, as apart from the two necessary changes it provides for a whole series of solutions that will not only generate additional costs on the part of employers, but will hamper the now uneasy dialogue with unions at the level of the workplace. Granting union members who are not employees the same rights may lead to pathologies that will impede business activity. In addition, the new definition of a trade union implies indirect changes to counting the representativeness of the union at all levels, and it will also affect the counting of employers' representativeness within the Social Dialogue Council.

Effects on the economy › Negative effects on businesses will be an obvious consequence of the introduced changes, increasing the costs of maintaining trade union job positions and special protection. The changes make the Trade Unions Act even more complex and incompatible with the principles of the market economy.

EDUCATION

Vocational education reform

Key changes › The main goal of the proposed solutions, which are to be in effect starting from the 2019/20 school year, is to make the vocational education system more adapted for effective cooperation between schools and employers. The changes will take place in the educational law and the Education System Act.

The reform replaces vocational schools with 1st and 2nd level industry-oriented schools. The educational subsidy will be diversified for education in high-demand professions. Moreover, before launching new profession curricula, schools will be required to establish cooperation with the employer to educate for the needs of the market. Students of a 1st level industry-oriented school who are not under-age workers, and students of a technical secondary school, will be able to complete student internships on the basis of an agreement with the employer. The employers will be able to recognize the costs of cash benefits that the student receives during the internship as tax deductible.

A compulsory vocational exam will be introduced, and vocational teachers will be required to undergo training and mandatory industry internships.

Schools will be able to more flexibly adapt their educational offer to the needs of adult learners, by conducting shorter courses (vocational skills courses), and the income from the educational service activities conducted for a profession will be collected on a separate account.

The draft Act also introduces tax reliefs for those entities that donate equipment to schools or educational establishments. It is worrying that these reliefs will only apply for donation of technical and teaching equipment to public schools, and not private schools.

Opinion › We assess the proposed changes as positive. The solutions aimed at supporting the involvement of employers in the building and development of the vocational education system, however, are not sufficient. A reform is needed that will change the way the teaching process is organized, so that at the point of focus are the student and the skills making them fit for purpose in the workplace and, consequently, employable.

Effects on the economy › Vocational education reform opens schools to a better cooperation with businesses. The proposed solutions are oriented to the right direction, but they are definitely insufficient. The challenge is to create a system that flexibly adapts to changes, in the centre of which should be the student and the skills they acquire.

Higher education reform. Act 2.0

Key changes › Act 2.0 entered into force on 1 October 2018. The Polish Confederation Lewiatan and the entities associated in the Polish Educational Union support the spirit of the planned reform – a pro-quality approach to assessing the activities of universities and individual academics, while abolishing the hampering structural mechanisms.

A cause for concern lies in the missing solutions for equal treatment of higher education institutions, regardless of their ownership status.

The student should always be in the centre. Therefore, it is necessary to change the method of financing universities – the money should "follow the student". This due both to the need to adapt the system to the proposed organizational changes as well as the analysis of the weaknesses of the current financial procedures and algorithms. Under such assumptions, the new university funding system should ensure that four basic objectives are achieved:

- strengthening the pro-quality functions of the university financing system,
- ensuring equal access of public and non-public higher education institutions to budgetary funds for teaching activities and own research,
- budgetary funding for higher education and science under multiannual programs adopted for ten-year periods,
- strengthening the role of local government units in financing higher education.

Opinion › We assess the need for change and direction proposed by the Ministry of Science and Higher Education as positive. However, the solutions do not provide for an equal status of higher education institutions regardless of their ownership structure. A positive change is the opening of universities to cooperation with both internal and external stakeholders, especially employers.

Effects on the economy › The proposed solutions create conditions conducive to better cooperation between universities and businesses and offer an opportunity to develop strong academic centres with international potential. However, the regulations that discriminate against non-public universities, can contribute to lowering the competitive position of the higher education sector. It is all the more so that non-public higher education institutions are more open to cooperation with companies by flexibly adapting curricula to the needs of the economy.

SOCIAL DIALOGUE

Amendments to the Social Dialogue Council Act

Key changes › The Act entered into force on 1 September 2018, and as regards trade union regulations it will become effective on 1 January 2019. Amendments to the Social Dialogue Council Act, though not revolutionary in nature, extend the powers of the Social Dialogue Council with the right to file motions with the Ministry of Finance for a uniform interpretation of tax law. The financial conditions of Regional Social Dialogue Councils have also been improved. Unfortunately, partners lacked determination and the government lacked good will to put the principles for a consultative process regarding parliamentary and senate draft bills into the Act.

There was also no consent to extend the right to organize a public hearing on such draft bills. As a result, partners will have no influence on the parliamentary and senate legislative initiatives, which means weakening the dialogue given that it is deputies and senators that sometimes initiate key changes. Also, as a result of amendments to the Trade Unions Act, the principles of counting the representativeness of trade union organizations and employers' organizations will also be different.

Opinion › A lot of confusion has been brought about by the amendment to the Trade Unions Act, which among the many bad changes contains a key one, consisting in a new definition of the trade union and, indirectly, the employers' organization. Unions are no longer created by employees, but by those who do paid work (and therefore also contractors, agents, self-employed, and even volunteers). They are also counted as members and employees decisive to the representativeness of trade union and employers' organizations represented in the Social Dialogue Council. This means that when filing the 4-year-term application for recognition as a representative organization one can include even 100,000 contractors, who after a few months may no longer be in the union or work in the company, as the essence of contract work is a short-term relationship (several months, at most a year).

For several years, the Polish Confederation Lewiatan has emphasized that that the level of 300,000 people on the employers' side does not mean real representativeness, and it means sheer fiction when those under non-employment contracts are added to that figure. In the light of these changes, it is necessary to immediately start discussions about the criteria of representativeness. Without this, the Social Dialogue Council and the dialogue itself will be even weaker.

Effects on the economy › The new solutions will not favour the quality of the law created, and the representativeness of organizations forming the Social Dialogue Council will be very weak. This may be conducive to further marginalization of the Social Dialogue Council, and indirectly to reduction in the influence of employers' organizations on the quality of the law passed.

RESPONSIBILITY OF BUSINESSES

Corporate liability

Key changes › The government's draft Act on the liability of collective entities is in the final stage of preparation before it is referred to the Parliament. It has passed all ministerial consultations and is waiting for adoption by the Council of Ministers. The new rules will probably enter into force in 2019.

The regulation prepared by the Ministry of Justice will revolutionize the approach to liability of businesses (corporate liability, liability of collective entities) in Poland. So far, the principle is that a collective entity is liable to penalty if a natural person acting on its behalf has been convicted by a final judgement. Now, this premise has been completely abandoned.

The draft originators assume that under the new Act, proceedings against a natural person will be irrelevant to the company being held liable. Proceedings against a collective entity can take place completely independently of the proceedings against the natural person who is the perpetrator of the act.

Opinion › One should agree with the general thesis that the state should be effective in combating intentional economic and fiscal crimes, constituting in fact unfair competition towards entities acting in accordance with the law. However, the key is how one translates such intentions into legal language. Our significant legal doubts are aroused by detailed solutions adopted in the draft Act. The withdrawal from the condition of a prior conviction may lead to situations where a collective entity gets convicted when a natural person is acquitted, or their criminal liability is excluded.

Effects on the economy › The new regulations are unfavourable for businesses and undermine their confidence in the state. The draft Act imposes a disproportionate burden on collective entities, to which liability for the perpetrator of the offence is transferred. There are also doubts about

a number of other detailed solutions adopted in the draft Act, regarding a violation of the non-retroactivity principle, excessive application of the renvoi institution in conflict-of-laws cases, imprecision of penalties and lack of clear guidelines for their application, imprecision in defining an offence and grounds for prosecution, insufficient precision of the grounds, principles and basis for the application of preventive measures, inappropriate regulation of the institution of whistleblowers. In a situation where businesses will face threatening penalties from PLN 30 thousand to 30 million, such regulation undermines their confidence in the state.

ENERGY

Increase in electricity prices

Key changes › Wholesale electricity prices have increased by 60-70% in 2018 YoY and probably will not be reduced in the coming decade.

Opinion › The reasons for the increase in electricity prices are fundamental and as such should not come as a surprise: on the one hand, this is due to rising prices of CO_2 emission allowances resulting from the reform of the EU ETS system, and on the other, to the Polish power industry based in 78% on coal, still using old, high-emission blocks due to insufficient numbers of modern generation units, both conventional and renewable. As a matter of fact, the holding back of RES investments was a deliberate choice of policy makers.

An additional impulse for price increases lately were high prices of coal. In the years to come, the costs of construction and support for upgraded and new generation and transmission capacities will add to this, if only with the power market charges. Moreover, having the generation sector monopolized makes it easier for producers to pass on the rising costs onto industrial customers. Energy tariffs for households are regulated. The new tariffs will apply from 2019.

Effects on the economy ›

- The increase in energy prices will cause the competitive position of Polish businesses in the EU market to deteriorate.

- In any case, the competitive position of European industry in global markets is deteriorating, as wholesale energy prices due to CO_2 limits have increased throughout the EU, save that the growth was the fastest in Poland. In July 2018, the cost of an MWh for a large customer was approx. EUR 69, in the Czech Republic EUR 57, while in Germany, taking into account the extensive compensation system, only EUR 38.

- The effects of the increase in costs of energy production will burden all customers: energy-intensive, other business customers, municipalities and households. It is only the proportions in which this burden will be spread that are not clear now. The Ministry of Entrepreneurship and Technology is in favour of introducing the industry's demanded broader scope of protection of the energy-intensive customers, so as to bring the operating conditions in Poland closer to those in force in Germany. The Minister of Energy initially announced the protection of the households poorest in terms of energy spending. Now the Ministry declares the will to compensate for the increase in costs for all households, as well as for SMEs. The Minister of Finance is silent over this issue. EU regulations allow for compensation to customers for an increase in energy prices resulting from the climate policy, from budget revenues on the sale of CO_2 emission allowances. To be reasonable economically, though, these should be used in a substantial part to reduce the emission intensity of the power and heavy industry. Subsidizing the mining sector and customers indefinitely will end with a catastrophe.

- To whom, to what extent, under which conditions and for how long it is necessary to compensate for the increase in electricity costs should be the subject of reliable analyses and general debate leading to a nationwide agreement on a socially just and economically sensible transformation of the Polish energy and economy. (Such a debate preceded the introduction of Energiwende in Germany.)
- On the positive side, it is justified to temporarily protect consumers in a situation of a shock price increase, but at the same time high wholesale energy prices together with falling technology prices will be an impulse for the development of renewed energy sector (larger and small scale) and for all measures improving energy and heat efficiency. These will be accompanied by basic efforts (elimination of losses) and other initiatives, such as direct contracts for energy supply with RES producers, sale of waste heat, construction of plants for own needs, thermal upgrading of buildings, new urban standards, etc. These activities also fit well in the anti-smog and electromobility programs, as well as the debate at the COP24 Climate Change Conference in Katowice.

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