

POLAND -Covid-19 report by Izabela Konopacka and Tomasz Szarek

1. What are the anti-coronavirus measures for all citizens in your country?

Poland, at the heart of central Europe with a population of around 38.5 million people, has been considered the fastest-growing economy within the EU. However, the Covid-19 pandemic could have very severe effects on its Economy.

The first case of a laboratory-confirmed SARS-COV-2 infection in Poland was that of a man hospitalised in Zielona Góra, announced officially on 4 March 2020.

As of 6 April 2020, there were 4,413 laboratory-confirmed SARS-CoV-2 cases and 107 deaths and as of 6 April 2020 there were 162 recoveries.

Lockdown-type control measures started on 10–12 March, closing schools and university lectures and cancelling mass events. These were further strengthened on 25 March, limiting non-family gatherings to two people and religious gatherings to six and forbidding non-essential travel.

The current restrictions will apply until April 19 and everybody must comply with these new measures. The relevant authorities, including the police, have been vested with powers to enforce them. Fines up to 30,000 PLN may be imposed on citizens per violation and in some cases, the breach could result in imprisonment. Members of the public have been warned and advised to stay at home because of the obvious risk in meeting others which means spreading the virus and increasing the number of infected patients. The situation for the medical services is very serious as there are not enough respirators and protective measures. On 20 March, the Ministry of Health tried to prevent medical personnel from commenting on the pandemic. Adam Bodnar (the Polish Ombudsman) defended medical personnel's rights to speak publicly about the epidemic on the constitutional ground of freedom of speech and the right of the public to information. Doctors opposed the self-censorship orders.

The upcoming election for Polish President has caused a lot of controversy as the date had been set for 10 May and remains unchanged; even though, there is an epidemic. Parliament has recently adopted amendments which would oblige Polish citizens to vote for candidates by mail. They await the approval of the Senate.

2. What is the legal situation and in courts?

The pandemic has had a significant impact on the operation of the justice system in Poland. Court activities have been limited to hearing only very urgent cases. Most hearings have been cancelled except for giving judgments and urgent criminal and family cases. However, hearings and court activities are within the responsibility of the presidents of individual courts. There have been specific provisions introduced suspending the running of court time limits subject to some exceptions.

Due to operational restrictions on Polish postal service, Court presidents have issued internal orders to limit letters circulation in some courts. It generally means that other court activities have been also reduced to a minimum level. For a limitation period to be suspended, the event of a force majeure has to result in the “inability to pursue rights” (Article 121(4) of the Civil Code). It cannot be unequivocally stated that this state of affairs already exists today due to

the risk of COVID-19 infection these are only hearings that have been cancelled (excluding urgent cases); court work has not been suspended completely. This means that it is unsafe to assume that limitation periods do not start running.

Under the current legislation, the possibility of filing case statements by electronic means is very limited (generally only to an electronic writ of payment proceedings). However, in certain conditions, case law allows for case statements (also appeals) to be filed by electronic means, provided that the absence of an original signature is later remedied as it is considered to be a formal defect. (Supreme Court resolution of 23 May 2012, III CZP 9/12).

Unfortunately, in the case in question, the Supreme Court indicated that the date a submission is filed on, is not the date it is received in the court's e-mail box, but the very uncertain date on which it is printed out by the court clerk. Due to potential restrictions on the work of court secretariats, a party is unsure when the submission will be printed and stamped as received, which gives rise to significant procedural risks.

3. How is the situation of lawyers and what the Bars are doing?

Lawyers have been affected by the pandemic as any other professionals have. Most attorneys work online and provide legal services by electronic means of communication. Many lawyers also provide pro-bono services to people in need such as doctors, nurses, entrepreneurs, migrants and single parents. Attorneys can attend court hearings provided the introduced security measures are complied with. Due to the pandemic, there is a high demand for legal services regarding inter alia employment law, bankruptcy and insolvency, state aid for businesses, family issues.

The National Bar Association has published guidelines for its members to assist lawyers in their daily work during the pandemic. The Bar has also proposed different solutions to the Ministry of Justice to improve the functioning of the justice system. Regional Bar Associations have also introduced on-line training for its members regarding current legal issues. Many Regional Bars have offered assistance to their senior members as well as those adversely and severely affected by the pandemic.

4. Which measures are the most appreciated and what are the challenges?

The measures most appreciated from a lawyers' perspective are currently those introduced by the government and concerning the aid and support for employees and businesses as a vast majority of people have faced an unprecedented situation and many members of the public have been left without any means of livelihood.

5. Additional Comments

A detailed summary regarding the situation concerning employees and businesses has been drafted by our colleague, the attorney Tomasz Szarek set out below:

Impact of Covid-19 on doing business in Poland and state aid for entrepreneurs, employers and employees

The COVID-19 results with significant impact on the activities of almost all entities, from sole traders to large business entities. Many entrepreneurs have already officially suspended their business activities. The consequences of covid-19 affect everyone.

What support can entrepreneurs, employers and employees in Poland expect from the state during the current crisis?

„Anti-crisis shield”

On 8th March 2020, Act on special solutions related to the prevention, counteracting and eradication of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374), entered into force. It focuses first on the regulation of preventing and combating the infection and spread of human infectious diseases caused by SARS-CoV-2.

On the weekend of 21st and 22nd March 2020, the first information on detailed solutions of the planned package of regulation, known as the „anti-crisis shield”, was published. The „anti-crisis shield” is to be a package of solutions for companies, preventing in particular the loss of liquidity in their operations and the dismissal of their employees. Adopted on 31st March 2020, Act on amending the Act on special solutions related to the prevention, counteracting and eradication of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 568), was signed by the President of Poland, published and entered into force on the same day.

Works on further amendments to the „anti-crisis shield” are pending.

What the „anti-crisis shield” offers to entrepreneurs, employers and employees in practice?

The most important forms of public aid covered by the „anti-crisis shield” are described below.

1. Co-financing for entrepreneurs

A part of the costs of business of an entrepreneur who is a natural person and does not employ employees shall be co-financed. The co-financing shall be granted in case of a decrease of the entrepreneur's turnover by at least 30%. A turnover decrease is defined as a decrease in the sale of goods or services (in volume or value), calculated as a proportion of the entrepreneur's total turnover for any 2 consecutive months, falling after 01.01.2020 to the day preceding the date of submitting the application for co-financing, to the total turnover of the entrepreneur reached during analogous 2 consecutive months in 2019.

The co-financing is provided by the local authority (*starosta*) on the basis of a contract concluded with the entrepreneur, for a maximum of 3 months. The co-financing amounts:

- in the event of decrease of the entrepreneur's turnover by at least 30% – to 50% of the minimum wage per month;

- in the event of decrease of the entrepreneur's turnover by at least 50% – to 70% of the minimum wage per month;
- in the event of decrease of the entrepreneur's turnover by at least 80% – to 90% of the minimum wage per month.

The minimum wage per month in Poland amounts to 2600,00 PLN (about 600,00 EUR)

The co-financing shall be paid on a monthly basis, after the entrepreneur submits a declaration on operating business in a month, for which the co-financing shall be paid. The entrepreneur is obliged to operate its business during the period for which co-financing was provided and after the end of co-financing during the equal period to the period for which co-financing was provided.

2. Wage subsidy

Employee Benefits Guarantee Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych*) shall subsidise employees' wages for the benefit of entrepreneurs who have recorded a decrease in turnover.

The decrease in turnover shall amount to:

- not less than 15% calculated as the ratio of the total turnover in any two consecutive calendar months after 1.01.2020 until the day preceding the date of application, compared to the total turnover from the corresponding 2 consecutive calendar months of the previous year, or
- not less than 25% calculated as the ratio of the total turnover for any given calendar month, after 01.01.2020 until the day preceding the application date, compared to the turnover of the previous month.

The employer shall be able to obtain subsidy:

- up to the amount of 50% of the minimum wage - in case of introducing economic downtime, considering working time;
- up to the half of the wage for work in reduced working hours, but not more than 40% of the average monthly wage from the previous quarter - in case of a reduction in working hours, considering working time.

The subsidy is not to be granted in relation to the wages of persons whose wage obtained in the month preceding the month in which the application was submitted was higher than 300% of the average monthly salary from the previous quarter, announced by the President of the Central Statistical Office.

The maximum period for receiving such benefits shall amount up to 3 months.

Further subsidy, not only relating to the wages of persons employed on the basis of an employment agreement, but also those employed on the basis of an tolling contract or a mandate contract or other contract for the provision of services, may be granted by a local authority (starosta) on the basis of a contract with an entrepreneur.

3. Stoppage benefit

Persons conducting business activity and performing civil law contracts shall be entitled to a stoppage benefit, if they are not subject to social insurance on another account. The above is also applicable to foreigners legally residing in the territory of the Republic of Poland. The stoppage benefit is granted if, following the occurrence of COVID-19, a stoppage in business activity has occurred, respectively, by a person conducting non-agricultural business activity or by ordering party with whom a civil-law contract has been concluded.

A person conducting business activity is entitled to a stoppage benefit if he or she started this activity before 01.02.2020 and:

- did not suspend the business activity and the income from conducting this activity obtained in the month preceding the month of submitting the application for the stoppage benefit was at least 15% lower than the income obtained in the month preceding that month and was not higher than 300% of the average monthly wage from the previous quarter, announced by the President of the Central Statistical Office;
- suspend the business activity after 31 January 2020 and the income from this activity obtained in the month preceding the month in which the application for the stoppage benefit was submitted was not higher than 300% of the average monthly wage from the previous quarter, announced by the President of the Central Statistical Office.

A person performing a civil law contract is entitled to a stoppage benefit if:

- the civil-law contract was concluded before 1 February 2020;
- the income from the civil law contract obtained in the month preceding the month in which the application for the stoppage benefit was submitted was not higher than 300% of the average monthly wage from the previous quarter, announced by the President of the Central Statistical Office.

The benefit is a one-off payment of 80% of the minimum wage.

4. Loans to micro-entrepreneurs

A local authority (starosta) may grant a single loan of up to PLN 5.000 to cover the current costs

of business for micro-entrepreneur who operated a business before 01.03.2020. The loan's fixed interest rate per year is 0,05 of the rediscount rate for bills of exchange accepted by the National

Bank of Poland (currently the rediscount rate is 1,05). The repayment period may not exceed 12 months, with a grace period for repayment of capital and interest of 3 months from the date of granting the loan.

The loan may be remitted, provided that the entrepreneur does not reduce the employment in terms of full-time work in comparison with the employment as of 29.02.2020 within 3 months from the date of its granting.

5. Social security contributions and benefits

At the contribution payer's request, who on 29 February 2020 reported less than 10 insured persons to social security, contributions for compulsory social security, health insurance, Labour Fund (*Fundusz Pracy*), Solidarity Fund (*Fundusz Solidarnościowy*), Employee Benefits Guarantee Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych*) or Briding Pension Fund (*Fundusz Emerytur Pomostowych*), due for the period from 1.03.2020 to 31.05.2020 shall be canceled.

In the case of an entrepreneur who does not employ employees, an application may only be submitted by one who in the month preceding the submission of the application achieved income from non-agricultural activity not exceeding 300% of the forecasted average monthly gross wage in the national economy in 2020.

During the redundancy period the right to social security benefits is retained from the payment of contributions.

6. PIT and CIT

Taxpayers who have suffered negative economic consequences due to the COVID-19 epidemic may pay the tax advances personal income tax payment collected in March and April 2020 on income from the public service relationship, employment relationship, outwork, cooperative employment relationship, and social security benefits until 01.06.2020.

The provisions regarding PIT and CIT payments on the so-called bad debts to the taxpayer who is the debtor do not apply if, as a result of COVID-19, the taxpayer's revenues in 2020 will be at least 50% lower than the previous tax year.

Taxpayers (PIT and CIT), who because of COVID-19 in 2020:

- will suffer a loss on non-agricultural business activity and
- will achieve total revenues from economic activity lower by at least 50% than the total revenues achieved in 2019 from this activity,

may once reduce revenue or income achieved in 2019 from non-agricultural economic activity by the amount of this loss, but no more than by the amount of PLN 5 000 000, by submitting a correction of the tax return for this year.

The taxpayer (PIT and CIT) may deduct donations made in 2020 to counteract COVID-19, depending on the month of making a donation up to 200% of its value.

Further tax facilities support applies to entities producing goods related to fighting the epidemic and those conducting research in this area.

Small taxpayers who have chosen the simplified form of advance payments for 2020 may opt out of it during the tax year if they have suffered negative economic consequences due to COVID-19.

7. Labour law

The employer shall be able to reduce wages in the event of economic downtime by no more than 50%. Reduced wages cannot be lower than the minimum wage. An employer who has experienced

a decrease in business trading as a result of COVID-19 may reduce working hours by 20%, not more than 0.5 FTEs. Employers are granted additional rights to make the working time more flexible. Up to 50% of the minimum wage may be subsidised from the funds of the Employee Benefits Guarantee Fund (*Fundusz Gwarantowanych Świadczeń Pracowniczych*).

An employer with a decrease in business trade (by 15% or 25% - as indicated in section 2) may introduce the following changes:

- reduce the uninterrupted daily rest from 11 to 8 hours;
- reduce the uninterrupted weekly rest from 35 to 32 hours;
- conclude an agreement on the introduction of a balanced working time system where it is admissible to extend daily amount of working time, however for not more than 12 hours in the settlement period not longer than 12 months;
- conclude an agreement on the application of employment conditions less advantageous than the ones stipulated in the contracts of employment concluded with the employees to the extent and for the period determined in the arrangement (so-called crisis agreements).

8. Credit Agreements

It is possible to change the conditions or repayment terms of loan agreements granted before the day 8.03.2020 to micro, small and medium-sized entrepreneurs. Importantly, the changes must be justified by the assessment of the borrower's financial and economic standing made by the bank not earlier than on the day 30.09.2019 and not on the current situation.

An amendment to loan agreement is made on conditions agreed between the bank and the borrower however, it may not cause deterioration of the borrower's financial and economic situation.

Are the proposed regulations sufficient?

We will see. Many entrepreneurs, employers and employees already raised doubts and claim that the „anti-crisis shield” in this form may be considered as too weak. For the moment, these regulations appear to be only an “emergency aid”. The effectiveness of the „anti-crisis shield” depends on the duration of the COVID-19 coronavirus pandemic and the appropriate response of the state authorities to the changing situation.

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