



# Government reforms in Poland – the impact so far and future prospects

## Part 1 – Social Reforms

*Spring 2017 marks a year and a half since the Law and Justice (PiS) party won the General Election and formed the Government of the Republic of Poland. It is more than a year since the Government implemented its flagship reform – the Family 500+ Programme. Also, we are seeing the first effects of PiS's tax-evasion countermeasures. In February, almost exactly a year after announcing the Responsible Development Plan, the Government adopted the Responsible Development Strategy. Other reforms, such as in education, healthcare and justice, are well advanced. This is a good moment for a summary of what has been done and what the prospects are for the future. It's also worth taking a look at public opinion on, and the opposition's complaints about, the Government reforms. These reforms will be discussed in three parts: (1) social reforms; (2) the economy and finance; (3) security and justice (these correspond to the three pillars considered as priorities by Prime Minister Szydło – Family-Development-Security).*

### The Family 500+ Programme

The Family 500+ Programme is PiS's flagship project, which the party announced during the election campaign and faithfully implemented after winning the election. Prepared by the Ministry of Family, Labour and Social Policy, the Programme was launched on 01 April 2016. It provides Polish families with child benefit of PLN 500 monthly for each second and subsequent child aged up to 18. Less well-to-do families, whose monthly income does not exceed PLN 800 per capita, or PLN 1,200 per capita in the case of families with disabled children, may also claim the benefit for the first child. More than 2.5 million families are taking advantage of the Programme, with the money going to a total of more than 3.8 million children (55 percent of all children aged up to 18). More than PLN 21 billion went to Polish families in the first year.

The Family 500+ Programme has two core objectives – the social objective of supporting families with children, and the demographic objective of increasing the number of births. Underlying the latter is Poland's grim demographic outlook. According to the Polish Central Statistical Office, and Eurostat, if the current trend continues, Poland's population (now 38.5 million) will shrink to less than 34 million by 2050, and 33 million by 2060. Also, the older population will greatly outnumber the younger population.

As far as the social objective is concerned, the Family 500+ Programme has substantially improved the financial situation of Polish families, which now use less welfare, child-meals programmes, specific-purpose benefits and temporary benefits (a 12-percent decrease). According to World Bank estimates, the Programme has reduced extreme poverty and extreme child poverty in Poland by 48 and 94 percent respectively. A January 2017 National Bank of Poland report shows that real household income increased by 5.9 percent in Q3 2016 (y/y), with Family 500+ payments accounting for 3.2 percentage points of this increase. An autumn 2016 Centre for Public Opinion Research (CBOS) survey showed that the Programme enabled parents to purchase clothes (31 percent) and footwear (29 percent), and also to go on family vacations (22 percent). There has also been a significant effect on education, as 22 percent of the respondents spent their Family 500+ funds on books and teaching aids, with 20 percent having paid for



extracurricular activities for their children. So, one year into the Programme, we can now see that the critics who claimed that the money would be squandered have proven to be wrong.

Their concerns that the Programme would have an adverse impact on the labour market have also not materialised. In late 2016 some media and opposition parties claimed that 150,000 women would quit their jobs because of receiving the Family 500+ benefits. However, as shown by CSO data, the number of working women in Q4 2016 actually increased by 15,000 compared to Q3 2016.

As far as the demographic objective is concerned, the Government expects the Programme to increase the number of births by about 280,000 over 10 years, and also to increase the birth rate from 1.3 to the EU average of 1.6 (although the required rate to ensure generation replacement is about 2.1). While it is too early to draw conclusions, according to CSO data, a total of 385,000 children were born in 2016, which is 16,000 more than in 2015. This outcome exceeded the expectations the Government had before launching the Programme (377,000 births in 2016 and 378,000 births in 2017). Currently – taking into account the optimistic CSO data from January 2017 (35,000 births) – the Government estimates that more than 400,000 children (potentially even 410,000-420,000) will be born in 2017.

A March 2017 CBOS survey showed that a year after being implemented, the Family 500+ Programme continues to enjoy popular support (77 percent positive vs. 20 percent negative responses). The introduction of this Programme has radically changed the perception of State family policy. Previously (1996-2013), State family policies were perceived by the vast majority of the public as either satisfactory or unsatisfactory (e.g. in 2012 and 2013, when Civic Platform [PO] and The Polish People's Party [PSL] were in power, these opinions combined accounted for more than 80 percent of all responses). In the last survey more than half the respondents (52 percent) had a good or very good opinion of State family policy. The most responses mentioned the positive impact of the Family 500+ Programme on the budgets of households with children – less financial constraints (a total of 34 percent of the respondents stated that they personally knew people for whom this was the case, or that they themselves had experienced this advantage) and a major improvement in the situation of children from poor families (28 percent of all responses). The percentage of individuals who expected that the Programme would have no effect whatsoever on the birth-rate increase fell over the year (from 29 to 16 percent), and more respondents (an increase from 16 to 24 percent) believed that it would substantially contribute to this increase. Most of the respondents (55 percent) were cautiously optimistic about this issue. Over the same period, there was an increase in the percentage of responses (from 10 to 16 percent) claiming that child benefits should go to the poorest families, with less respondents (from 43 to 38 percent) being of the opinion that child benefits should be paid to all families with children regardless of their income. Most of the respondents (42 percent) believed that families with low or medium incomes should be entitled to child benefits.

In a summary of the first year of the Family 500+ Programme in early April 2017, the Government announced that it would review the family-support systems. The general framework would be left unchanged, while the proposed changes would aim at a tighter system to eliminate fraud identified during the first year (such as underestimating employment or business income to meet the income requirement for the first child, falsely claiming single parenthood to conceal the income of the other parent, thus obtaining benefits for the first child, etc.). Proposed improvements also include better enforceability of alimony (maintenance arrears might be as high as PLN 10 billion), an expanded Big Family Card (for families with three or more children), and



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better care for the youngest children (aged up to 3). The former will involve increased accessibility of nurseries, children's clubs and day carers (the Young One+ Programme). This will complement the existing solutions, such as the 12-month parental leave and the obligation for communes (*gmina*) to accept all 3-year-olds into pre-schools (from September 2017).

## The Housing+ Programme

In September 2016 the Government adopted a Resolution on the National Housing Programme (NHP), with the aim of making housing more affordable for low- and medium-income persons. One of the core elements of the NHP is the Housing+ Programme, which will facilitate the construction of affordable rental housing with an option to purchase the ownership right to the flat. The rent is planned to average PLN 10-20 / m<sup>2</sup> (plus maintenance and utility costs) and if the ownership option is chosen, the rent will be PLN 12-24 / m<sup>2</sup>. The Programme is available to all Polish citizens, but preference will be given to low-income and multiple-children families. The buildings will be erected on land donated to the National Housing Fund (NHF) by the State Treasury, communes, private investors and other entities. Public consultation and cross-ministerial consultations on the draft NHF Act were held in December 2016.

In April 2017 Prime Minister Beata Szydło announced that the work on the Housing+ Programme was two-pronged. One component is being implemented by Bank Gospodarstwa Krajowego (BGK – a Polish national-development bank) – agreements with local governments have already been signed and a pilot programme is under way. The other component is being prepared by the Ministry of Infrastructure and Construction. It will be adopted by the Government and cleared for implementation soon.

The first dwelling units under the Housing+ Programme should be ready by late 2017. The Programme will be stepped up in 2018. BGK Nieruchomości has already signed 80 letters of intent (with local governments and State-owned companies) and two Project Agreements (in Biała Podlaska and Jarocin). The letters of intent have been signed both by major cities (Gdańsk, Katowice, Kraków, Poznań, Wrocław) and smaller towns (Ciechanów, Koluszki, Łowicz, Trzebinia, Września, etc.). Under these arrangements, BGK Nieruchomości has nearly 450 ha of land pre-designated for the construction of housing, with an estimated capacity of up to 60,000 dwelling units. A further 622 locations are being confirmed and talks are being held with more than a dozen companies and developers interested in joining the Programme.

The Government has set some ambitious goals for the Programme to be met by 2030 (as defined in the NHP). First, the local governments of communes should be able, by 2030, to satisfy the housing needs of all households currently on the waiting list for communal rental housing. This means that the communes must have more than 165,000 flats constructed. Second, the number of dwelling units per 1,000 residents should increase from the current 363 to the EU average of 435 by 2030, which means that about 2 million new flats will have to be built. Third, the number of people living in sub-standard conditions (poor state of repair, unavailable basic utilities, overcrowding) should decrease by 2 million (from 5.3 million to 3.3 million).



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## Educational reform

The first component of this reform was implemented soon after the election, in December 2015, when an Act was passed to reinstate the compulsory school age of 7 (starting from the school year 2016/2017). This entailed the rescinding of the reform implemented two years earlier by the PO-PSL Government, under which the compulsory school age started at 6. The PO-PSL Government lowered the compulsory school age against the will of the majority of parents, who protested against the bill in 2012 and 2015 by signing citizen's draft bills to reinstate the compulsory school age of 7, and also by signing the 2013 petition for a referendum on this issue. It should be noted that the December 2015 Act allows parents to decide to send their children to school at the age of 6, provided that their children have completed a year's pre-school preparation, or have been deemed fit for school by a child counsellor.

As shown by a February 2017 CBOS survey, the large majority of the respondents (78 percent) agreed with the view that it was parents who should decide whether their children should start school at 6 or 7 (this has not changed since 2009 – the survey conducted back then found that 79 percent agreed with this view). Regarding the compulsory school age, more than half the respondents (58 percent) believed that the right age for starting education was 7, whereas just over one third (35 percent) saw the age of 6 as the appropriate age to start school education.

The core component of the reform was implemented a year later. Passed in December 2016, the Act (the Educational Law Act) established a new educational system with an eight-year primary school and a four-year upper-secondary general school (replacing a six-year primary school, a three-year lower-secondary school, and a three-year upper-secondary general school). The new system also included a five-year upper-secondary technical school (*technikum*), a three-year first-cycle trade school (*szkoła branżowa*), and a two-year second-cycle trade school (replacing vocational schools). The 2016 Reform will phase out lower-secondary schools (*gimnazjum*), introduced under the 1999 reform, which have failed to meet their primary objective of ensuring equal educational opportunities. Three-year upper-secondary general schools (*liceum*) have also failed to serve their intended purpose, as they have essentially amounted to a “preparatory course” for the school-leaving exam (*Matura*) and their graduates were ill-prepared for higher education (26 out of 37 higher-school rectors noted that graduates were insufficiently prepared to take up higher education, due to their secondary education's being too short). Education in vocational schools, which account for the most unemployed graduates (more than 40 percent among graduates of basic vocational schools and more than 30 percent among technical-school graduates), has also been unsatisfactory. From now on, vocational education will involve cooperation with employers to align it with labour-market needs.

The educational reform will be implemented gradually. The changes will start in the school year 2017/2018 and end in the school year 2022/2023. Secondary general schools and secondary technical schools will start to be reformed in the school year 2019/2020, and their reform will be completed in the school year 2023/2024. A Regulation was signed in February 2017 on the core curriculum for pre-schools and primary schools, set to enter into force on 01 September 2017 (the new core curriculum will apply to first- fourth- and seventh-graders in primary schools). By the end of March 2017, almost all commune and district (*powiat*) councils (99 percent) had confirmed their readiness to adapt their school networks to the new educational



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system. By the end of June 2017, new course books will have been developed for the new core curriculum (course books and other educational materials for students will be provided free-of-charge at their schools).

The February 2017 CBOS survey found that the majority of the respondents (57 percent) believed that the new educational system would be better than the existing one, with every fourth respondent claiming the opposite (24 percent) and almost every fifth respondent (19 percent) having no opinion on this issue. One third of the respondents (34 percent) were hopeful rather than anxious about the reforms, with slightly less respondents having mixed feelings about them (31 percent) and more than one quarter (27 percent) being more anxious than optimistic about the reforms. More than half the respondents thought the changes proposed by the Government would go in the right direction (51 percent “right-direction” vs. 33 percent “wrong-direction” responses), but the opinion that the reforms were ill-prepared was also common (44 percent “ill-prepared” vs. 28 percent “well-prepared” responses).

Teachers were primarily concerned about losing their jobs as a result of the reform. The Ministry of National Education (MEN) has assured them, however, that the reform will not cause any lay-offs, as old-system teachers will become new-system teachers by virtue of the law (for instance, teachers from six-year primary schools will become teachers in eight-year primary schools, teachers from three-year upper-secondary general schools will become teachers in four-year secondary schools, etc.). The new legislation also establishes mechanisms to help teachers make a smooth transition from old-system to new-system schools without having to terminate their existing agreements and sign new ones. MEN estimates that the reform will add about 5,000 new teaching posts. Then again, the Polish Teacher's Union (ZNP) claims that as many as 45,000 teachers might lose their jobs as a result of the reform. This claim has been reiterated by the opposition. To oppose the reform, ZNP staged a nationwide teachers' strike in late 2017 (according to ZNP, almost 40 percent of schools and pre-schools joined the strike, while MEN claims this figure was only 11 percent).

## **Healthcare reform**

In 2016 an Act was passed on free-of-charge medicines for seniors, i.e. people aged 75 or more (the so-called Medicine 75+ Programme). The list of these medicines (announced in September 2016 and updated every two months) currently includes 1,200 pharmaceuticals. These medicines are for diseases of old age – mainly chronic diseases, such as heart and circulatory-system diseases, Parkinson's disease, osteoporosis, etc. In 2015 patients aged 75 or more spent a total of about PLN 860 million on refundable medication. This cost is expected to be reduced by more than 60 percent in 2017. The project is Government funded and will involve an increase in expenditures each year – ultimately, from PLN 560 million in 2017 to more than PLN 1.2 billion in 2025.

A new Act was passed in March 2017 establishing the so-called hospital network. Eligible hospitals will make up the so-called primary hospital healthcare system (PSZ). About 91 percent of the existing hospital healthcare spending will be spent on this system. By entering the PSZ, hospitals will have a guarantee that the National Health Fund will sign a contract with them without a bidding procedure. The Ministry of Health expects that the hospital network will provide patients with the following benefits – treatment will be coordinated, hospitals will provide comprehensive care (from outpatient specialised care to hospital care to



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rehabilitation), and healthcare provided at night and on holidays will be more accessible (shorter queues in hospital emergency and admission departments), etc.

Also, the pharmaceutical law was amended in April 2017. Under the amended law, new pharmacies may be opened only by licensed pharmacists who operate a sole proprietorship, a registered partnership, or a professional partnership, whose sole object is running a pharmacy (the “pharmacy for pharmacists” principle). The Act provides for demographic and geographic constraints for newly established pharmacies, i.e. no more than one pharmacy per 3,000 persons may exist and the distance between individual pharmacies must be at least 1 km. Also, controlling entities may own no more than four pharmacies.

## Retirement reform

In addition to the Family 500+ Programme, the reduction in the statutory retirement age was one of Law and Justice’s centrepiece election promises. The President of the Republic of Poland put forward a draft bill on this reduction in autumn 2015, thus fulfilling his election-campaign promise. The Act was passed in November 2016, and will enter into force on 01 October 2017. The Social Insurance Institution [ZUS] has to prepare its computer systems, etc., hence the delay. Under this new piece of legislation, the retirement age will be reduced to 60 for women and 65 for men (but retirement at these ages will not be obligatory). The changes will apply both to persons insured under the universal pension system (ZUS) and to farmers insured under the agricultural insurance system (KRUS). The State-budget costs of this reform are estimated at about PLN 10-15 billion a year.

This reform has undone the changes introduced in 2012 by the PO-PSL Government, which involved a gradual increase in the retirement age for women and men to 67 (by 2020 for men and by 2040 for women). The PO-PSL Government did this against the public will, so it is not surprising that PiS’s proposal to reduce the retirement age to 60 for women and 65 for men has been very popular with the public. An October 2016 CBOS survey found that 84 percent of respondents supported (of which 57 percent expressed strong support) the plan to re-instate the previously applicable retirement age, while 12 percent opposed the plan. Qualified and unqualified workers (90-92 percent), and farmers (98 percent) were the most enthusiastic about reducing the retirement age, while executives and specialists (28 percent) and business owners (29 percent) were the most critical of this change.

An Act was passed in December 2016 to increase the minimum retirement and disability pensions. So far, the minimum pension has been slightly over PLN 882 a month. Starting from 01 March 2017, the minimum pension, the total-disability pension and the survivor pension were all increased to PLN 1,000. Consequently, they now amount to 50 percent of the minimum wage. The minimum pension can be claimed by women with at least 20 years’ professional service and men with at least 25 years’ service.

At the same time, also in December 2016, an Act was passed to reduce the retirement and disability pensions paid to former security-service (SB) officers of the Communist Polish People’s Republic (this piece of legislation is commonly referred to as *ustawa dezubekizacyjna – the SB-Reckoning Act*). Former SB officers used to receive sizeable pensions (often more than PLN 10,000 a month), much in excess of average pension (currently, about PLN 2,000), which most of the public saw as a gross injustice. What was particularly



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outrageous was that former officers of the Communist regime received much higher pensions than anti-communists active in the times of the Polish People's Republic. Following the reduction under the SB-Reckoning Act, the retirement and disability pensions of these officers may not exceed the average retirement or disability pension paid by ZUS (on average in June 2016, the retirement pension was PLN 2,053, the disability pension was PLN 1,543, and the survivor pension was PLN 1,725). The adjusted pensions will be paid starting from 01 October 2017. The reduction will apply to about 32,000 individuals and will generate State-budget savings of more than PLN 500 million a year.

Last but not least, it is worth mentioning the Capital Build-Up Programme, which is part of the Responsible Development Strategy. The plan under the Programme is to establish universal and voluntary Employee Capital Schemes (PPK) and Individual Capital Schemes (IPK) within the third tier of the pension system, which is underdeveloped (as few as 380,000 individuals use employee pension schemes – the Programme will aim to increase the number of PPK and IKE savers by 5.5 million and 16.5 million respectively). As far as the second tier is concerned, Open Pension Funds (OFE) have been deemed ineffective, due to the low expected pension levels they will provide. The plan is to transfer 75 percent of OFE assets (in the form of Polish stock) to IKE within the third tier, and to reallocate 25 percent of OFE assets (in the form of liquid assets other than Polish stock) to the Demographic Reserve Fund, but also to credit these funds to ZUS sub-accounts. This applies to those OFE assets which remained after the PO-PSL Government transferred 51.5 percent of them to ZUS (the first tier) in 2014. The Programme is planned to be ready by 2017 and be implemented between 2018 and 2019.

## **Part II – The economy and finance**

### **The Responsible Development Strategy**

In February 2017 the Government adopted the Responsible Development Strategy, which is an extension of the Responsible Development Plan (also known as Morawiecki's Plan), put forward in February 2016. This strategy – prepared by the Ministry of Development in collaboration with other ministries – specifies the mid- and long-term directions of Poland's development, i.e. by 2020 and with an outlook to the year 2030.

The strategy concentrates on three goals: (I) permanent economic growth, which is increasingly knowledge-based; (2) socially sensitive and territorially sustainable development; and (III) an efficient state and institutions. The implementation of this strategy is expected to increase the affluence of Poles and reduce the percentage of the population at risk of poverty and social exclusion. Moreover, it assumes an increase in the average household income to 75-80% of the EU average by 2020 and to reach that average by 2030, at the same time aiming at narrowing the disparities of income between the country's regions.

The strategy places emphasis on introducing more cutting-edge solutions and innovation to the Polish economy. In the last twenty five years, Poland's economic development and growth have been based on low labour costs (a cheap workforce), but this scenario is becoming rarer. There are still too many Polish partnerships and companies which are competitive only in terms of low prices and too few which are bringing innovations to the market. Meanwhile, the world is at the dawn of the fourth industrial revolution (the so-called Industry 4.0) based on digitisation, robotisation, mechanisation, automation etc. This is why the strategy lists a series of innovative flagship projects such as the Electric car, E-bus, Luxtorpeda 2.0, Batory, Żwirko and Wigura (the design and construction of electric vehicles, innovative rail vehicles, ships, and drones



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in Poland), the Enigma Cyberpark (cyber security), Telemedicine, the Biotechnology Development Centre, Polish medical devices (the Polish medical robot, generic and biosimilar drugs), Eco-construction, Polish furniture, Smart Mines, etc.

The above-mentioned territorially sustainable growth and the narrowing of the disparities between the country's regions are to be achieved through the support package for medium-sized towns presented in April 2017, among other things. It applies to towns with a population of over 20 thousand inhabitants and the towns of 15 thousand inhabitants which are the capitals of districts (excluding voivodeship towns) – today 255 localities in the whole of Poland, among which there are 122 urban centres in need of support, as they are losing their social and economic functions to the greatest extent. The main elements of the package are EU subsidies, investment preference, and the facilitation of access to the funds of the Local-Government Investment Fund managed by the Polish Development Fund. Support from the national operational programmes managed by the Ministry of Development is expected to be nearly PLN 2.5 million from EU funds for the years 2014-2020.

The strategy is to be implemented both nationwide and at the regional level. In March 2017 the Central Eastern European Innovators Summit was held in Warsaw. Apart from start-ups, large corporations, economists, and non-governmental organisations, the summit was also attended by Prime Ministers from the Visegrad Group, who signed the so-called Warsaw Declaration on the tightening of regional cooperation in research, technology, innovation, digitisation etc. Other regional projects set out in the strategy include the construction of international expressways: the Via Baltica (running from Poland to Lithuania and Latvia to Estonia) and the Via Carpatia (running from Lithuania to Greece through 7 EU states – in Poland through the eastern voivodeships) and the plans to establish a centre for gas transit and trade for Central and Eastern European countries in Poland. Such activities are a chance to strengthen economic cooperation and mutual relationships within the so-called Three Seas initiative.

## **The Business Constitution and package for entrepreneurs**

One of the priorities of the Responsible Development Strategy is the development of entrepreneurship, including micro, small and medium-sized enterprises, which constitute more than 90% of all enterprises in Poland. This is why the Ministry of Development prepared the greatest reform of the Polish law since 1989, implemented in two packages – *“100 changes for partnerships and companies”* and the Business Constitution. Their objectives are to release the potential of Polish entrepreneurs, so far restricted by various legal, administrative etc. obstacles.

The *“100 changes for partnerships and companies”* package introduces into Polish law a number of solutions aimed at eliminating the most troublesome limitations faced by entrepreneurs. Some of these changes entered into force on 1 January 2017: the principle of legal certainty; the raising of the limit of net revenues from the sale of goods, products, and financial transactions for which PIT taxpayers are allowed to keep their revenue and expense ledgers (from EUR 1.2 million to 2 million); the raising of the revenue limit which gives one the right to tax one's economic activity based on the rate of tax on registered revenue (from EUR 150 thousand to 250 thousand); the exemption from conducting a second tax audit if it is intended to examine the period already covered by a previous audit etc. These changes were introduced by the so-called Deregulatory Act, which is expected to bring considerable savings to entrepreneurs (at least PLN 500 million a year).

In March 2017 the Sejm passed two other Acts within the *“100 changes for partnerships and companies”* package, i.e., the amendment of the Code of Administrative Proceedings and the so-called creditor package. They are to enter into force on 1 June 2017. The first Act stipulates that there will be more partnership in the relations between the state and the citizen (e.g. thanks to the principle of citizen-friendly interpretation of





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legal provisions or mediation), official cases will be taken care of more quickly (e.g. “the tacit handling of a case”), and administrative penalties will be commensurate with the severity of the violation. The creditor package will in turn make it possible for partnerships and companies to examine the creditworthiness of contracting parties, recoup debts, counteract payment deadlocks, etc.

The objective of the Business Constitution is to implement the principle of economic freedom as set out in the Constitution of the Republic of Poland, so far only partially achieved. The main element of the Business Constitution – the Act on the Law of Entrepreneurs (in February 2017 the bill was submitted for public consultations) – is to introduce a series of business-friendly principles, e.g. the principle “*everything which is not forbidden is allowed*”; the presumption of the entrepreneur’s honesty; the principle of proportionality (a public office does not have the right to impose unjustified charges on entrepreneurs); the principle of the liability of civil servants for breaching the law; “*tax relief at the start*” (the exemption of novice entrepreneurs from paying social insurance contributions for the first 6 months of their business activities); “non-registered activity” (the exemption of the smallest firms whose monthly revenue does not exceed 50% of the minimum remuneration from the obligation to register their activity) etc.

In the future other elements of the “*100 changes for partnerships and companies*” package will be introduced, including the simplification of the rules of procedure concerning the inheritance of a family enterprise after the death of its owner, the shortening of the period of keeping employee files (from 50 to 100 years) and transferring them to electronic databases, the introduction of the so-called simple joint stock company, adjusted to the needs of start-ups etc. Other Acts which are part of the Business Constitution will put into effect, among other things, the simplification of taxes (e.g. by removing a number of obligations concerning documentation, standardising blank forms, simplifying the rules for settling tax deductible expenses), the formation of the Common Committee of the Government and Entrepreneurs, the Commissioner for the Protection of Entrepreneur Rights, the Information Office for Entrepreneurs, etc.

## **Pay and taxes**

Since 1 January 2017 the minimum pay for those employed under a contract of employment has been PLN 2000 gross, which is PLN 150 more than in the preceding year, when it amounted to PLN 1850. The amount of PLN 2000 constitutes nearly 50% of the average pay in the enterprise sector (according to the Central Statistical Office of Poland, in January 2017 this amounted to PLN 4277). On 1 January 2017 the minimum hourly wage of PLN 13 gross also entered into force. It applies to contracts of mandate and contracts for the provision of services, natural persons and the self-employed (running a business). Formerly, those employed under contracts of mandate (around 1.3 million people) received very low hourly wages (e.g. PLN 5-6), which meant that their remuneration was lower than the minimum pay. Because not all employers abided by the new provisions on the minimum hourly wage, the National Labour Inspectorate started to conduct inspections. Not only do the inspectors verify whether the hourly wage of PLN 13 is being paid, but also whether civil-law contracts (so-called “junk contracts”) are not overused at the expense of contracts of employment which should have been used instead. During the first investigation the inspectors resort to instructions only; during subsequent ones – if irregularities have not been removed – they are allowed to submit motions to courts, which can result in fines of up to PLN 30 thousand.

On 1 January 2017 a new income tax threshold came into effect – PLN 6,600 per year, which is more than twice as much as the former one (PLN 3,091). The application of such a low income tax threshold under the Government of the coalition of the Civic Platform (PO) and the Polish People’s Party (PSL) actually meant the taxation of income at the minimum level of existence (around PLN 6,500 annually), which in the autumn of 2015 the Constitutional Tribunal deemed contrary to the Constitution of the Republic of Poland. The raising of the income tax threshold will be of benefit to over 3 million Poles with the lowest incomes (retirees, pensioners, students, among others). Those who earn up to PLN 6,600 a year will not have to pay income tax.



For the taxpayers who earn more, but less than PLN 11 thousand a year, the income tax threshold will gradually decrease to the level of PLN 3,091. Those whose annual income ranges between PLN 11 thousand and PLN 85 528 will be taxed on the former basis, with the income tax threshold of PLN 3,091. The income tax threshold for above PLN 85,528 a year will be gradually lowered, and taxpayers earning more than PLN 127 thousand a year will not be subject to an income tax threshold.

The income tax threshold of PLN 6,600 is a compromise between the willingness to ensure the minimum of social justice and the current possibilities of the state budget. It costs the budget around PLN 1 billion a year. The raising of this threshold to PLN 8 000 – which was proposed in the electoral campaign and is now being reminded of by the opposition – would today be too much of a burden on the state budget. It is, however, possible to continue to raise the income tax threshold in the future if appropriate budget income is ensured (e.g. thanks to the tightening of the tax system).

On 1 January 2017 the CIT rate was lowered from 19% to 15% for small enterprises, i.e. companies whose annual sales revenue does not exceed EUR 1.2 million. The new rate also applies to companies at the beginning of their economic activity. In total, around 90% of CIT taxpayers will benefit from this, which is nearly 400 thousand entities. The lowered CIT rate will cost the state budget around PLN 270 million, but the provisions on the tightening of tax collection which have entered into force are intended to compensate for this deficit in the budget.

Moreover, the year 2017 brought a significant convenience for taxpayers as regards income tax settlement. In March 2017 the Sejm passed an Act under which around 13 million taxpayers who submit their annual PIT declarations will be able to do so in the simplest way possible. It is now enough to send a relevant request to one's fiscal office, and that fiscal office – on the basis of the information included in the request and the information obtained from employers or pension agencies – will fill in the tax return declaration and then send it (within 5 days) to the taxpayer for acceptance. This new form of tax return settlement (carried out via the Internet) is a significant convenience for taxpayers, as it saves their time and eliminates the risk of making a mistake in the declaration.

## **The state budget – the tightening of the tax collection system**

One of the main objections of the opposition to the Government's social (e.g. Family 500+, Housing+, free medicines for seniors, the raising of the income tax thresholds etc.) and economic programmes (e.g. the lowering of taxes for small enterprises) was the alleged lack of funds for their financing. This is indeed a significant burden on the state budget (e.g. the annual cost of the Family 500+ subsidy programme is PLN 22-25 billion, whereas the cost of the lowering of the retirement age is another PLN 10-15 billion a year), but these additional expenditures can be recovered from other sources of income, which were previously – under the Government of the PO-PSL coalition – lost from the state budget as a result of various dishonest or even criminal activities such as tax evasion (the so-called aggressive tax optimisation) and tax-return swindles (the so-called VAT carousels). Each year the state budget lost several dozens of billions – according to different estimates, PLN 10-40 billion from CIT and PLN 40-55 billion from VAT. Therefore, the money lost year on year by the state budget would have been sufficient to finance the Family 500+ programme twice or even three times over.

In consideration of the foregoing, immediately after the elections, the Government of Law and Justice commenced intensive work aimed at the tightening of the tax collection system. In August 2016 the so-called fuel package entered into force, which is a series of legal solutions designed to limit the grey area on the market for liquid fuels (which constitutes up to 30% of the market). The package already started to bring measurable effects in the first months of its operation, e.g. the use of fuels from legal sources increased



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rapidly – by 29% in August, 26% in September, and 17% in October, compared to the corresponding periods in the preceding year (this data comes from the Polish Organisation of the Oil Industry and Trade). This has been also confirmed by Polish corporations such as Lotos and Orlen, which in the third and fourth quarters of 2016 recorded increases in the sale of fuels and diesel oil by about 20-25%.

As far as other measures taken to tighten the tax collection system are concerned, in the middle of 2016 the Ministry of Finance introduced the so-called Standard Audit File (the informatisation of tax book audits). On 1 March 2017 the National Fiscal Administration started its activities, which consolidates tax administration, fiscal inspection, and customs administration (previously operating separately). In April and May 2017 the so-called Transit Package will enter into force, which is an act on the obligations concerning the road transit of goods involving a high risk of tax fraud (fuels, alcohol, dried tobacco etc.) as well as sanctions on any violation of these provisions.

As for sanctions, it has to be mentioned that the amended Criminal Code entered into force on 1 March 2017, which stipulates severe punishments for making out false VAT invoices, forging and remaking them in order to use as genuine (the producing of such invoices amounting to over PLN 5 million carries the penalty of at least 3-years' imprisonment, PLN 10 million – from 5 to 25 years of imprisonment). This harsh punishment is motivated by, among other things, the large scale of this type of crime: in 2013 the tax audit authorities discovered fictional invoices amounting to PLN 19 billion, in 2014 – PLN 33 billion, and in 2015 – as much as PLN 81 billion.

The above actions are just the beginning of the fight against tax crime, but they have already brought their first, desired results. It is estimated that in 2016, thanks to the activities aimed at reducing the VAT gap, the income to the state budget increased by PLN 4.2 billion. As far as the current year is concerned, it is as yet too early to make evaluations, because the full picture of the improvement in tax collection will become apparent after several months. It is, however, worth noting that, in the period from January to February 2017, the income from tax increased by over 25% compared to the corresponding period in the preceding year, and the income from VAT was higher by over 40% (PLN 9.6 billion) year on year. The income from PIT and CIT, excise duty, and gambling tax also increased (by 5-7%). In the long-term, i.e. in the years 2017-2019, the Government expects that the implementation of its activities aimed at tightening the tax collection system will contribute to an increase in tax revenues by PLN 22-33 billion.

In general, the condition of the state budget is good and is indicative of the strict public finance discipline maintained by the Government. In 2016 the budget deficit amounted to around PLN 46 billion, which is 2.8% of GDP, below the limit required by the EU (3% of GDP). At the end of February 2017 there was a budget surplus of nearly PLN 0.9 billion (in the corresponding period in the year 2016 there was a deficit of over PLN 3 billion). Banking tax, which entered into effect almost a year ago, is expected to bring income of PLN 4 billion. The budget deficit in 2017 is expected to amount to PLN 59 billion (2.9% of GDP), which the opposition attempts to present as alarming. It has to be recalled that under the PO-PSL Government the level of deficit was likewise high, clearly exceeding the EU limit of 3% GDP, e.g. PLN 50 billion in 2009 (3.7% of GDP), PLN 85 billion in 2010 (6% of GDP), or PLN 56 billion in 2011 (3.7% of GDP), which is why in the years 2009-2015 Poland was subject to the EU procedure of excessive deficit.

## **Toxic financial products**

For several years the banks had granted large numbers of mortgage loans indexed or denominated in Swiss francs, not properly informing their clients about the exchange-rate risk, i.e. a possible considerable increase of one's debt towards the bank (paid off in Polish zloty) as a result of unfavourable changes in the exchange rate of the Polish zloty to the Swiss franc. In January 2015 the Swiss franc hiked in relation to the Polish zloty



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and brought an increase in loan instalments and the general debt of those paying off the so-called franc loans. In 2016 there were around 900 thousand people with 535 thousand loans, aggregating to PLN 137 billion.

In consideration of the foregoing, in 2015 and 2016 there were some ideas for solving the problem of the so-called franc loans, e.g. converting the loans to Polish zloty, the cost of which for banks was estimated to be PLN 21-22 billion (the National Bank of Poland) or PLN 30-40 billion (the Chancellery of the President of the Republic of Poland). In January 2017 an extraordinary subcommittee was formed in the Sejm with a view to considering three bills on foreign currency loans – submitted by the President of the Republic of Poland and opposition parties (PO and Kukiz'15). The President's bill stipulates that the banks would have to return to their clients (including interest) the difference between the admissible *spread* and the one actually applied by them when recalculating instalments from the Swiss franc to the Polish zloty (usually overestimated). The bill proposed by PO stipulates the possibility of converting such loans into the Polish zloty at the exchange rate from the day of the restructuring contract and calculating the difference between the value of the loan converted and the amount of debt, which a debtor would have at that moment if he/she had taken a loan denominated in the Polish zloty (banks would write off part of that amount). The bill of Kukiz'15 stipulates that loans in foreign currencies should be treated as if originally taken out in the Polish zloty. In April 2017 the Polish Financial Supervision Authority (KNF) estimated the costs which banks would have to bear if each of the bills entered into force: PLN 9.1 billion (the President's bill), PLN 11.1 billion (PO's bill), and PLN 52.8 billion (the bill proposed by Kukiz'15). For comparison, the profits earned in the last few years by the Polish banking sector were around PLN 15-16 billion a year.

Another serious issue is the so-called savings insurance policies (life insurance policies with a capital fund), which banks and insurance firms sold in large numbers to their clients (mainly from 2009 to 2013), not informing them about the high costs of cancelling them, which could mean the loss of a considerable part (even 80-90%) of the funds paid. The problem of savings life insurance policies hits around 5 million Poles and is estimated to amount to over PLN 50 billion. In March 2017 the Ministry of Finance hosted the first meeting of a working team which will handle abuses related to the selling of savings insurance policies. The representatives of the Ministry of Finance, the Financial Ombudsman's Office, the Office of Competition and Consumer Protection, the Financial Supervision Authority, and the "Przywiązani do polisy" Association, as well as lawyers from law firms providing legal aid to the aggrieved parties, also took part in the meeting. The participants put forward suggestions for changes to be introduced to the respective Acts in order to make it easier for the clients of insurance firms to make complaints, improve the efficiency of collective claims, counteract the blocking of proceedings by creditors, extend consumer rights to small entrepreneurs, and specify what an admissible insurance product is or is not, etc. They also considered the introduction of a statutory limit for fees charged in the case of the terminating of an insurance contract by the client, a limitation on commission, and the introduction of a list of insurance products which cannot be sold to consumers etc.

In closing, it is worth mentioning the Amber Gold scandal. The operations of this pyramid scheme (2009-2012) led to over PLN 850 million in losses sustained by around 19 thousand people, including those who lost all their life savings. The Amber Gold company was formed and operated during the term of the PO-PSL Government, but the then-authorities did not take any real steps to explain the matter. Such steps were not taken until the elections won by Law and Justice. In March 2016, the Gdansk regional court started a trial into the Amber Gold case. Then, in September 2016 a Sejm investigation committee commenced its activities in order to examine the correctness and legality of the activities of the public authorities and institutions towards the entities forming part of the Amber Gold group (acts and omissions during the term of the PO-PSL Government, potential connections between Amber Gold and the world of politics, etc.). The committee has already investigated, among other things, the former heads of the National Bank of Poland and the Polish Financial Supervision Authority, and plans to probe the then Prime Minister, Donald Tusk.



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## Part III – Security and justice

### Armed Forces

Europe has seen a marked decline in security in recent years, especially after Russia's aggression in Ukraine in spring 2014. This is reflected in public opinion polls. As shown by a March 2017 Centre for Public Opinion Research (CBOS) survey, in the years 1992-2013 the vast majority of the respondents claimed that Poland's independence was not threatened. However, in April 2014, due to the situation in Ukraine, almost half the respondents (47 percent) thought that there was a threat to Poland's independence, while 41 percent did not see such a threat. These proportions later reversed, as 47 percent of the respondents believed that Poland's independence was not at risk, with the slightly smaller proportion (41 percent) being concerned that there was a threat to the independence of our country.

In April 2017 the Minister of National Defence outlined a general plan to increase the manpower of the Polish Armed Forces. According to the plan, the Polish Army will have more than 150,000 soldiers by 2019, and between 2020 and 2022 this figure will increase to 200,000.

Also, a significant new military component, the Territorial Defence Force (WOT), is being formed, with a view to reinforcing the Polish Army. In November 2016 the Polish Parliament passed an amendment to the Defence Obligation Act, under which the WOT will be the fifth component of the armed forces, in addition to the land force, air force, special forces and the navy. Military people and civilians, both men and women, may enlist with the WOT. The planned WOT service time is one to six years, and most military exercises will take place on days off (one or two weekends a month, between September and June – an average of 20 days a year, plus 9-10 days in the holiday periods). WOT is designed to eventually become a 53,000-soldier contingent. More than 17,000 volunteers have enlisted so far, and the figure is estimated to rise to 35,000 and about 53,000 by 2018 and 2019, respectively. The plan is to set up a total of 17 WOT brigades. The Office for the Establishment of the Territorial Defence Force was set up in mid-2016 – by the end of 2017, it will become the Territorial Defence Command, based in Warsaw. According to the 2016 and 2017 plans, three brigades will be formed in the east of Poland (Rzeszów, Białystok, and Lublin), and three brigades will be formed in the neighbouring voivodeships (Ciechanów, Radom, and Olsztyn). A further five brigades will be set up by the end of 2018 (Bydgoszcz, Gdańsk, Łódź, Kielce, and Kraków), and the last six brigades will be added in 2019 (Katowice, Opole, Poznań, Szczecin, Wrocław, and Zielona Góra). The complete WOT system is scheduled to be ready by 2021.

As found by a March 2017 CBOS survey, nearly half the Poles surveyed thought that the Territorial Defence Forces were needed. WOT supporters (49 percent) outnumbered WOT opponents (25 percent) almost two-fold. WOT supporters were more likely than WOT opponents and respondents with no opinion to see Poland's independence as being at risk.

In April 2017, in addition to announcing the Polish-Army enlargement plan, the Minister of National Defence defined the army modernisation priorities for the years to come. These included three key modernisation programmes. The first would entail the procurement of the *Wista* anti-aircraft and anti-missile defence system, which would rely on the combat-proven US Patriot system (the contract is expected to be signed this year, and the plan is to have the first units delivered in two years; under the offset agreement, half the



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system components are to be manufactured by the Polish defence industry). Another priority is to procure *Homar* rocket launchers, with a range of 300 km (negotiations with the US and Israeli Governments are well advanced). The third programme, codename *Orka (Whale)*, involves the procurement of three advanced submarine ships for the Navy (the contract is expected to be signed this year, with deliveries starting within several years at the earliest). Furthermore, a call for bids was announced in February 2017 for the delivery of 16 helicopters for the Polish Army. Also, the Minister announced the formation of the so-called cyber military.

Adequate funding will be required to meet these and other objectives. In the 2017 Budget Act, defence spending comprises 2 percent of GDP, as required by NATO (although not all NATO members observe this requirement). A proposal came up to make the level of defence spending in a given year dependent on GDP in the same year (rather than on the previous year, as has been the case). This would result in a real-term increase in military expenditures without affecting the nominal level of spending (2 percent of the GDP). There have also been calls for increasing defence spending to 3 percent of the GDP, if feasible budget-wise.

The year 2017 marks a breakthrough, as the allied forces of the US and NATO are beginning to be based in Poland. The first American soldiers – the Armoured Brigade Combat Team – came to Poland in January 2017. The Team will be sited in the west of Poland (Bolesławiec, Skwierzyna, Świątoszów, Żagań). Furthermore, US Combat Aviation Brigade soldiers will be stationed in Powidz. In March and April 2017 NATO deployed about 4,000 soldiers of international units to Poland, Lithuania, Latvia and Estonia (four battalion groups) to reinforce the eastern flank of NATO, as agreed during the July 2016 NATO summit in Warsaw. As far as Poland is concerned, NATO's multinational battalion of soldiers (from the US, UK and Romania) will be stationed in the east, near Orzysz, not far from the Suwalki Gap, which is of strategic importance to NATO. A multinational division command, coordinated by the four NATO battalion groups, will be set up in Elbląg. A total of 7,000 US and NATO soldiers will be on "permanent rotation" in Poland. Poland, in turn, will send its soldiers to Latvia, Bulgaria and Romania.

Poland has also been involved in the construction of the NATO missile defence system, a US missile interceptor base designed to protect the US and NATO allies against ballistic missiles launched from the Middle East. The construction of the Polish component of the system, i.e. the US base in Redzikowo, Pomorskie Voivodeship, started in May 2016, after the Romanian component became operational. The base is expected to be operational in 2018.

## **The migration crisis and anti-terrorism**

Security in Europe has been seriously compromised in recent years as a result of the migration crisis involving a massive and uncontrolled influx of immigrants and refugees from Asia and Africa to Europe. It peaked in 2016, as more than a million people, mainly Muslims (from Syria, Iraq, Afghanistan, Pakistan, Eritrea, Nigeria, etc.), came to Europe. Soon after, radical Islamists started carrying out terrorist attacks in Europe, and these attacks continue. The most violent and deadly attacks took place in 2015, 2016 and 2017 in France, Belgium, Germany, the UK and Sweden, i.e. countries with the largest immigrant populations. These countries have seen a surge in immigrant crimes (thefts, batteries, armed robberies, vandalism, sexual harassment of women, etc.). The police have lost control over many Muslim immigrant neighbourhoods. All this has caused



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a decline in security. Suffice to say, for instance, that the state of emergency in France, declared in the autumn of 2015 (following the Paris attacks) has been repeatedly extended (currently, until July 2017).

The Law and Justice Government, like the Governments of several other countries (including the Visegrad Group), refused to accept the “refugee relocation scheme” proposed by the European Commission. Poland has provided on-site aid (mainly in Syria, but also in Lebanon, where there are now 1.5 million Syrian refugees), as, according to the Polish Government, this is the only effective help. First, it enables these people to gradually come back to normal life in their home countries. Second, on-site aid is much more effective than arranging the transportation of people to other countries, which is a very costly operation. Poland spent nearly PLN 120 million on Syrian aid in 2016 (four times more than in the previous year). In April 2017 the Government announced that it would become involved in another humanitarian aid project for Syria, donating PLN 4 million for the renovation and reconstruction of destroyed houses in Aleppo.

Due to the rising terrorist threat in Europe, the Anti-Terrorist Act was passed in June 2016 (the PO-PSL Government worked on a draft of a similar Act, but eventually did not pass it). Developed by the Ministry of the Interior and Administration, this new piece of legislation played a significant role in ensuring security at the NATO summit in Warsaw, and also at the World Youth Day in Kraków, which was attended by almost three million people from all over the world. The Anti-Terrorist Act gave the security services the means to respond to threats quickly and effectively. The Internal Security Agency has gained extensive access to databases (including to secret bank data). The Act makes it legal, among other things, to conduct operational surveillance of foreigners (tapping, video surveillance, correspondence surveillance, etc.), block phone conversations and Internet access, arrest individuals on suspicion of terrorism (arrest and search operations can now be run round the clock – before, only between 6 a.m. and 10 p.m.), immediately expel from the country all foreigners posing a threat, temporarily close borders, prohibit the organisation of mass events, etc. It is now obligatory under the Act to register pre-paid cards (so far anonymous), and false bomb alarms are punished more severely (a minimum of PLN 10,000 fines and penalties of six months to eight years in prison), as are terrorist activities (e.g. five years in prison for participating in terrorist training), etc. The concerns voiced by the opposition that this new law would restrict civil rights and liberties have not materialised. On the contrary, it has started to bring positive effects, as it has provided the legal basis for expelling from Poland foreign citizens suspected of terrorism (this included the attempted purchase of weapons), and also there has been a decline (60 percent) in false bomb alarms.

A September 2016 a CBOS survey found that 44 percent of the respondents considered Polish authorities well prepared to prevent terrorist attacks (33 percent thought the opposite). A few months earlier, before the Anti-Terrorist Act was passed, only 20 percent considered Polish authorities well prepared, with a whopping 63 percent claiming the opposite. Similar results were found in 2013 and 2015 surveys (26-28 percent considered Polish authorities well prepared, while 55-58 percent claimed they were ill prepared). Most of the respondents would accept stricter checks at the borders, airports and bus/railway stations (90 percent), stricter immigration laws (78 percent), and increased prices due to higher defence spending (52 percent) to improve their security.



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## **The Police and other law-and-order agencies**

An amendment was passed in January 2016 to the Police Act and other Acts on other law-and-order agencies. The amendment implemented the July 2014 judgement of the Constitutional Tribunal, which questioned some laws governing the operational techniques of the police and other law-and-order agencies (tapping, video surveillance, correspondence surveillance, etc.), and the collection of telecommunications data (phone billings, phone location data, IP numbers, etc.). The PO-PSL Government failed to implement the judgement, which could have crippled the police and other law-and-order agencies affected by the amendment (the Border Guard, the Military Gendarmerie, the Internal Security Agency, the Intelligence Agency, the Military Counterintelligence Service, Military Intelligence, the Central Anticorruption Bureau, the Customs Service, and the tax inspection authorities). Opponents of the amended Act (which they refer to as “the Surveillance Act”) claimed that the police and other agencies were gaining too much power. Supporters pointed out that the new legislation restricts, and provides a clearer definition of, the powers of the police and other agencies. For instance, operational surveillance may not last longer than 18 months, and the collection of telecommunications data must be subject to court scrutiny (in 2014 law-and-order agencies had mobile operators disclose about 2 million billings without court scrutiny).

An Act was passed in January 2017 on *The establishment of the Police, Border Guard, State Fire Service and Government Protection Bureau Modernisation Programme in 2017-2020*. Drafted by the Ministry of the Interior and Administration, the new piece of legislation will mandate more than PLN 9 billion in spending between 2017 and 2020 (from PLN 1.4 billion to PLN 3.1 billion a year) on infrastructure upgrades, new equipment for agencies, and pay rises for officers. The Programme is designed to improve the effectiveness and efficiency of the police and other law-and-order agencies. Programme funds will also be spent on the construction of new police stations and the reopening of defunct police stations. Between 2007 and 2015 the PO-PSL Government cut the number of police stations by more than half (418 out of 817). They are currently being restored – a total of 37 police stations were brought back into operation in small towns across Poland in 2016, and further 33 stations will be reopened by the end of 2017. Public consultations identified 176 places where police stations should be reopened. The process is expected to end by 2020.

## **The reform of the justice system**

The Ministry of Justice is planning a comprehensive reform of the justice system in Poland. The reform will draw on the solutions in place in other EU States and reflect the expectations of the Poles. As shown by a March 2017 CBOS survey, half the respondents (51 percent) had a negative opinion of how the Polish system worked, with every eighth response (12 percent) being “very poor”. Slightly more than one third of the respondents (a total of 36 percent) had a positive opinion on the justice system, and only a handful of the respondents had a “very good” opinion of it. The key weaknesses of the justice system were lengthy court proceedings (48 percent of the respondents), overcomplicated procedures (33 percent), corruption among judges (30 percent) and excessive leniency towards crime (23 percent).

An amendment to the General-Courts System Act drafted by the Ministry of Justice was passed in March 2017. Under the amended Act, which will come into force in May 2017, court directors will be appointed and dismissed by the Minister of Justice. So far, court directors have been appointed by the Minister as well, the





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difference being that the Minister has had to wait for the selection committees appointed by court presidents to complete deliberations. The competitive selection procedures have been lengthy and have made it impossible to fill in directorial positions quickly, thus compromising the efficiency of court administration. Hence the decision to replace the competitive procedure with the appointment procedure (as defined in the Labour Code) to make the system more orderly and efficient in terms of personnel and financial management. This change aims to relieve court presidents from the burden of court administration, to give them more time to fulfil their role as supervisors of the adjudication work of courts.

In April 2017 Law and Justice MPs put forward another draft amendment to the General-Courts System Act (the new legislation would enter into force on 1 July 2017). Under the new law, the Minister of Justice would have the power to appoint presidents and deputy presidents of courts of all levels – appellate, regional and district – without having to seek second opinions on the candidates (currently, the Minister appoints them after seeking opinions from judge assemblies of individual courts). Furthermore, the Minister of Justice, who may now dismiss court presidents during their term of office – for instance, in the case of gross professional misconduct – would gain the power to dismiss them in other situations as well, e.g. if they found their performance to be particularly ineffective. The new legislation would also expand the scope of property and assets which the judges must disclose, and also to extend this disclosure obligation to court directors. Other changes would include the equal distribution of case workloads among judges and random case assignment (the aim of the latter being to reduce the informal influence by court presidents over court judgements by their arbitrarily assigning cases to specific judges).

In March 2017 the Government approved the Minister of Justice's draft amendment of the National Council of the Judiciary (KRS) Act, and the Parliament debated this amendment in April 2017. This reform will aim to ensure better vetting of aspiring judges in order to make courts work more effectively and restore popular confidence in the justice system. To this end, it is a prerequisite to change the way KRS members are elected, as it is they who select judge candidates. By extension, the proposed solution is to introduce a democratic and objective procedure to select KRS members, replacing the existing procedure, which is complicated and intransparent. This will give representatives of the public actual influence over the election of KRS members (and, indirectly, judges). So far, only judge circles, immune to public scrutiny, have been allowed to exert this influence.

The KRS currently has 25 members, including 15 judges elected by judge assemblies. Following the reform, those 15 judges would be elected by Parliament. KRS membership candidates could be put forward by a group of at least 50 MPs, and judge associations could make their recommendations. Competence, rather than connections within judge circles, would be the sole criterion, so each judge would have equal chances of being elected, regardless of the level of the court in which they sit (so far, over 28 years of KRS's existence, only two judges from district courts – the lowest level of the judiciary, but also one which handles the most cases – have been KRS members. The seats of current KRS members (15 judges) would expire 30 days after the entry into force of the amended law, as the KRS would have a joint term of office instead of existing individual terms of office.

Also, the reform provides for a new way in which candidates for general court, administrative court, military court and Supreme Court judges would be selected. Currently, they are selected by all the KRS members collectively (25 members). The plan is to set up two assemblies within the KRS. The members of the first



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assembly would include the First President of the Supreme Court, the President of the Supreme Administrative Court, the Minister of Justice, four MPs, two Senators and a representative appointed by the Polish President. The other assembly would comprise 15 judges. Each assembly would examine judge candidates separately, and candidates would have to be approved by both assemblies. Should the assemblies differ in their assessment of a candidate, the candidate could be examined by the KRS collectively. In order to secure the approval, such a candidate would have to gain the support of all judge members of the KRS (15 judges, the First President of the Supreme Court and the President of the Supreme Administrative Court).

The reform is being criticised by the opposition and judge circles, with the latter claiming that the draft KRS legislation is moving towards *the politicisation of courts and undermining their independence*. The Ministry of Justice has dismissed these claims as ill-founded, pointing out that similar solutions work successfully in Europe – in Germany, for instance, federal-court judges are appointed by federal ministers in conjunction with a committee comprising State ministries and Parliament-appointed members; in Austria judges are nominated by the Federal President at the request of the Federal Government; in Sweden judges are appointed by the Minister of Justice at the request of the Judge Nomination Council, whose members are selected by the Government and Parliament; in the Czech Republic, judge candidates are put forward by presidents of regional courts, and then the Ministry of Justice decides which candidates should be presented to the President for nomination.

The March 2017 CBOS survey showed that the Polish public is clearly divided on this reform. One third of the respondents (33 percent) were in favour of KRS judges' being elected by Parliament, and a slightly larger portion (37 percent) thought this was a bad idea, with 30 percent of the respondents having no opinion on this issue.

## **Harsher criminal law**

In March 2017 the Parliament passed an amendment, drafted by the Ministry of Justice, to the Penal Code and other Acts, involving the so-called extended forfeiture, which makes it legal to confiscate assets gained from crime. Perpetrators will have to prove that the assets they acquired over the previous five years are legal (in other countries this period is longer, going back to as many as 15 years). Under the new law, asset forfeiture will also apply to third parties in order to prevent perpetrators from making over their illegally acquired assets to other persons, e.g. relatives. Assets may now be forfeited without a conviction – e.g. when criminal proceedings have to be discontinued or suspended due to the death or flight of the perpetrator. Other EU States use this solution as well (about 40 percent of all retrieved funds come from forfeiture without a prior conviction and 13 percent come from traditional confiscation). The new law allows the forfeiture of a business which is not owned by the perpetrator but has been used for criminal activities, such as money laundering. As a means of protecting honest entrepreneurs, however, business forfeiture may not be ordered if an illegal activity of an entrepreneur involved only a marginal portion of the overall business of such an entrepreneur. The Act will enter into force in April 2017.

Another amendment of the Penal Code and other Acts, drafted by the Polish President, passed in March 2017. Its aim is to extend more protection to minors (below 15) and vulnerable adults. The new law prescribes harsher punishment for crimes against the life, health and liberty of children (mutilation, abduction,



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abandonment, trafficking, sexual abuse, etc.). For instance, perpetrators who have caused a severe health impairment, a crime for which the law previously prescribed one to 10 years' imprisonment, will now face at least three years' imprisonment. If the consequence of the mentioned impairment results in the victim's death, the previously applicable two to 12 years' imprisonment will now be replaced with at least five years' imprisonment, or 25 years' imprisonment, or life imprisonment. Failure to report a crime will also be penalised. For instance, individuals who were aware of an act of child sexual abuse and failed to immediately report this to law-enforcement agencies will be liable to three years' imprisonment. The Act will enter into force in July 2017.

The above examples provide a good picture of the overall approach of the current Government to the justice system, targeting the most dangerous criminals, including organised crime, while protecting the most vulnerable members of the community. This is the exact opposite of the approach prevailing during the PO-PSL term, when the justice system was lenient on criminals and ruthless to regular citizens. Law and Justice's measures towards harsher criminal laws meet the expectations of the Polish public. Indeed, the March 2017 CBOS survey found that 70 percent of the respondents viewed the Polish law as being too lenient on offenders and criminals. Only 5 percent of the respondents held the opposite view.

## **The Constitutional Tribunal**

In December 2016 Julia Przyłębska became the new President of the Constitutional Tribunal, replacing President Rzepliński, whose term of office had expired. This put an end to more than a year of crisis surrounding the Tribunal, which had been caused by the unconstitutional changes in the Constitutional Tribunal Act made in June 2015 by the PO-PSL coalition. These changes were made to ensure that the Tribunal was dominated by judges elected by the PO-PSL coalition. As Law and Justice was expected to win the October 2015 election, the Tribunal's role would be to obstruct the new Parliament and prevent Law and Justice from implementing social and economic reforms announced by PiS during the campaign.

In October 2015, under the above-mentioned June 2015 Act, the former Parliament (in which the PO-PSL coalition had the majority) elected five new judges to the Constitutional Tribunal. The election of two judges whose terms of office expired in 2015 was unconstitutional, as ruled by the Tribunal. The election of the three judges whose terms of office expired in November 2015 was seen as an unethical last-moment act of legislation – only several weeks ahead of the October 2015 parliamentary election. The motives were clearly political, in that the coalition wanted to have the Tribunal dominated by judges it had selected (14 of 15 judges). Opinions on the election of those three judges were divided – some lawyers and experts claimed that the judges had been elected in accordance with the applicable laws and procedures, others said the opposite was true.

Due to these controversies, President Duda refused to administer the oath of office to all five judges elected by the former Parliament. In November 2015 the current Parliament (in which PiS has the majority) invalidated the election of those five judges and decided that their posts should be subject to another election. In December 2015 the Parliament elected five new judges, and President Duda immediately administered the oath of office to them. However, Tribunal President Andrzej Rzepliński refused to allow three out of the five judges to sit in the Tribunal, claiming that they had been elected unlawfully. Rzepliński's



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decision brought the Tribunal to a standstill, with only 12 judges sitting in it, while the new Constitutional Tribunal Act (passed in December 2015) required that as a rule, the Tribunal should issue rulings collectively, i.e. with at least 13 judges involved. President Rzepliński chose to ignore this Act and designated other (non-statutory) adjudicating panels, which the Government believed to have made Tribunal's rulings illegal and acted on this belief by refusing to publish them. A “vicious circle” ensued, from which there seemed to have been no way out, despite many legislative attempts by Parliament to restore the situation to normal. It was not until the expiry of President Rzepliński’s term of office that things could go back to normal.

*Warsaw, April 2017*