ANTI-CRISIS LABOUR LAW IN POLAND

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I. Introductory Remarks

The global economic crisis, started in the USA in autumn 2008, spread to other parts of the world in a relatively short time. Although its direct causes are closely related to operation of financial institutions, banks in the first place, its most painful effects are those manifested in the social plane. The limitation of demand for goods and services results in a drop in business traffic which fact, in turn, translates into mass redundancies and increasing level of unemployment. In a majority of the countries struck by the crisis actions are taken aimed at reduction of the scale of the adverse phenomena. Among the measures taken, an important role is played by those directly aimed at labour market protection, including maintenance of jobs and supporting people who become unemployed. States attempt at using a wide range of measures from subsidizing entire sectors of the economy and big companies to providing credit guarantees to flexibility of legal regulations in the field of business activity, the area of broadly termed labour law and social law in particular.

In Poland a whole array of measures related to counteracting the negative impact of the global economic crisis was introduced by the Act of 1st July, 209 on Mitigation of the Impact of the Economic Crisis on Employees and Entrepreneurs. It came into force on August 22, 2009. The adoption of the Act was preceded by conclusion of an Anti-Crisis Pact by major social partners, the Pact being an agreement addressing certain social policy demands and supposed to assist the entrepreneurs that are in a difficult situation resulting from the global economic crisis, to protect jobs in that way. The demands were communicated to the government with the suggestion that the legislative process should be started, the solutions to be thus given the normative power.

The mechanisms supporting entrepreneurs during the economic crisis, as provided for in the anti-crisis law, are twofold. The first group includes legal solutions aimed at liberalization of certain working time schemes (extension of the account period, fixing of individual working time schedules, reduction of working time) and limited application of fixed-time employment contracts, as well as termination of employment relationships. The other group includes financial mechanisms, consisting mainly in providing resources from public funds, aimed at financing additional benefits paid to employees.

II. Assumptions of the anti-crisis legal solutions

1. Subjective scope of the regulation

The anti-crisis law has a limited subjective scope of application, as it pertains only to those employers that have been conducting business activity (entrepreneurs). Almost the entire public sector (public administration, education, healthcare system etc.) has thus been excluded from the operation of the law.

In addition, it should be mentioned that the anti-crisis law makes a distinction between "entrepreneurs undergoing temporary financial difficulties" and "other entrepreneurs". It is applicable, in full, only to the entrepreneurs in temporary financial troubles, solely its selected rules being applied to the remaining entrepreneurs. Such a delimitation of the subjective scope of application of the anti-crisis law makes it necessary to assess whether it rests in conformity with the constitutional principle of equality. On the one hand the initial assumption that it is only the employers running a business activity that are struck with the economic crisis may look wrong, and the adopted regulations may seem to favour them unfairly against other employers (if only as far as access to support from public funds is concerned). On the other hand, however, eyes should not be closed to the fact that it is mostly entrepreneurs that have been faced with the painful consequences of the crisis, and that it is their employees on whose shoulder the main burden of the crisis has been laid. Hence the limitation of the subjective scope of the anti-crisis law should be found rightful, all the more that social partners representing employees were ready to concede only to a solution like that. Consequently, the criterion whereby distinction was made between employers and entrepreneurs is relevant and does not lead to violation of the constitutional principle of equality.

2. Objective scope of the regulation

The objective scope of the regulation, i.e. the types of actions and legal instruments provided for in the anti-crisis law can be divided into four groups, concerning respectively: 1) liberalization of working time, 2) limitation of employment under fixed-time contracts, 3) granting of benefits financed from public funds, recompensing the employees for reduction of salaries/wages in case of so-called economic stoppage and reduction of working time, 4) granting of public funds to subsidize training and postgraduate studies of employees.

Re 1) As regards actions concerning organization of working time the law allows to extend the working time accounting period up to as many as twelve months (as compared to the current basic account period being four months long), and fix individual working time schedules for employees, the scheme consisting in determination of various hours of starting and finishing work. In addition, at the entrepreneurs experiencing temporary financial difficulties working time can be temporarily (for a period not exceeding six months) reduced, no more than down to half the regular working hours (with salaries/wages reduced on a pro rata basis), there being no need for the employer to give the employee a notice to terminate

his/her terms of employment. For the application of the above mentioned legal solutions it is required to seek prior consent of the plant's staff, as expressed in the collective labour agreement or other agreement concluded with trade unions, and where such trade unions do not operate at the employer's – with a non-trade-union representation (e.g. a delegate of the staff).

Re 2) At present, the period of employment under a fixed-time contract and the total period of employment under consecutive fixed-time contracts between the same parties to the employment relationship is not allowed to last longer than for 24 months. Deemed to be a consecutive fixed-time contract shall be a contract concluded before the lapse of three months from termination or expiration of the preceding fixed-time contract. This solution has replaced the mechanism used up to now, consisting in the third fixed-time contract with the same employee being qualified as a contract for an indefinite period.

Re 3) As regards entrepreneurs experiencing temporary financial difficulties, it is possible to partly pay employee salaries/wages for the time of economic stoppage (i.e. work not being done for economic reasons), partly compensate for the decrease in the employee working time, as well as pay premiums for social insurance of employees from the resources of the Guaranteed Employment Benefits Fund. It should be mentioned that during the period of the employee receiving the above mentioned benefits, his/her contract of employment must not be terminated by the entrepreneur for reasons not concerning the employee.

Re 4) And, finally, the anti-crisis law provides for a possibility of costs of employee training and costs of postgraduate studies of employees to be co-financed by the state where it is justified by current of future needs of the entrepreneur. The subsidy may amount to 80% of the costs of the training or postgraduate studies per person, but shall not exceed 300% of the average salary. In addition, during the period of the training or postgraduate studies, the employee whose working time has been decreased or who is in a situation of an economic stoppage is entitled to a scholarship financed from public funds, amounting to 100% of the unemployment benefit.

3. Temporal scope of the regulation

The anti-crisis law shall stay in force for a limited time, until 31st December, 2011. This gives the anti-crisis regulation the nature of an extraordinary piece of legislation, supposed to expire by a specified date. The solutions included in the law should, however, be evaluated, while it stays in force, to judge if turning them into permanent schemes is not advisable. Since it is not all rules of the anti-crisis law that are, in fact, controversial.

III.Summary

The initial evaluation of Poland's labour law anti-crisis regulations makes it necessary to make two remarks. First, it is necessary to approve the temporary nature of the anti-crisis law, as part of its solutions may raise fears whether the protective function of labour law, natural for the latter, is actually reflected in them. Social acceptance of the solutions was possible only thanks to their having been given extraordinary nature, and their binding force limited in time. As it seems, the turn of 2011 and 2012 is likely to bring the end to (or marked reduction of) the global economic crisis. Should it prove necessary to maintain the special legal regulation, it is definitely better to extend its binding force, corrections being made where necessary, than to assume an excessively long period of effectiveness of the anti-crisis law.

Secondly, the anti-crisis regulation does only partly play its role of supporting entrepreneurs in their struggle with the crisis. Some of the solutions are, in practical terms, not operable, considering the excessively strict requirements, established by the legislator, which the entrepreneurs have to meet. This holds particularly true about conditions under which support from public funds may be granted to compensate for the reduced salaries or subsidies can be provided for training and postgraduate studies.