



Tax&Legal Highlights

Poland

Transport Package. Finished work on amendments

On May 30, 2018, the bill amending the act on the system of monitoring the road and railway transport of goods and some other acts was published in the Journal of Laws (Journal of Laws 2018 item 1039). The new regulations come into force on 14 July 2018.

Expanding the requirements onto railroad transport

The amendments introduce a modification of the bill's title to "act on the system of monitoring the road and railway transport of goods", and also introduce changes in the wording of many other regulations. Not only road transport, but also railway transport of goods specified in the bill will be covered by special requirements. This change has also invoked modifications in existing bills in order to adapt them to new areas of use.

Removing the Classification of Goods and Services and changes in classification for CN codes

Another important change introduced by the amendment is retreating from grouping goods in accordance with the Polish Classification of Goods and Services („PKWiU”). This is an answer to demands raised by businesses to eliminate interpretational doubts in regards to two different classifications: the Classification of Goods and Services and the Combined Nomenclature

("CN"). A consequence of not using PKWiU is introducing necessary changes in other regulations as well.

In regards to classification for CN codes, significant changes have been introduced in the scope of codes 2905 and 3824, as well as 2707 and 3814, which we informed about in an [information dated 12 January 2018](#). The changes were meant to be an answer to demands of many industries, and due to their form, may still be a source of many interpretational doubts.

Group declarations

The amendment signed by the President provides the possibility to send one declaration to the register in case of different goods. The new form of the declaration will allow for sending one declaration to the register in the case of different goods (various four-digit CN items) to one recipient and to one place of delivery in one means of transport. It will therefore be able to declare goods from various CN codes, provided that the quantity of each exceeds 500 kilograms or 500 liters. This means that it will cover goods with different CN codes, which will be a significant advantage for taxpayers.

Regardless, the declarations will not be exempt from limitations. The regulations of the new bill state that the cases where one declaration may cover several goods with different CN codes will be specified in the Ordinance of the Minister of Finance.

Medical Products

The amendment provides for extension of the catalog of types of goods that are to be subject to the goods monitoring system, for medicinal products, special foods and medical goods. In regards to them, regulations imposing a new requirement to declare some movements into the goods monitoring system will be introduced. An argument to introduce such a requirement is the necessity to limit export of pharmaceuticals outside of Poland ("reverse import"). A list of such products and goods shall be announced by the Minister competent for health matters at least every 2 months, by means of an announcement.

What's next?

The amendments were published on 30 May 2018. Considering the 14-day vacatio legis period, they are in force since 14 June 2018.

However, it should be noted that the Act simplifies matters by waiving the requirement to use the Polish Classification of Goods and Services ("PKWiU"), but also imposes many new requirements. Therefore, we recommend considering the implementation of appropriate procedures or mechanisms for managing the company's risk. Training for employees or amendment of contracts with contractors may be necessary first of all for railway carriers. At the same time, it is very important that companies from the pharmaceutical sector introduce appropriate mechanisms.

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Thorough changes to the Public Procurement Law. Selected propositions of changes presented during the first consultation meeting

On 11 June 2018, the first consultation meeting was held between representatives of the Ministry of Development and Entrepreneurship, Office of Public Procurement, and other interested parties to discuss the framework of the new Act on Public Procurement (hereinafter: „Framework”). From the outcome of the meeting, we can expect that, despite talks of far reaching changes to the Act on Public Procurement, there will be significant changes to some laws, but no new act altogether.

Interested parties will be invited to submit comments, and further consultations regarding the Framework will take place. At a later stage, we can expect a potential draft of the proposed changes, which will be subject to further consultations.

Below, we present a short description of selected changes presented during the first consultation meeting on 11 June 2018. They are divided into two groups: (i) general remarks on the public procurement system and (ii) remarks on methods of legal protection.

Part I – General Changes

1) Adding the „effectiveness” principle and „cooperation of the ordering party and the contractor”. The framework adds these principles in order to take greater consideration of the proportionality principle. This is also supposed to encourage ordering parties to form agreement terms in a way to preserve the balance principle of both parties to the agreement. As indicated by the Minister of Development and Entrepreneurship: *„The framework proposes that the obligation of cooperation between the ordering party and contractor should be directly stated in the law so that the order can be correctly executed. Implementing the abovementioned changes shall obligate the parties to cooperate, leading to practical advantages at the realization stage.”*

2) **Competitive dialogue**; The goal of the framework is broadening the ordering parties and contractors interest in other forms of awarding procurement contracts, in particular in the form of a competitive dialogue (so

far almost 90% of procurements were granted in an open procedure, and the rest in a single source procedure). Regardless of this, according to the Framework the negotiations are meant to serve "improving offers" rather than influencing SIWZ.

3) **Effectiveness of granting public procurement contracts**; introducing the requirement to perform analysis in cases of procurements exceeding 20 million euros for works contracts and 10 million euros for supplies and services. The analysis will cover market research and the possible methods of executing the procurement, both from the procedure aspect as well as the economic and technical side.

4) **Placing notices in one place**; Consolidation notices in one place and ensuring that the addresses directly correspond to the entire documentation concerning the procurement.

5) **Grounds for exclusion**; The Framework sets a radical limitation of obligatory grounds for exclusion of proceedings. The grounds concerning legally valid criminal sentencing of a member of a company body, or matters related to tax arrears of the contractor will remain.

6) **Abnormally low price**; The Framework will not implement changes in this scope.

7) **Professionalization of public procurement**; The Chairman of the Public Procurement Office will be able to create agreement templates;

8) **Increasing the number of entities interested in obtaining procurements**; The Framework will extend the balance principle to include matters concerning the execution of a public procurement, introducing the necessity of shaping standard agreements in accordance with the balance principle. Thanks to this, while shaping the contractual provisions that impose obligations onto the future contractor, the ordering party will have to consider the possibility of fulfillment and their connection to the correct execution of the procurement.

In addition, a catalogue of clauses forbidding unproportioned contractual provisions will be introduced.

9) **Reserving subliminal orders for SMEs**; The Framework limits a certain number of procurements (30% of subliminal procurements) for SME contractors;

10) **Feedback for participants**; The Framework will introduce a new solution: the ordering party will be obliged to hold a meeting where the ordering party will justify his choice (such a meeting will be held at the request of entities that did not receive the order),

11) **certification system**; According to the Framework, a certification system of contractor potential will be introduced, done by a public certifying institution that will grant appropriate certificates. As indicated by the Ministry: *„The contractor will be able to present the same document in many procurement proceedings and replace a number of documents, indeed confirming that the contractor has appropriate potential and is not excluded from the proceedings“*;

12) **Nullification of the agreement;** The Framework adds a new ground for nullification of the agreement: failure to apply Public Procurement laws by the contractor if he was obliged to apply them.

PART II – METHODS OF LEGAL PROTECTION

There will be significant changes to legal protection and proceedings before the National Chamber of Appeals:

Cases will be reviewed by a panel of **3 arbitrators** of the National Chamber of Appeals; „smaller“ cases will be directed to 1- person panels;

1. To harmonize the NCA rulings, the General Assembly of NCA members will pass resolutions binding to other NCA members;
2. Passing appeals in full scope will also be possible for **orders under the EU threshold**;
3. A law enabling **appealing contractual provisions** to avoid filing appeals based on violation of the balance principle will be implemented;
4. According to the Framework displaying new evidence will be **limited by a trial preclusion**. At the same time, the Framework does not extend deadlines to file an appeal or to accede the appellation proceedings;
5. Hearings will be **recorded** with an **electronic protocol** (transcript);
6. A possibility of **revoking a ban on entering into an agreement in cases where appeals have formal defects** (for example are unpaid for);
7. One **court will be set to recognize complaints concerning NCA rulings**;
8. **A 14 day term for raising a complaint on an NCA ruling**;
9. The **fee for the complaint will be lowered** and will amount to three times the amount for an appeal;
10. Compensation for an agreement concluded with violation of public procurement laws- the contractor will be able to demand a lump sum compensation, amounting to 1% of the offer- but no more than 100 thousand PLN and additionally demand compensation on general terms.

During the discussion, matters related to effective methods of protecting trade secrets in public procurement procedures were raised. In this regard, it is postulated to implement solutions to broaden the scope of declassified information, however no specifics were mentioned.

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The government introduced a proposition of minimal wage and minimal hourly rate in 2019

According to the proposition of the Council of Ministers, the minimal monthly wage in 2019 will amount to 2.220 PLN, whereas the minimal hourly rate for contracts of mandate and service contracts will amount to 14,50 PLN.

The government's proposal will now be presented to the Committee of Social Dialogue and the final amounts will be known on 15 September at the latest.

The new minimal wages will be in force from 1 January 2019. The minimal wage will be applicable by law to employees whose employment contracts have lower wages and paying a salary lower than the minimal wage will violate worker's rights.

Raising the minimal wage will also influence the amount of other benefits related to the employment relationship. The statutory limit of severance pay based on the Group Redundancy Act will be raised to 33.300 PLN. The allowance for night will also be raised.

The minimal wage and minimal hourly rate are respectively **2.100 PLN** and **13,70 PLN**.

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Controversial changes in posting workers passed by the European Parliament. Stricter regulations may limit the number of postings from Poland to EU countries.

On 29 May 2018, the European Parliament passed controversial changes in Directive 96/71/EC from 16 December 1996 concerning posting workers in the provision of services. Although Member States will have 2 years to implement the new regulations, the new rules mean more strict regulations that may influence the number of postings from Poland to European Union Member States.

Poland as a leader of postings

Statistics of the European Union clearly show that Poland is an undeniable leader in the number of posted workers from Poland's territory to other EU countries. A high number of postings is a result of relatively low costs of workforce and current EU regulations, which impose the requirement to apply labor laws (including remuneration) in destination countries only within a limited scope.

The legal framework of worker postings will soon be subject to vast changes, which can also influence the activity of polish companies abroad and the number of posted workers based on a provision of services.

Below, we present selected information on the changes passed by the European Parliament.

What will change?

The changes to Directive 96/71/EC include:

- The requirement to use remuneration regulations applicable in the country of posting, the Member States may also decide to use collective or sectoral collective agreements; the abovementioned also means that employers must also consider the requirement to pay supplements and other remuneration components (currently, only the requirement to pay the minimal wage of the country of posting is applicable);
- Limiting the time of posting to 12 months with the possibility of a one-time extension for a 6 month period (the current regulations of the Directive do not set any time limits), after the indicated posting period, all the employment laws of the country of posting will apply to the worker;
- The requirement to cover travel costs as well as room and board of the posted worker by the employer. These costs cannot be deducted from the workers salary. At the same time, the employers will be required to ensure that the lodging standards of posted workers are decent and in accordance with national laws
- The requirement that the temporary employment agency guarantees posted workers the same conditions that are applied to temporary workers employed in the country of posting.

The transport sector without changes

Passed by the European Parliament, changes in Directive 96/71/EC will not apply to the transport sector as of now. This will happen from the moment detailed regulations for this sector enter into force, defined in the "Mobility Package".

How will the changes influence entrepreneurs providing services abroad?

The changes to Directive 96/71/EC will definitely influence the competitiveness of polish companies on foreign markets.

On one hand, by imposing the requirement to apply all remuneration laws of the country of posting to posted workers, potentially also regulations resulting from regional or sectoral collective agreements, will raise the costs of hiring posted workers, for example due to paying additional allowance to salaries (currently, posting employers are not obligated to pay them) or the necessity to engage local advisors to calculate the amount of benefits due.

On the other hand, imposing a time limit of postings may cause polish companies to provide services abroad less willingly.

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Although a 2 year term to transpose the Directive into the law systems of Member States has been set, polish entrepreneurs providing services abroad should already start preparing for the new, revolutionary regulations.

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