

Poland*

Since mid-1991 a tendency towards increasing the control of the state over economic processes has clearly marked the legislative activity of the Polish Parliament. The original, extremely liberal concept of the operation of the national economy, based on the principle of unlimited economic freedom within an open market economy, has started to give way to tightened control over the principles of pursuing business activity and the protection of the home market. A continuing process of privatization consistently accompanies this tendency. However, a change of privatization trends towards the protection of the state sector has been recorded also.

I. State Control over the Economy

Amendments to the Law on Economic Activity (enacted on December 23, 1988)¹ reflect the trend towards tightening state control over the economy. When this law, referred to as a specific "economic constitution," was passed, it meant that the state gave up its previous legal control over the commencement of business activity by private entities. The December 23, 1988, law adopted the principle of economic freedom as a basis of economic development. However, the law also specifies areas of business activity that require a permit from the appropriate administrative body. The supervision over how business activity is pursued was delegated exclusively to bodies of the so-called economic police (for example, sanitary, epidemiological, environmental supervision, and the like).

In practice, it turned out that excessive legislative liberalism concerning the principles of pursuing business activity had led to significant infringements of third persons' interests and the public interest. To counteract this phenomenon the October 16, 1991, law,² amending the December 23, 1988, law, introduced the following: First, a tightened supervision of permit-issuing bodies over business activity carried out in areas for which a permit is required irrespective of the general principles of operation by the economic police; and second, restrictions of economic freedom in those areas in which state control has become indispensable primarily because of the public interest. The tightened state supervision over business activity for which a permit is required consists of: carrying out substitute inspections aimed at assessing the actual capacity of the applicant to carry out a specific kind of activity; possibly refusing a permit because of the lack of warranty on the part of the applicant to carry out a specific kind of activity in

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1. Dziennik Ustaw [Dz.U.] (Journal of Laws) No. 41, item 324 as amended.

2. Dz.U. No. 107, item 460.

a way that would not lead to the infringement of public interest or personal property of citizens, or possibly granting a permit under the stipulation that the applicant meets specific conditions; and withdrawing the permit when the activity carried out grossly infringes specified conditions or threatens the interests of the national economy and security or personal property of citizens. These rules apply to both domestic entities and foreign entities investing in Poland. Decisions on these matters have been put under the supervision of the Chief Administrative Court. It determines whether administrative bodies have transgressed the limits of administrative authority by incorrectly or for insufficient reasons refusing or withdrawing a permit.

The October 16, 1991, amendments also expanded the scope of areas for which a permit is required. These areas include the processing industry, trade in nonferrous metals, and re-recording of sound or sound and picture onto tapes, records, cassettes, and video cassettes. This latter restriction was also introduced pursuant to the Treaty on Trade and Business Relations between Poland and the United States signed by both countries and ratified with the July 26, 1991, law.³

The July 26, 1991, law⁴ separately excluded the conditions of international road transport from the scope of economic freedom. The obligation to obtain a permit to conduct business activity in this area applies to Polish entities and foreign entities having vehicles registered abroad. The conditions of granting a permit and its refusal were based on the directives of the EC Commission for Member Countries of the European Communities.

Another instrument tightening state control in the economic sector is a special procedure based on general directions contained in article 19 of the GATT. The instrument was introduced as the July 20, 1991, amendment⁵ of the Customs Law, which was enacted on December 28, 1989.⁶ This instrument allows the implementation of proceedings to ensure that the import of goods into a Polish customs area is not carried out in quantities increased to such an extent and on such conditions that it causes or may cause serious damages to economic interests of manufacturers producing similar goods. The proceedings are officially initiated by the Minister of Foreign Economic Relations or by the request of a person who has a legal interest in it, acting on the principle of legal fiction on behalf of all home manufacturers. If the outcome of the proceedings confirms that there are threats to the interests of home entities, the minister may appeal to the importer to reduce the quantity or change the price of goods imported to the Polish customs area. The minister may also apply to the Council of Ministers for the introduction of temporary restrictions on imports of specific goods, quotas, or temporary special payments in addition to the regular customs fee.

3. Dz.U. No. 77, item 336.

4. Dz.U. No. 75, item 332.

5. Dz.U. No. 73, item 320.

6. Dz.U. No. 75, item 445; Dz.U. No. 60, item 253.

A greater state intervention in the economic sector has also covered the labor market. Significant changes in the employment policy were introduced by the Law of October 16, 1991,⁷ on employment and unemployment. The provisions of this law take into account ILO Convention No. 122 on the employment policy, which has been ratified by Poland, and the provisions of the Declaration of Human Rights and International Covenant of Economic, Social and Cultural Rights of 1986. As a result the law treats unemployment, in general, as a negative phenomenon, irrespective of its size and introduces a number of instruments of state active influence on the labor market. When compared to the previous legal provisions in this area the law especially strengthens the stimuli and assistance for those unemployed who take job retraining courses and introduces the institution of public work. The law also permits employment of foreigners by work establishments subject to the provisions of the Law of June 14, 1991,⁸ on Companies with Foreign Participation. Such a work permit can be withdrawn before it expires if the situation on the local labor market requires it.

II. Privatization of State Agricultural Property

Provisions adopted for the restructuring of the state farming sector (some 20 percent of farm land) fundamentally differ from methods and lines of privatization of industrial enterprises.⁹ The experiences of privatization have clearly shown that combining the control function over the entire national economy with the management function and the restructuring of the property of the State Treasury in the competencies of administration bodies is ineffective. Besides, privatization carried out "at any price" has led to the degradation of public property, which resulted in a fall in state budget revenues.

The Law on the Management of Agricultural Property of the State Treasury passed on October 19, 1991,¹⁰ constituted an attempt to counteract these phenomena. Under this law the Agency of Agricultural Property of the State Treasury (the Agency) was established as a private legal institution separate from the structure of administration. The Agency exercised, on its own behalf, property rights to the state property entrusted to it. The construction of the Agency resembles that of the German Trust Office (Treuhandanstalt), but its concept is broader because it leads to a legal and organizational separation of the institution of the State Treasury, which previously had constituted peculiar legal fiction. The aim of the Agency is to manage and privatize state property (real property and its parts) that had previously been under the management of state enterprises or under the management of communes as a function commissioned to the state

7. Dz.U. No. 106, item 457.

8. See Cezary Banasiński, *Regional Developments: Poland*, 26 INT'L LAW. 243, 244-46 (1992).

9. Cf. Cezary Banasiński, *Regional Developments: Poland*, 25 INT'L LAW. 771 (1991).

10. Dz.U. No. 107, item 464.