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The Role of the Border Guard in Combating Economic Crime

Zenon Woźniak, Mariusz Kuliński and Wojciech Jakubiec ¹

¹Bielsko-Biala School of Finance and Law
Cz. Tańskiego 5, 43-382 Bielsko-Biala – Poland

Abstract— Economic crime is an extremely harmful phenomenon for a country's economy. In the free-market era with accelerating globalization of financial markets, business related crime can only be considered on international grounds. The efficiency of combating economic crime relies heavily on international regulations and on activities undertaken by relevant organs and agencies. Economic crime occurs in different layers of business turnover. Therefore, the Polish legislator entrusted the Border Guard the mission to counteract economic crime because this particular formation by nature of their statutory tasks monitors border areas and keeps an eye on routes through which illegal goods may be smuggled. Border areas are often the only spots where business related crime can be detected due to the fact that any human activity within the borderland is subject to controls and checks on regular bases. This paper looks at the phenomenon of business crime or economic crime, as the authors use the terms interchangeably, from the angle of the activities the Polish Border Guard undertakes to counteract business related crime.

Keywords— economic/business crime, the Border Guard, international cooperation, globalisation.

I. INTRODUCTION

Economic crime as a social phenomenon can be encountered on everyday basis. This phenomenon impacts the players on the economic arenas and threatens business security on national and international scale. In the era of globalization which enables free flow of goods and services and transfer of financial resources, the fight with economic crime can only be undertaken comprehensively on international grounds bearing in mind sophisticated means and technologies at the disposal of highly specialized criminal groups.

While deliberating on the issue of economic crime and in order to fully present this phenomenon, it is worth reaching for relevant literature on the topic and quote a definition of economic crime. Economic crime is defined fundamentally as a statutory type of prohibited act, described in a legal regulation whose main content-based object of protection is proper

business turnover (Skorupka, 2007). However, legal and non-legal literature features a number of definitions of business crime. The authors of these definitions naturally refer to various political and economic systems pertinent to the particular countries in which they reside. Therefore, definition of business crime formulated in a free market economy differs considerably from a definition formulated in a centrally controlled one, for example in the former People's Republic of Poland.

In an attempt to define the issue of economic crime it is worth reaching to the science of criminology which points to the characteristics of economic crime in which violence is absent and becomes replaced by appearances of legality. Serious material and immaterial losses which occur as the result of economic crime very often step outside the sphere of business alone (e.g. corruption). Victims of economic crime are mainly anonymous physical persons or institutions of the economic system. When it comes to sociological origin of business crime perpetrators, a considerable number of them come from better well-off social strata (Zimmerli, 1994, p. 56). Business crime is also very often referred to as white-collar crime. It is easy to notice that economic crime is a very complex issue frequently accompanied by other criminal phenomena committed by organized groups. White-collar offences are often subject to increase of penalty.

II. ECONOMIC CRIME – RELEVANT LEGISLATURE

While economic law emerged from legal systems of countries quite a while ago, the term criminal economic law has been present in legal sciences for no longer than half a century. The author who first coined the term is K. Lindemann. He was the first to ask a question whether there was a separate division of criminal law related to economic issues. He also pointed to a series of specific features of provisions to which he referred the term criminal economic law (Górniok, 1997, p. 5).

In Poland, after the period of political transformation which started in 1989, in an effort to meet the international



requirements and to reduce criminal pathology in business turnover, the legislator included criminal provisions aimed at providing security of economic turnover in particular business sectors because at that time the entirety of the economy was not protected by criminal provisions. In order to assure the safety of economic turnover, the legislator decided to criminalize such kinds of behaviour which are marked by social harmfulness to more than a negligible degree and pose a threat for participants of economic turnover and the State Treasury itself. Therefore, the Polish Penal Code features Chapter XXXVI entitled *Offences Against Economic Turnover and Asset Interests in Civil Law Transactions* (Act of 6 June 1997 Penal Code, Journal of Laws 1997 No 88 item 553). Chapter XXXVI is where all elementary law provisions on economic turnover are written down. However, when one reaches deeper in the structure of other codes and legal acts, one encounters even more in-depth regulations protecting business turnover. Also observations of the amendment process of criminal provisions show that new regulations frequently pop up with the development of newly emerged business sectors.

III. SIGNIFICANCE OF THE POLISH BORDER GUARD

In order to protect economic turnover, Polish legislator appointed a number of organs, equipped them with certain powers and imposed duties to facilitate fight with all manifestations of business crime. The list of appointed organs include: the Supreme Chamber of Control, fiscal agencies, the General Inspector of Financial Information and other organs of administrative nature. The law enforcement agencies with the mandate to fight business crime are: the Police, the Internal Security Agency, Central Anticorruption Bureau, and last but not least, the Border Guard.

The Border Guard as a law enforcement agency has been equipped with a series of permissions and powers, the main of which is still protection of Polish frontiers, what is clearly regulated by law. Nevertheless, duties of the Border Guard that refer to fight with economic crime are written down in the Act of 12 October 1990 on the Border Guard, (Journal of Laws of 1990, No 78, item 462). The Act mentions identification, prevention and detection of criminal activities as tasks to be performed by the Border Guard. The said criminal activities constitute a blow to the national economy and may be manifested as penal-fiscal offences and other forms of crime which fulfil the criteria of business crime e.g. introduction into the business turnover, under the guise of legality, various smuggled goods. However, a detailed analysis of whether a given crime belongs to business crime category or constitutes crime of business nature is not in the scope of interest of the authors of the paper.

The officers of the Border Guard take an active part in the fight against business crime. Their intervention very often occurs in the early stages of illegal procedure when the transit channels of particular goods are discovered before the goods are actually introduced into the turnover. Efficient activities of the border units reduce the cost of fight with economic crime because they prevent the introduction of certain illegal goods

into the economy of the target country. Confiscated goods later become evidence in court cases. Legal practice has shown that detection of economic crime in its later stages prolongs the time of preparatory proceedings or other operational and investigative activities and the illegal procedure itself with time becomes more difficult to prove in court in face of the appearance of legality.

Protection of frontiers has a wider meaning than it is formulated in legal acts. This protection stretches to many layers of social life in a direct and indirect way. It involves the activities of the Border Guard in the context of economic turnover as an interest protected by law. The officers of the Border Guard supervise transfer of goods and services in the cross-border traffic and eliminate or reduce threats of introducing into the turnover illegal tobacco, alcohol, fuel or other goods. The next important aspect of illegal transfer of previously mentioned products is depletion of public-law receivables in which the damages sustained by the Treasury, constitute a direct ailment for all entities of social life.

IV. THE BORDER GUARD – STRUCTURE AND TASKS

The uniformed and armed formation called the Border Guard since the beginning of independent Polish state has been supposed to defend the frontiers of the Republic of Poland. Nowadays the Border Guard is a homogeneous, uniformed and armed police-type formation of nationwide scope which was established by the Act on the Border Guard and came into being on 16 May 1991 replacing the dissolved Boarder Guard Troops (WOP). The tasks of the Border Guard and earlier of its predecessor WOP have evolved through time and concentrated mainly on such sections of the borderline which due to their geographical and administrative location attract more criminal activity than others. With time, the legislator decided to broaden the competences of the formation and added duties related to counteracting economic crime. That is why, the organizational structure of the formation features departments which are specially designated to fight economic crime and to shape the security of business turnover.

The role played by the Border Guard on the forefront of business crime is invaluable and must not be underestimated. Of course, the Border Guard is not the critical formation for providing security of business turnover, such tasks are entrusted to specialized formations. Nonetheless, bearing in mind the areas of activity of the Border Guard it can be assumed that this particular force may dispose of a better recognition of criminal milieu than other law enforcement agencies. Obviously, the business offences detected by the Border Guard are complex because they refer to more than one country, are committed by organized groups and along cross-border routes. Illegal liquor, cosmetics or other materials smuggled across the border may be legalized and introduced into Polish economic turnover. Fortunately, the Border Guard disposes of proven mechanisms for counteracting crime such as smuggling which have been tried and tested over a long period stretching from the times of the Boarder Guard Troops (WOP) to contemporary times of free-market economy.

Within the structure of the Border Guard there is the Border Guard General Headquarters (Warsaw) and nine regional departments deployed all over Poland:

- Warmińsko-Mazurski Border Guard Regional Unit (Kętrzyn)
- Podlaski Border Guard Regional Unit (Białystok)
- Bug Border Guard Regional Unit (Chełm)
- Bieszczady Border Guard Regional Unit (Przemysł)
- Śląski Border Guard Regional Unit (Racibórz)
- Odra Border Guard Regional Unit (Krosno Odrzańskie)
- Sea Border Guard Regional Unit (Gdańsk)
- Vistula Border Guard Regional Unit (Warsaw)
- Carpathian Border Guard Regional Unit (Nowy Sącz).

Within the units there are 97 outposts of the Border Guard together with remote branches and two divisions. On top of that there are training centres, high-security centres and detention facilities for foreigners, joint outposts and contact points. Currently, the headcount of the formation amounts to 14,800 officers and 3,500 civil workers (strazgraniczna.pl). Pursuant to the Act, the Border Guard's main tasks and powers of the formation include protection of the state borders; organization and performance of border traffic control and counteracting and preventing illegal migration. Apart from these fundamental tasks, pursuant to article 1 section 2 point 4 of the Act, the duties of the Border Guard also include:

- fighting border crime;
- prosecuting perpetrators of offences against public order within the border crossing area, and, within the scope of the BG competence, in the border zone;
- supervision over foreigners permitted to work in the territory of Poland;
- supervision over business activity conducted by foreigners in the territory of Poland;
- prosecuting offences against documents referring to the scope of activities of the Border Guard;
- prosecuting fiscal offences listed in article 134 of Penal and Fiscal Code;
- prosecuting offences related to excise, duty and currencies;
- prosecuting crimes and offenses related to the crossing of the border or moving through it goods and excise goods subject to excise duty labelling, as well as items specified in the provisions on weapons and ammunition, explosives, the protection of cultural goods, national archival resources, counteracting drug addiction, and population records and identity cards;

prosecuting offences related to migration specified in the provisions of the Act on Foreigners of 12 December 2013, and in the Act of 13 June 2003 on Granting Protection to Aliens within the territory of the Republic of Poland;

- prosecuting crimes against general security and crimes against communication security that are related to air transportation;
- prosecuting crimes related to corruption committed by officers of the Border Guard while performing statutory duties or corruption offences committed by non-officers of the Border Guard but connected to tasks performed by the officers of the Border Guard;

- offences mentioned in articles 190, 222, 223 and 226 of the Penal Code against officers of the Border Guard while on duty and performing their statutory tasks;
- crime related to human trafficking (Mądrzejowski, 2018, pp. 91-92).

Thus, as it is shown above, the Border Guard is responsible for fighting a number of offences which are collectively referred to as 'organized economic crime'. This results directly from the elementary function of the border itself which in its economic function, constitutes the barrier for the free-flow of goods (Maksimeczuk, Sidorowicz, 2007, p. 87).

The Border Guard alongside the Police is an agency supervised by the Minister of Interior and Administration. These two forces of the Interior constitute the pillar of the fight against organized business crime. A joint scheme of the Ministry of Interior, the Ministry of Finance and the General Prosecutor's Office called Prevention and Fight Against Economic Crime stipulates that the Minister in charge of the internal affairs is accountable for protection of security and public order. The Minister is accountable for tasks undertaken to combat business crime both directly through proposal of systemic changes of legal nature and organizational proposals aimed at raising efficiency of combating economic crime, and indirectly through supervision activities of the Police and the Border Guard. The Police intervenes in all areas of occurrence of economic crime and to this aim is entitled to apply offensive methods of operational work. The key role here is played by the division responsible for combating economic crime and in important cases is supported by specially dedicated structures of the Central Bureau of Investigation.

When it comes to business crime committed in the border territories, the most relevant agency is the Border Guard empowered to perform tasks with regard to excise crime, its investigation, prevention, detection and prosecution of its perpetrators. Within its jurisdiction, in order to fight cross-border crime, the Border Guard may apply offensive methods of operational work (Prevention and Fight Against Economic Crime Scheme 2015, p. 23). Territorially, the above mentioned activities are performed on regional unit level by operation and investigation departments and on the outpost level by operation and investigation groups. All the tasks related to combating economic crime are coordinated and supervised by the division of operation and investigation of the Border Guard. The division reports directly to the operation and investigation management board located in the General Headquarters in Warsaw.

V. SELECTED ASPECTS OF FIGHT WITH ECONOMIC CRIME

In the early period of the existence of the Border Guard (1990s), their activities were mainly concentrated on the border zones, border crossings and in the regions of the so-called green border. During political transformation, after 1989, the crime rate in Poland dramatically increased. In 1989 the total number of detected offences was 547,589, while in 2003 this figure rose to 1,466,643 (Hołyst 2009, p. 162). The increase in crime rate

was also true for organized crime of criminal, drug-related and economic nature.

The Border Guard at that time had to face the challenges of increased cross-border traffic of persons, vehicles and illegal migration. Back then, the main agencies responsible for combating economic crime in the near-border territories were Customs Offices which in 1999, following a relevant legal act, transformed into the Customs Service. The Border Guard took an active part in activities aimed at detecting and counteracting business crime within the limits of their powers. Economic crime in those times concentrated mainly on importing illegal alcohol into the Polish customs territory. The smuggling typically took form of the so called 'ant-running' where individual bootleggers carried legal amounts of alcohol across the border on foot doing a number of rounds within one day. Then the alcohol was transported inside the country already in bigger bulks hidden in trucks or vans in specially constructed caches or hiding spots. Illegal alcohol would also be transported in big amounts in heavy goods vehicles or even in cargo train tankers using falsified customs documents. Thus, it can be said that business offences at that time applied various modus operandi.

In the years that followed, another unlawful procedure developed. Illegal manufacturers started producing alcohol using contaminated industrial alcohol which after denaturing was bottled, labelled with fake labels and excise tax stamps and distributed all over the country and outside. The criminal groups specializing in manufacturing and distribution of illegally produced liquor managed to generate enormous incomes from this illegal trade. Such activity was a direct blow for the fundamental values of business turnover, not to mention the State Treasury and due to its international scope maintained the transboundary nature of the crime.

With time, the profitability of dealings with illegal alcohol decreased due to higher efficiency of Polish law enforcement and some logistic difficulties. Therefore, the cross-border business crime shifted attention to tobacco. The statistics show that in 1996 the BG officers impounded alcoholic products worth 14,032,000 Polish zloty and tobacco products worth 3,889,000 Polish zloty. By contrast, in 2003 the value of detected illegal alcohol dropped to 5,186,372 Polish zloty, while in case of tobacco the value surged to 34,226,316 Polish zloty. The more recent figures show even more dramatic disproportion. In 2021 the worth of illegal alcohol amounted to 6,038,209 Polish zloty, and tobacco and cigarettes to 289,735,253 Polish zloty (strazgraniczna.pl). Currently, the activities of criminals in the tobacco sector involve smuggling tobacco products from the former Soviet Union states through both official and unofficial border crossings. There are also illegal manufacturing facilities which produce and trade various tobacco products, part of which is sold in Poland, while the rest is smuggled abroad. The tobacco used for production of illegal cigarettes usually comes from Bulgaria and the criminal groups that control the whole procedure are often of international composition. Being involved in illegal tobacco dealings guarantees huge revenues and offers prospects of more than a comfortable life. It is estimated that one cigarette machine in an

illegal factory working 8-10 hours a day 20 days a month can make about a million packets of cigarettes which costs the State Treasury about 13 million PLN in unpaid taxes and excise (superwizjer.tvn.pl) and makes the criminals engaged in the procedure very rich.

Speaking of economic crime of cross-border nature, the authors should also bring to the reader's attention offences related to the import of clothing, leather goods and cosmetics with falsified trademark of renown brands. Again, a certain portion of the goods imported from abroad remains for sale in Poland and the rest is forwarded to other countries. In one spectacular case, the officers of the Border Guard acting in unison with the officers of the National Tax Administration, crushed an organized criminal group who under the umbrella of allegedly decent business entities and perfectly legal shipping companies managed to transport weekly more than 40 tons of merchandise from Turkey avoiding all fiscal liabilities what translated into multi-million losses for the State Treasury. Clothing with counterfeited trademarks constituted a quarter of these goods. As the result of operational work, several dozen thousands of garments were confiscated and charged were pressed against 8 perpetrators under the article 258 § 1 and 3 of the Penal Code (Act the Penal Code of 1997, p. 102), article 305 and article 305, items 1 and 3 of the Act Industrial Property Law (the Act Industrial Property Law of 2000, p.137) (slaski.strazgraniczna.pl).

Constant developments of methods and modes of action of criminal groups eager to earn enormous profits from illegal business, forces law enforcement agencies to keep up with these developments in order to effectively fight economic crime. The government subsidies for law enforcement agencies conducting activities for the sake of combating economic crime have been considerably increased, the officers are more generously rewarded to reduce the temptation of corruption and heavy emphasis is put on cooperation between agencies so that the potential of each force is exhausted to the full. The main allies of the Border Guard in fighting economic crime are the National Tax Administration, the Police and the Central Bureau of Investigation. Cooperation of forces and their joint actions against offences that undermine the economic order undertaken in the phase of operational work and later during preparatory proceedings, guarantee that all vital information is exchanged on regular basis what precludes unnecessary overlapping of tasks, enables efficient delegation of tasks which leads to the most productive results. Apart from the exchange of information or having mutual access to specialized databases, another benefit of collaboration of forces is the possibility of exchanging the equipment, sharing service dogs, detention facilities or storage facilities. Exposing offences against business turnover often requires a lot of storage space to accommodate large amounts of merchandise such as alcohol, tobacco, clothing, leather goods or cosmetics but also large-size machines or even complete assembly lines which often have to be stored for years on end as they constitute evidence in court cases and must be retained until relevant legal proceedings are complete.

VI. CONCLUSION

The Border Guard holds an important place in the system of national security of Poland. Beside their elementary statutory tasks of supervision over cross-border traffic, protection of the Polish border line and counteracting illegal migration, they also play an important role in combating economic crime which generates enormous losses for the State Treasury. The specifics of the work of the Border Guard done both on the external borders of the European Union, internal border crossings and inside the country and the necessity to maintain readiness for temporary reintroduction of border control, determine their particular role in the fight against economic offences especially of cross-border nature. Constant developments of methods, ideas, means, equipment and technologies used by criminal groups forces law enforcement agencies not only to keep up with the criminal pace but also to be one step ahead. To achieve this it is necessary to enhance cooperation between agencies which is of key significance in boosting the efficiency of the combat against economic crime and demonstrating the power and determination of the authorities to put an end to cross-border crime. International cooperation is a critical factor for efficient fight with economic crime and it may be manifested in a number of ways e.g. conducting international operational activities or joint investigations of multinational scope. However, in order to increase the crime detection rate it is also important to assure prompt exchange of information with the support of digital systems. Mutual integration of systems and databases will impact the ratio of crime detection including economic crime, and at the same time will reduce losses to the State Treasury which this type of crime generates.

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