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## **The Impact of the Pandemic on Economic Crime**

**Abstract:** This paper aims to outline possible directions of criminal activity that are part of both state and global economic crime. It is not a novelty that periods of economic crises carry particular criminogenic potential, affecting the scale and dynamics of specific crime categories. The ongoing pandemic makes precise data collection or statistical calculations, in the context of the problems described in this paper, difficult. Nevertheless, at this stage, it is possible to indicate certain areas which, from the perspective of criminal law, should be of interest for criminal law specialists, but also criminologists aiming to develop tools to combat the most serious pathologies in business trading.

**Keywords:** COVID, criminal law, criminology, economic crime, pandemic

### **Introduction**

Economic crime is one of the key crime categories that significantly correlate with the economic situation on the country and global levels. The financial crisis in the early 2000s, including the collapse of Lehman Brothers, one of the key US banks, significantly affected the functioning of the global economic system<sup>1</sup>. History teaches, therefore, that every economic crisis significantly influences the course of criminal activity and the statement that “economic crimes are the mirror image of

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1 For further details see: M. Pronobis, *Kryzys w strefie euro – ryzyko niewypłacalności Grecji i pozostałych krajów peryferyjnych*, (in:) M. Kalinowski, M. Pronobis (eds.), *Gospodarka. Nowe perspektywy po kryzysie*, Warsaw 2010, p. 75 et seq.

a particular state economic order”<sup>2</sup> remains valid. Criminology has long emphasised the role of economic and institutional factors determining criminal activity, which resulted in the emergence of such concept as “economic crime”<sup>3</sup>. Therefore, without a shadow of a doubt, a hypothesis can be made about the significant impact of the COVID pandemic on the formation of new trends in the area of economic crime. Given, however, that the role of criminological research is, *inter alia*, to find a general explanation for the causes of certain events or behaviours<sup>4</sup>, the main objective of this paper was to make an attempt to identify the possible new forms of threats to business trading that may be observed in the public perception in connection with the current COVID pandemic, and which are not yet reflected in statistics or legislative output. As emphasized in the subject literature, there is no single way to conduct research in social science. In various research orientations, one can distinguish, for example, nomothetic explanation which consists in seeking an explanation for a certain class of social events in an “economic” way, using only one or several explanatory factors<sup>5</sup>. In the present paper, the occurrence of the pandemic was treated as one such factor. For this purpose, the research methods adopted and accepted in the science of criminology were applied. In the course of research, a secondary analysis of data was carried out, consisting in a structured analysis of official data published by European institutions and leading international consulting companies providing legal services, focused on counteracting the negative effects of the pandemic. Firstly, the desk research method was used, which made it possible to collect data on the status of knowledge concerning new forms of threats in the area of economic crime, which significantly evolves during the COVID-19 pandemic. The analysis of reports, analyses, papers, or publications enabled the obtaining of data necessary to investigate the phenomenon in question. Then, in order to juxtapose the assumption made in the research hypothesis, the doctrinal output in the form of available studies and scientific commentaries on the investigated matter was analysed. Conclusions from the above procedures allowed noticing certain forms of exploitation that appear in social life.

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2 E.J. Lampe, *Ogólne problemy prawa karnego gospodarczego*, „Ruch Prawniczy Ekonomiczny i Społeczny”, Warsaw-Poznań 1988, no. 3, p. 115.

3 G. Becker, *Crime and Punishment, An economic Approach*, <http://www.nber.org/chapters/c3625> (12.08.2020); P. Bieniek, S. Cichoński, M. Szczepaniec, *Czynniki ekonomiczne a poziom przestępczości- badania ekonometryczne*, „Zaszyty Prawnicze” 2012, no. 12(1), pp. 147–172. H. KołECKI, *Podstawowe zagadnienia badawcze z zakresu kryminalistycznej problematyki współczesnej zorganizowanej przestępczości ekonomiczno-finansowej w Polsce*, (in:) E. Gruza, T. Tomaszewski (eds.), *Problemy współczesnej kryminalistyki*, Warsaw 2004, pp. 16–18.

4 E. Glińska, *Metody badań w kryminologii*, (in:) E.W. Pływaczewski et. al. (ed.), *Kryminologia. Stan i perspektywy rozwoju*, Warsaw 2019, pp. 199–200.

5 E. Babbie, *Badania społeczne w praktyce*, Warsaw 2005, pp. 45–50.

The term “economic crime” covers many different types of crime, and in the literature several terminological approaches can be distinguished<sup>6</sup>. In the present paper, the term economic crime is considered from a criminal law perspective. Nevertheless, the common denominator can be regarded to be the main generic object of protection, defined as orderly business trading, “it is, therefore, a question of numerous and varied types of criminal regulations which primarily protect the economy”<sup>7</sup>. The criminal law protection of business trading in the Republic of Poland is regulated in the Act of 6 June 1997 – the Criminal Code, and in other acts in the area of business trading. The vast majority of criminal regulations defining economic crimes are found outside the Criminal Code, yet – due to the nature of the issues addressed in this paper – the discussed crimes are included in the Criminal Code.

There is no doubt that in the period of lockdowns introduced by governments of individual countries, which significantly changed the functioning of economic entities, even leading to their bankruptcy, entrepreneurs were often forced to make decisions on the verge of economic risk. Consequently, attempts to ‘save’ assets and, on the other hand, to ‘look for opportunities to make money’ have become practices of various business sectors. Given the short period of time since the outbreak of the pandemic, in terms of analysing the structure and dynamics of crime, it is difficult to find much data and research on this subject. Nevertheless, the aim of this paper is to give an idea of possible developments in economic crime.

## 1. Fraud as a Form of Abuse

At a time of economic crisis, which the ongoing COVID-19 pandemic can certainly be viewed as, the activity of entrepreneurs has been extremely limited, resulting in financial destabilisation and even, on many occasions, inevitable insolvency. This, in turn, forces those who are struggling to survive in the marketplace or inspires those who are taking advantage of a difficult situation, to multiply their profits. While in the case of the first group the activities of entrepreneurs are aimed at taking advantage of the solutions offered by the State, in the case of the second group an increase in the risk of fraud can be observed, particularly in the context of State offered anti-crisis shields. Observation of society leads to the conclusion that it is not only those in an extreme financial situation who apply for financial support, but also those who, in times of pandemic, are able to maintain business at least at an adequate

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6 Confer: M. Kuć, *Leksykon kryminologii*, Warsaw 2015, p. 148; R., Zawłocki, *Podstawy odpowiedzialności karnej za przestępstwa gospodarcze*, Warsaw 2004, pp. 59-62,

7 R. Zawłocki, *Prawo karne gospodarcze. System Prawa Handlowego*, Warsaw 2018, vol. 10, Legalis (20.06.2021).

level<sup>8</sup>. Thus, the question arises as to whether such practices may be considered a criminal offence.

Pursuant to Article 297 of the Criminal Code, the Polish legislator has provided for criminal liability for financial, subsidy, and subvention fraud, sometimes referred to as capital or economic fraud. The term covers various types of fraud, *i.e.*, defrauding of capital, extortion of a credit, bank loan, credit guarantee, grant or subsidy, or a public contract from the State, a foundation, a bank, *etc.*, generally by means of presentation of false documents or statements and failure to inform the lender (grantor) of circumstances likely to have an impact on the withholding or reduction of the credit, bank loan, credit guarantee, grant or subsidy, or a public contract<sup>9</sup>. The common use of the term subsidy fraud is treated in the same way as financial fraud, as both refer to the provision of Article 297.1 of the Criminal Code, but due to the types of financial support currently offered under anti-crisis shields, the former term has become more common.

The perpetrator of the fraud identified in Article 297.1 of the Criminal Code acts with the intention (*dolus coloratus*) to obtain financial support and for this purpose submits to the bank, or the organisational unit conducting similar business activity pursuant to the act, or to the authority disposing of public funds – which applies to applicants under the anti-crisis shield, a document (within the meaning of Article 115.14 of the Criminal Code) which is forged, counterfeited, or which evidences untruth or is unreliable, or an unreliable written statement, and which concerns circumstances of material significance.

The offender's criminal conduct can therefore manifest itself in three forms: a) the submission of false documents, b) the submission of documents that claim untruth, c) the submission of unreliable written statements. The term 'submission' includes any action consisting in submitting documents or written statements, handing them over for inspection or evaluation, or appearing before an authority or an authorised person, such as a bank employee<sup>10</sup>. The offences under Article 297 are formal in nature. This means that if, for example, a benefit covered by the anti-crisis

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8 Raport Policji: Zarzuty dla przedsiębiorców z za wyłudzenie dotacji z tarczy antykrzyzowej, <https://www.policja.pl/pol/aktualnosci/209313,Zarzuty-dla-przedsiębiorców-z-katowic-za-wyłudzenie-dotacji-z-Tarczy-Antykrzyzowo.html> (13.09.2021); Raport Policji: Członkowie grupy są podejrzeni m.in. o wyłudzenie świadczeń z tarcz antykrzyzowych, <https://www.policja.pl/pol/aktualnosci/196298,Członkowie-grupy-sa-podejrzani-min-o-wyłudzenie-srodkow-finansowych-z-tzw-tarczy.html?search=66998609> (20.08.2020); ZUS wyczulony na wyłudzenia świadczeń z tarcz antykrzyzowych – Artykuły dla Szukających pracy (szukampracy.pl) (12.08.2021); N. Szagdaj, Wyłudzili pieniądze z tarczy antykrzyzowej, ale oszustwo wyszło na jaw, *Gazeta wrocławska* 2021, <https://gazetawroclawska.pl/wyludzili-pieniadze-z-tarczy-antykrzyzowej-ale-oszustwo-wyszlo-na-jaw/ar/c1-15681477> (09.10.2021).

9 I. Zgoliński, Komentarz do art. 297, (in:) V. Konarska-Wrzesed (ed.), *Kodeks karny. Komentarz*, third edition, Warsaw 2020, p. 1364.

10 Supreme Court judgement of 2.12.2003, IV KK 37/03, LEX no. 108050.

shield is paid out, Article 286 of the Criminal Code (fraud) will apply, while the mere submission of a statement containing unreliable information, on the basis of which institutions will be able to grant the requested assistance, will be subject to a charge of violation of Article 297 of the Criminal Code. The occurrence of actual damage is not a condition for criminal liability<sup>11</sup>. At this point a question may arise as to the differences between economic fraud – Article 297 of the Criminal Code and classic fraud under Article 286 of the Criminal Code. Semantic interpretation could suggest that the provision of Article 297.1 is a special provision in relation to Article 286 of the Criminal Code<sup>12</sup>. However, it is most often assumed in this case that there is an actual (and not negligible) concurrence of these two provisions<sup>13</sup>. In the event of fraud under Art. 286 of the Penal Code there must be an adverse effect of disposing of the property. On the other hand, financial fraud (297 kk.) belongs to ineffective crimes<sup>14</sup>, this means that it does not matter for its existence whether it has obtained support, a financial instrument or an order and unfavourable disposal of property or the occurrence of damage is not a necessary element to talk about committing a prohibited act. However, if such a situation does occur, then the Court will consider the cumulative qualification, *i.e.*, it will recognize that the perpetrator has completed the elements of the offense under Arts. 286 and 297. Cumulative qualification will also be in the event of obtaining a loan, cash loan, surety, guarantee, letter of credit, subsidy, confirmation by the bank of the obligation arising from the surety or guarantee, or a similar cash benefit for a specific economic purpose. If the perpetrator leads to the disposition of property in a different way than described in art. 297 of the Penal Code, then the qualification will be based only on the basis of Art. 286 of the Penal Code

Thus, anyone who submits falsified documents, or unreliable statements in order to obtain financial support from public funds may be subject to criminal liability. Any act of disclosure of a document or a statement with its annexes shall be criminalised. According to information posted on the official Government website, applicants for financial assistance under the anti-crisis shield are not obliged to submit specific documents, but only statements showing that the entity in question has suffered a loss

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- 11 P. Kardas, Komentarz do art. 297, (in:) A. Zoll (ed.), Kodeks karny. Część szczególna. Tom III. Komentarz do art. 278-363 k.k., wyd. IV Warsaw 2016, pp. 649-651; Judgement of the Court of Appeal in Wrocław of 27.09.2017, II AKa 242/17, LEX no. 2381446; J. Giezek, Komentarz do art. 297, (in:) D. Gruszecka, N. Kłaczyńska, G. Łabuda, A. Muszyńska, T. Razowski, J. Giezek (eds.), Kodeks karny. Część szczególna. Komentarz, Warsaw 2014, p. 1203.
  - 12 Confer: A. Ratajczak, Ochrona obrotu gospodarczego: Komentarz do ustawy z dnia 12 października 1994 r., Warsaw 1994, p. 40.
  - 13 M. Bojarski, Komentarz do art. 297, (in:) M. Filar (ed.), Kodeks karny. Komentarz Warsaw 2016, p. 1589; R. Zawłocki, in: R. Zawłocki (ed.), System Prawa Karnego, vol. 9, Warsaw 2011, p. 543.
  - 14 M. Kulik, Komentarz do art. 297, (in:) M. Mozgawa (ed.), Kodeks karny. Komentarz, LEX/el. 2021.

due to a decline in revenue<sup>15</sup>. Further dangers may appear in this respect, namely an attempt to 'control' the amount of income in order to obtain subsidy support, despite the fact that in reality the entity is able to survive on the market without this support. The income referred to in the anti-crisis shield is understood in accordance with the regulations on income tax. In this context, the problem of so-called creative accounting, which has already been described in the subject literature and has been noticed and described as a result of financial scandals in the United States, may arise<sup>16</sup>. Each application for aid on the basis of the anti-crisis shield requires the submission of a statement of income, which should be carried out reliably, taking into account the actual income. Otherwise, it is possible to accuse the applicant of giving false testimony, which in turn is criminalised under Article 233.6 of the Criminal Code (liability for false testimony).

Additionally, a question may arise in this area as to the legal assessment of forgery or alteration of a document by the perpetrator, which is subsequently submitted in the proceedings for granting a given economic instrument. On the one hand, an actual coincidence of Article 297.1 and Article 270 of the Criminal Code is accepted<sup>17</sup>, while on the other, a negligible coincidence in the form of a co-criminal act is indicated (forgery of documents is only a means to an end, therefore it is co-criminalised together with the conduct described in Article 297.1 of the Criminal Code)<sup>18</sup>.

Given the fact that the COVID pandemic has driven most of the services provided to date to the Internet, it can be assumed that this will have an impact on the growth in fraud cases in general, which shows a connection with business trading. However, such an assumption is not made in isolation from reality, since criminal tendencies in the context of fraud have been repeatedly drawn attention to, both in the public perception<sup>19</sup>, and in the work of specific institutions. As an example, reference may be made to documents prepared by the European Commission, which alerted consumers to the increasing prevalence of unfair practices<sup>20</sup>. Pursuant to Article 286 of the Criminal Code, a criminal offence is committed by anyone who, in order to

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15 Portal Gov.pl, Tarcza antykryzysowa, <https://www.gov.pl/web/tarczaantykryzysowa> (12.08.2021),

16 K. Wróbel, *Kreatywna księgowość na tle najczęściej popełnianych przestępstw gospodarczych*, „Edukacja prawnicza” 2014, no. 1, p. 10.

17 R. Zawłocki, *Komentarz do art. 297*, (in:) R. Zawłocki (ed.), *System Prawa Karnego*, vol. 9, Warsaw 2011, p. 543.

18 H. Pracki, *Nowe rodzaje przestępstw gospodarczych*, „Prokuratura i Prawo” 1995, no. 1, pp. 50-51.

19 The impact of COVID-19 on the fraud risks faced by organisations Information available on the official Deloitte website, <https://www2.deloitte.com/pl/pl/pages/Forensics/articles/ryzyko-naduzyc-w-dobie-covid19.html> (20.08.2021).

20 Information available on the official European Commission website: [https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/scams-related-covid-19\\_pl](https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/scams-related-covid-19_pl) (20.03.2021);

gain a material profit, leads another person to a disadvantageous disposal of their own or another person's property by means of deception, exploitation of a mistake, or incapacity to comprehend the action undertaken. Reports on the security of networks and information systems in Poland and worldwide show that the problem of cybercrime is growing, and criminal proceedings are also initiated on the basis of the Criminal Code, in particular under Article 286.1 of the Criminal Code – fraud<sup>21</sup>. Particularly in the initial phases of the pandemic, the public, frightened by the effects of the virus, easily succumbed to offers to buy protective measures, tests that were shown to fall short of the relevant standards, rendering the product useless. What is more, the frauds also often involved the non-fulfilment of an order which, in fact, was never dispatched to the buyer, despite payment having been made<sup>22</sup>. Another example of fraud in the COVID era is the conduct of fictitious collections for health care purposes (for financial support of hospitals, purchase of ventilators, or support for the sick and their families)<sup>23</sup>.

The sharp decline in sales in regular shops with the simultaneous increase in e-commerce can become a predictor of phishing scams, *i.e.*, attacks based on e-mail or SMS messages. One example is the communication from the Chief Sanitary Inspector, which suggests that we should be particularly wary of fraudsters who use text messages requesting that we call them about a positive COVID-19 test result. Cybercriminals, pretending to be courier companies, offices, or medical institutions, try to obtain login data *e.g.*, to bank accounts, social media accounts, or business systems. Moreover, it is worth pointing out that the literature even uses the term 'cyberpandemic', which "describes the similarities between cyberattacks and pandemics, not limited to COVID-19, the devastating human and economic consequences of their global, instantaneous spread. The massive and sudden shift from the infected real space to cyberspace has spread awareness of the opportunities associated with digital transformation – especially in healthcare."<sup>24</sup> In view of the

21 Krajobraz bezpieczeństwa polskiego Internetu. Raport roczny z działalności CERT Polska 2019, [https://www.cert.pl/wp-content/uploads/2020/07/Raport\\_CP\\_2019.pdf](https://www.cert.pl/wp-content/uploads/2020/07/Raport_CP_2019.pdf) (20.03.2021);

Internet Organised Crime Threat Assessment (IOCTA) 2020, Europol, <https://www.europol.europa.eu/activities-services/main-reports/internet-organised-crime-threat-assessment-iocta-2020> (20.03.2021),

Pandemic profiteering: how criminals exploit the COVID-19 crisis, Europol 2020, <https://www.europol.europa.eu/publications-documents/pandemic-profiteering-how-criminals-exploit-covid-19-crisis> (20.03.2021), for further details see: D. Taberski, Postępowania w sprawach o oszustwa popełnione za pośrednictwem Internetu, "Prokuratura I Prawo" 2018, no. 6, p. 63.

22 Pandemic profiteering: how criminals exploit the COVID-19 crisis, Europol 2020, <https://www.europol.europa.eu/publications-documents/pandemic-profiteering-how-criminals-exploit-covid-19-crisis> (20.03.2021).

23 A. Gryszczyńska, G. Szpor (ed.), "Internet. Cyberpandemia. Cyberpandemic", Warsaw 2020, Legalis.

24 *Ibidem*.

above, both in Poland and worldwide, work has been undertaken to counteract cybercrime. Work is also continuing on a directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings<sup>25</sup>.

## 2. The Activity of Organized Crime Groups

What is more, criminal groups pose a great threat to the proper functioning of business trading, as economic crime is very often the focus of organised crime groups. One of the greatest threats in the context of state economic security is organised crime of an economic nature, which significantly correlates with the internationalisation of economic processes<sup>26</sup>. Therefore, at a time of global crisis, the activity of these groups may intensify. This hypothesis is supported, among other things, by Interpol's conclusions which show that the outbreak of a pandemic represents an opportunity to make money quickly, which inspires criminal groups to take advantage of the high demand for hygiene and personal protection products<sup>27</sup>. Operation Pangaea, conducted in 90 countries from 3rd until 10th March 2020, to combat the online trade in counterfeit medical products, resulted in the arrest of 121 people and the seizure of potentially dangerous products worth USD 14 million, including counterfeit protective masks, low-quality antibacterial gels and medicines designed to counter coronavirus such as chloroquine, according to a statement from the Interpol secretary general. The problem is that criminal groups may seek to steal such products, which means that they may be improperly stored, rendering the medicines ineffective. According to Interpol, some fake medicines have been found to contain mercury, arsenic, rat poison, or cement<sup>28</sup>. What is more, medicines may be falsified or deliberately mislabelled. Interpol has sent a warning to the law enforcement agencies of 194 Member States, noting that the activity of criminal groups, including those having international reach, will focus on COVID-19 vaccines. Interpol secretary general, Jürgen Stock, stated "As governments are preparing to roll out vaccines, criminal organizations are planning to infiltrate or disrupt supply chains."<sup>29</sup> It is common knowledge that vaccines of legal origin are not for sale. Each country is

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25 *Ibidem*.

26 E.W. Pływaczewski, *Bezpieczeństwo obywateli – prawa człowieka – zrównoważony rozwój*, Białystok 2017, p. 459.

27 Information available at: [https://www.lexpress.fr/actualite/monde/la-criminalite-organisee-tire-profit-du-coronavirus-selon-interpol\\_2121420.html](https://www.lexpress.fr/actualite/monde/la-criminalite-organisee-tire-profit-du-coronavirus-selon-interpol_2121420.html) (28.05.2021).

28 Information available on the official Interpol website: <https://www.interpol.int/en/Crimes/Illicit-goods/Shop-safely/Fake-medicines> (27.05.2021).

29 Own translation, based on the official Interpol website: <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-warns-of-organized-crime-threat-to-COVID-19-vaccines> (27.05.2021).



responsible for introducing rules for their marketing. In view of the dynamic nature of the pandemic and its global extent, controlling trade in medicinal products, including vaccines, which have become the most sought-after product in the world, has become an absolute priority for the authorities responsible for investigating economic crime. The struggle against time to produce effective vaccines, combined with the public's expectations of rapid and effective success on the part of scientists, undoubtedly influenced the ingenuity of organised crime groups, who turned their interests precisely in this direction. From a criminological point of view, the attractiveness of the pharmaceutical market, in the context of COVID vaccines may change prevailing trends for a long time. While it is nothing new that organised crime has long been oriented towards the multiplication of profits from pharmaceutical crime, it is now all the more dangerous because we are dealing with a virus which, as yet, has completely unpredictable health consequences, and this means that any interference with products of unknown origin can only exacerbate an already dramatic medical situation. It is therefore important to monitor offers, particularly those involving the sale of vaccines online, as Interpol warns<sup>30</sup>. From the perspective of criminal liability, the provisions regulating pharmaceutical crime, *i.e.*, production/manufacture, marketing or, broadly understood, trade in medicinal products contrary to statutory provisions, are the provisions of Article 124b of the Pharmaceutical Law and Article 165.1(2) of the Criminal Code<sup>31</sup>. In addition, another threat from criminal groups should not be overlooked. It seems likely that groups will seek to use 'illegally earned' cash in trading, through a desire to invest in industries that have been materially affected by the COVID pandemic. For example, organised crime groups may find it attractive to buy out companies, restaurants, and hotels whose owners are at risk of bankruptcy. The need to monitor activities in the area of organised crime groups, for example, was highlighted by the European Economic and Social Committee during its conference on "The economic impact of organised crime and money laundering – How does the COVID-19 crisis exacerbate the problems?"<sup>32</sup>

### 3. Pandemic and Bankruptcy

For entrepreneurs reporting financial problems due to the ongoing COVID pandemic, the State offers not only the possibility to benefit from anti-crisis shields,

30 *Ibidem*.

31 For further details see: I. Kalinowska-Maksim, *Falszowanie produktów leczniczych. Zagadnienia prawne i kryminologiczne*, Warsaw 2020.

32 Information available at the following address: <https://www.eesc.europa.eu/fr/news-media/press-releases/contre-la-criminalite-organisee-leurope-doit-lutter-comme-si-elle-ne-formait-quun-seul-et-meme-pays> (20.06.2021).

but also the liberalisation of the rules on bankruptcy or restructuring procedures<sup>33</sup>. So far, in a situation of threatened insolvency or actual insolvency of an entrepreneur, the legislator has provided for the use of court procedures: restructuring and bankruptcy. It appears that the economic crisis caused by the SARS-CoV-2 virus will also affect creditors' ability to recover, while creating space for new abuses by debtors. It is indisputable that bankruptcy is part of the economic risk borne by every market participant and does not in itself constitute a criminal offence. However, in many cases, debtors take advantage of existing bankruptcy and restructuring laws to create a situation in which they can avoid paying their creditors. From a criminological point of view, economic criminal law can also be a criminogenic factor in the context of economic crime<sup>34</sup> and, in the case of the current liberalisation due to the pandemic, this problem may become even more topical.

According to a report by Euler Hermes, prepared on the basis of official sources such as *Monitor Sądowy i Gospodarczy*, Polish companies set an insolvency record in 2020. In 2020, 1293 insolvencies of companies operating in Poland were announced, 32% more than in 2019. In contrast, Euler Hermes forecasts that in 2021 there will be another significant increase in the number of insolvencies in Poland, by 17%, but also in export markets (+25%)<sup>35</sup>. Naturally, such figures do not immediately prove their criminogenic nature, but it is worth bearing in mind that, just as with the anti-crisis shields, there will be abuse of the new insolvency law.

On 24 March 2020, an amendment to the Insolvency Law<sup>36</sup> came into force, which is already affecting the increase in the number of declared bankruptcies. As a result of the amendments, Article 491<sup>4</sup> of the Insolvency Law was repealed, in which the legislator indicated the prerequisites for the court to dismiss a bankruptcy petition (if the debtor led to their insolvency intentionally or due to gross negligence). As a result of the amendment, bankruptcy can also be declared by those who have brought themselves into debt intentionally. According to the new regulations, the cause of insolvency will be examined only after the declaration of bankruptcy, at the stage of establishing the repayment plan. In addition, the new regulations make it possible to apply the same procedure to debtors running a sole proprietorship as the one for consumers. In addition, the Act of 16 April 2020, on specific support instruments in connection with the spread of the SARS-CoV-2 virus, regulates, *inter alia*, the issue of the impact of an epidemic emergency, or an epidemic state, declared

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33 For further details see: R. Adamus, *Uproszczone postępowanie restrukturyzacyjne*. Art. 15–25 Tarczy 4.0. Komentarz, Warsaw 2020.

34 For further details see: R. Zawłocki, *Zarys prawa, Prawo karne gospodarcze*, Warsaw 2007, p. 40.

35 Euler Hermes report available at Raport EH website: *Niewypłacalności. Rekordowa skala niewypłacalności firm w Polsce*, [https://www.eulerhermes.com/pl\\_PL/o-nas/dzial-prasowy/wiadomosci/2021-01-26-raport-eh-rekordowa-skala-niewypłacalnosci-firm-w-polsce.html](https://www.eulerhermes.com/pl_PL/o-nas/dzial-prasowy/wiadomosci/2021-01-26-raport-eh-rekordowa-skala-niewypłacalnosci-firm-w-polsce.html) (20.08.2021).

36 Ustawa z dnia 30 sierpnia 2019 r. (Dz.U. z 2019 r. poz. 1802).

due to COVID-19 on the running of the 30-day period for filing a bankruptcy petition, specified in Article 21 of the Act of 28 February 2003, the Insolvency Law. The emergence of a state of insolvency gives rise to an obligation to file a bankruptcy petition within 30 days thereof. Failure to comply with this obligation carries a risk of civil as well as criminal liability. Pursuant to Article 586 of the Code of Commercial Companies, a person who, being a member of the company's management board or its liquidator, fails to submit a petition for the company's bankruptcy despite the fact that the conditions justifying the company's bankruptcy have arisen, according to the provisions of law, shall be subject to a fine, the penalty of restriction or deprivation of liberty for up to one year.

Euler Hermes reports that the Covid-19 pandemic, through significant changes in various business sectors, such as hospitality, air and road transport, are exposed to the so-called domino effect of insolvency, which means "a chain reaction that starts when an insolvent company is unable to meet its obligations towards its trading partners. In its simplest form, it is when a company is unable to settle accounts with customers and suppliers, leaving them with unpaid invoices."<sup>37</sup> This could lead to a 25% year-on-year increase in global insolvencies in 2021, according to the latest report "How to inoculate the economy"<sup>38</sup>. Provisions of a criminal nature, in the context of debtors' liability, are scattered in various legal acts. They are found in the Bankruptcy Law, *i.e.*, in Articles 522 (provision of false data) and 523 (failure to disclose accounts), as well as in the Criminal Code, in Article 300 (preventing or depleting satisfaction of a creditor), Article 301 (transfer of assets, leading to one's insolvency or bankruptcy), Article 302 (favouring creditors).

## Conclusion

One can venture to say that the COVID pandemic is a criminogenic factor shaping contemporary manifestations of economic crime. The economic situation of the State, including the legislation in force, is embedded in the aetiology of this type of crime. Undoubtedly, the world's economic slowdown, the bankruptcy of many companies, and the new policies of governments around the world are 'channelling' criminal trends. It seems that criminal trends are updated depending on whether we consider them on the basis of their national or transnational impact. Undoubtedly, at the national level, a real threat, which is difficult to identify, is the application for subsidies on the basis of anti-crisis shields by entities which *de iure* show the prerequisites for entitlement, but which *de facto* do not report real financial

37 Insolvency risk: understanding the domino effect of Covid-19, [https://www.eulerhermes.com/en\\_GL/news-insights/business-tips-and-trade-advice/insolvency-risk-and-covid-19-domino-effect-ebook.html](https://www.eulerhermes.com/en_GL/news-insights/business-tips-and-trade-advice/insolvency-risk-and-covid-19-domino-effect-ebook.html) (21.05.2021).

38 *Ibidem*.

problems. On the other hand, internationally, the development of organised pharmaceutical crime, in particular, at the expense of human health and life, through illegal distribution chains of vaccines and anti-COVID medicines, can be considered a significant effect of the pandemic.

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