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# Dialogue for Advancing Social Europe

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Report for  
Poland

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## 1. Introduction

This study was prepared in the framework of the “Dialogue for Advancing Social Europe – DIADSE” project (Supported by the European Commission - Industrial Relations and Social Dialogue Program, nr VP/2014/004 - VS/2013/0037). The Report intends to examine the effects of global financial crisis on the situation in Poland and the impact of institutional social dialog mechanisms on adopted measures, especially with effects on labour market.

It must be underlined that within analyzed time – that is years 2008-2015 – in Poland was **relatively stable political situation**. After winning parliamentary elections in 2007 and 2011, the Civic Platform (Platforma Obywatelska) and the party leader – Donald Tusk, replaced in Prime Minister Office in 2014 by Ewa Kopacz – cooperated in coalition with Polish People’s Party (Polskie Stronnictwo Ludowe). In 2015 new government was created by Law and Justice (Prawo i Sprawiedliwość) party. Among other factors, this change was due to highly expected social reforms that were not implemented by previous decision-makers and on the other hand – criticism over those introduced<sup>1</sup>.

During analyzed period we could observed floating interest of government in cooperation with social partners: quite effective cooperation in the first years, through total destruction of tripartite institutional dialog in 2013, and new legislative framework and opening in 2015. The Report presents details of this process.

### 1.1. Impact of financial and economic crisis – “green island in a sea of red”

The global financial crisis had a limited impact on the Polish economy with only a few negative effects. First the crisis hit the Warsaw stock exchange – in mid-2007 the WIG index peaked and then had declined approximately 70% by the spring of 2009. In the second half of 2008, the crisis have been tracked on capital markets<sup>2</sup>. In 2009 external demand declined for Polish commodities, but in the following years exports constantly grew<sup>3</sup>. Due to a continued rise in employment, internal demand was rather robust<sup>4</sup>. The investments trends waved:

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<sup>1</sup> The majority of the society was especially dissatisfied with the pension system reform, which is aiming at gradually increasing retirement age to 67, both for women and men (previously it was 60 and 65 respectively).

<sup>2</sup> Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III*, updated 6.04.2016, Financial results of banks – net turnover profitability rate (in %): 2008-6.8, 2009-8.2, 2010-10.3, 2011-12.8, 2012-10.4, 2013-11.3, 2014-12.0, 2015-9.5 (preliminary). See: <http://stat.gov.pl/en/poland-macroeconomic-indicators/>.

<sup>3</sup> *Ibidem*, Export of commodities (constant prices, previous year=100), updated 30.03.2016: 2008-106.8, 2009-92.0, 2010-113.2, 2011-108.1, 2012-103.4, 2013-106.5, 2014-106.7, 2015-107. In 2015 for the first time since 2000 balance of foreign trade turnover was positive for Poland.

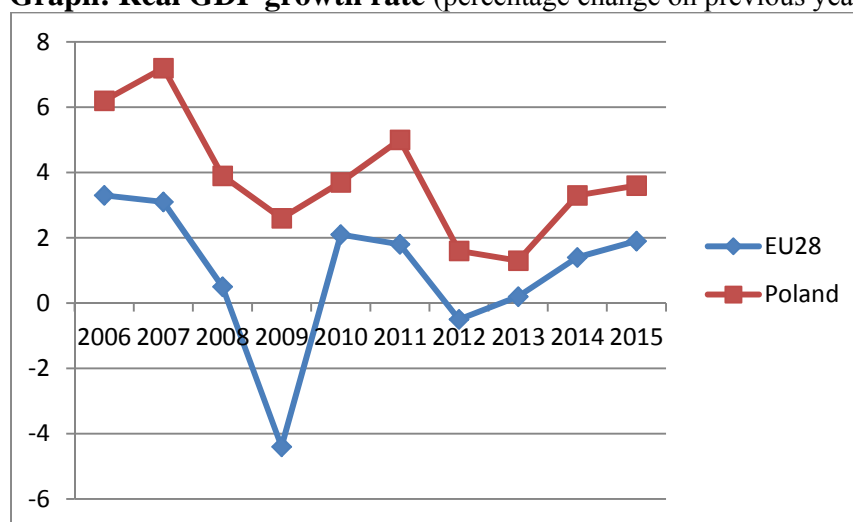
<sup>4</sup> *Ibidem*, Domestic trade (constant prices), total retail sales of goods (previous year=100), updated 23.10.2015: 2008-105.0, 2009-101.7, 2010-99.0, 2011-103.2, 2012-100.5, 2013-101.3, 2014-103.9.

generally slowed down in 2009 and 2010, than rose in 2011, and again came to a lower level in 2012 and 2013<sup>5</sup>, specific situations in different sectors applied<sup>6</sup>.

In 2008, the Polish economy seemed to be in good condition. In 2007, the real GDP growth rate was higher than 2006 by 7.2 %, and by 2005 - by 13.4%. In these and consecutive years, the growth was supported by different factors: timely fiscal and monetary stimulus; large depreciation of the Polish currency<sup>7</sup>; growing inflows of funds from the European Union; relatively large domestic economy – which limited the country’s exposure to falling international trade and sustained confidence among Polish consumer and entrepreneurs; diversified export structure; and a healthy banking sector.

Generally, the real economy and labour market were not devastated in Poland during the crisis, as it was in many other EU countries. To the contrary, if we compare Poland to EU28 general performance, in terms of GDP, we see a significant difference:

**Graph: Real GDP growth rate (percentage change on previous year)**



Source: EUROSTAT, extracted 16.03.2016

<sup>5</sup> *Ibidem*, Total investment outlays (constant prices, previous year=100), updated 28.12.2015: 2008-110.7, 2009-99.2, 2010-100.2, 2011-110.6, 2012-97.2, 2013-98.8, 2014-109.5.

<sup>6</sup> For instance: in construction after years of rapid growth, the decline and instability occurred (previous year=100): 2006-165.4, 2007-157.9, 2008-95.2, 2009-93.9, 2010-92.5, 2011-116.0, 2012-65.9, 2013-124.6, 2014-114.4; in real estate activities noticeable drop down occurred in 2009 and 2010 (previous year=100): 2008-107.2, 2009-95.9, 2010-94.4, 2011-101.2, 2012-107.9, 2013-108.8, 2014-103.9. *Ibidem*, Total investment outlays.

<sup>7</sup> By early 2009 the Polish zloty had lost some of one-third of its value with respect to the euro.

Poland was the only EU country that recorded positive growth in 2009<sup>8</sup>. Poland succeeded to have continuously growth, since 2008 until 2015 by 25 %. Gross domestic product slowly, but quite steadily, was positively changing.

**Table: Gross domestic product (GDP)**

Gross domestic product per capita								
year	2008	2009	2010	2011	2012	2013	2014	2015
current prices, in zł	33 741	35 658	37 517	40 662	42 274	43 020	44 672	46 546
Gross domestic product per capita in PPS								
year	2008	2009	2010	2011	2012	2013	2014	2015
EU28=100	55	59	62	64	66	67	68	-
Gross domestic product								
year	2008	2009	2010	2011	2012	2013	2014	2015
constant prices (previous year=100)	104.2	102.8	103.6	105.0	101.6	101.3	103.3	103.6

Source of data: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III, National Accounts*, updated 17.06.2016

## 1.2. Public deficit and special measures

Poland did not use the good economic times (2006-2008) to consolidate its public finances. Based on the notification by the Polish authorities of a 2008 government deficit of 3,9 % of GDP, on 7 July 2009 the European Council decided on the **existence of an excessive deficit** and recommended its correction by 2012.

The structural government deficit reached 7% of GDP in 2009. The significant deterioration from a deficit in 2008 reflects to large extent the impact of the crisis on government finances, but was also brought about by stimulus measures amounting to about 2 % of GDP which the government implemented in 2009 in line with the European Economic Recovery Plan<sup>9</sup>. A personal income tax cut (decided in 2007), an increase of public investment, and an indexation of social transfers were the main elements of the stimulus. On the other hand, the deficit outturn in 2009 would have been even worse if deficit-reducing measures estimated at about 1,5 percentage point had not been implemented (reduction of administrative expenditure and increase of dividends from State-owned enterprises). Despite these measures,

<sup>8</sup> For explanation see i.a.: M. Gradzewicz, J. Growiec, M. Kolasa, Ł. Postek, P. Strzelecki, *Poland's exceptional performance during the world economic crisis: New growth accounting evidence*, NBP Working Paper No. 186, 2014, [http://www.nbp.pl/publikacje/materialy\\_i\\_studia/186\\_en.pdf](http://www.nbp.pl/publikacje/materialy_i_studia/186_en.pdf).

<sup>9</sup> Communication from the Commission to the European Council, 26.11.2008, COM(2008)800 final.

the structural balance deteriorated by more than 2 percentage points of GDP in 2009, also reflecting over spending in some general government subsectors and unfavorable growth composition<sup>10</sup>.

Although Poland missed the 2012 deadline, it had made a fiscal effort over the 2010-12 period that exceeded the recommended level. In June 2013, the Council extended the deadline for correcting the deficit by two years, to 2014 and again, in December 2013, by another year – to 2015.

One of the major reforms tackling at reducing public deficit was **pension reform**. From 2013 such a pension reform, passed shortly after parliamentary elections in 2011, was being implemented, rising gradually retirement age to 67 (previously retirement age was 65 for men and 60 for women). Level of 67 will be reached in 2020 – men, and in 2040 – women. The new law was negatively assessed by Polish trade unions. Mass protests on the streets and parliament occupation was seen as a halt in effective social dialogue in Poland.

Other measures aimed at counteracting excessive deficit was **freezing salaries in the public administration**. Actually only in 2016 additional resources were given to part of public servants, that is civil servants (governmental administration).

In order to reduce public spending between 2011 and 2014 the **resources of the Labour Fund**, aimed at counteracting unemployment, were frozen and their spending was extremely **limited**. In 2011 Labour Fund spending was 28% less compared to 2010, however spending on active forms of counteracting unemployment were reduced by half. The most affected were small and medium enterprises, which almost lost all public support for employees' trainings. In general such a situation as regards Labour Fund negatively affected the capabilities of labour offices to actively counteract unemployment in Poland<sup>11</sup>.

On 19 June 2015, the Council closed excessive deficit procedure for Poland, confirming that it had reduced its deficit below the EU's 3% of GDP reference value. Thus the EU abrogated previous decision on the existence of excessive deficit in Poland<sup>12</sup>.

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<sup>10</sup> Council Opinion on the updated Convergence Programme of Poland, 2009-2012 (2010/C 143/04).

<sup>11</sup> See more: I. Ostoj, *Przeciwdziałanie bezrobociu w warunkach narastającej nierównowagi sektora finansów publicznych – wybrane problemy* [Counteracting unemployment in conditions of a rising imbalance of public sector finances – chosen problems], published in Internet: [http://www.ue.katowice.pl/fileadmin/migrated/content/uploads/12\\_I.Ostoj\\_Przeciwdzialanie\\_bezrobociu\\_w\\_warunkach\\_narastajacej.pdf](http://www.ue.katowice.pl/fileadmin/migrated/content/uploads/12_I.Ostoj_Przeciwdzialanie_bezrobociu_w_warunkach_narastajacej.pdf) (access on 7.8.2016).

<sup>12</sup> See: [http://ec.europa.eu/economy\\_finance/economic\\_governance/sgp/deficit/countries/poland\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/sgp/deficit/countries/poland_en.htm)

**Table: Public finances**

Year		2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Relation of deficit of public finance sector to GDP	in %	-2,1	0,1	-1,6	-3,7	-5,9	-3,6	-2,3	-3,0	-2,3	-2,5
Relation of debt of public finance sector to GDP	in %	47,3	44,4	46,5	48,8	51,8	52,0	51,6	53,3	48,1	49,0

Source: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III*, updated 24.06.2016

### 1.3. Labour market situation

As mentioned above, the situation did not call for immediate emergency policy measures. Nevertheless, some changes in the labour market were introduced and were more pronounced, although most of them were not motivated directly by the crisis.

There are some well-established challenges that require state intervention, as an ageing society<sup>13</sup>, a clear mismatch of skills to the rapidly changing labour market, occurring dualism and twice higher unemployment among young people in comparison to the overall unemployment rate<sup>14</sup>.

Besides that, one of the biggest structural problem of Polish labour market is low labour participation, far below 75% EU target<sup>15</sup>. Although, in analyzed period, since 2008, a trend of continued labour participation increase could have been observed. There are some factors to justify the process<sup>16</sup>, which – on the other hand – accelerated, for a time, unemployment rate

<sup>13</sup> The age structure of the population is changing. The median age of the population in 2008 amounted to 37.5 years, comparing to 2000 when it was 35.4. Over the past several years, systematic decrease in the percentage of population in pre-working age (0-17 years) to 19.0% in 2009 was observed, against 24.4% in 2000. At the same time there has been a weakening growth rate of the working age population and further increase in the number of people in retirement age. In 2009 they accounted for 16.5% of the population, i.e. by 1.7 percentage point more than in 2000. In addition, an increase in working age population is observed, from 60.8% in 2000, to 64.5% in 2009.

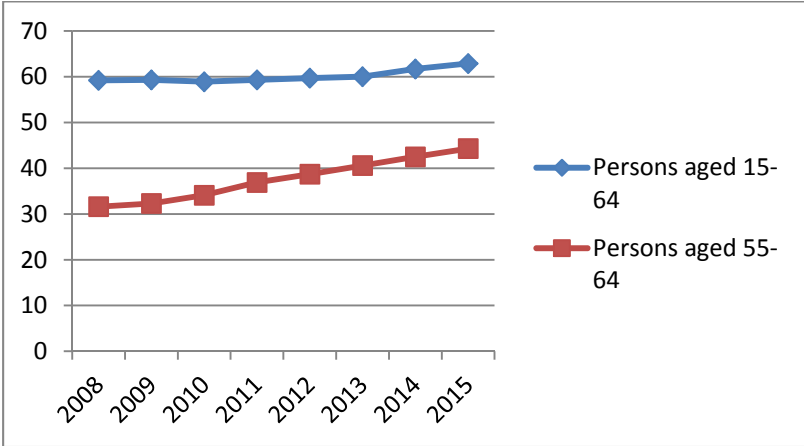
<sup>14</sup> It is worth to look at government documents: National Strategy Action Plans for Employment - according to the Act of 20 April 2004 on employment promotion and labour market institutions, such a plan, adopted by the Council of Ministers, including rules for the implementation of the European Employment Strategy, provides the basis for implementation of the tasks of the state in the field of employment promotion, mitigating the effects of unemployment and professional activation. See: <http://www.mpips.gov.pl/praca/strategie-i-dokumenty-programowe/>

<sup>15</sup> One of the EUROPE 2020 target for the EU for 2020 75% of the 20-64 year-olds to be employed.

<sup>16</sup> See: Gajewski, Paweł. *Labour Market Measures in Poland 2008-2013: the Crisis and Beyond*. Geneva: ILO, 2015, p. 8.

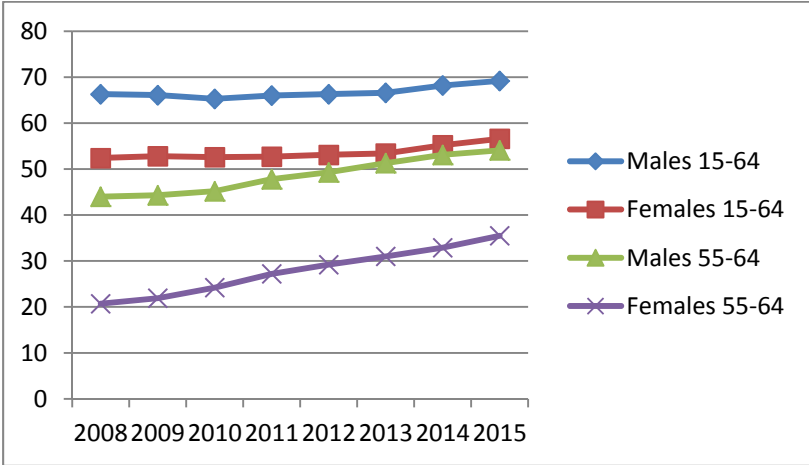
statistics (below): 1. early retirement schemes were limited<sup>17</sup> and special measures were implemented to encourage older persons activity<sup>18</sup>, 2. the disability pension system was tightened up, which resulted in a gradually declining number of beneficiaries, 3. abolition of military conscription in 2008 allowed the youngest persons (15-24) to be more active, 4. returning from other EU countries of some economic migrants during 2008-2010.

**Graph: Total employment rate of persons by Labour Force Survey (by age, in %)**



Source of data: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III, Labour Market*, updated: 24.06.2016

**Graph: Total employment rate of persons by Labour Force Survey (by gender, in %)**



Source of data: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III, Labour Market*, updated: 24.06.2016

<sup>17</sup> Since 1<sup>st</sup> January 2009 women under the age of 55 and men under the age of 60 were no longer eligible for early pension entitlements. As the exemption, the “bridging pensions” were introduced for persons that started work before 1999 and have at least 15 years of job seniority in special conditions or character.

<sup>18</sup> *Governmental Programme 50+ Solidarity between generations*. First adopted in 2008, amendment in 2013. The Programme is aiming at increasing the employment rate of persons 55-64 to 50% until 2020.



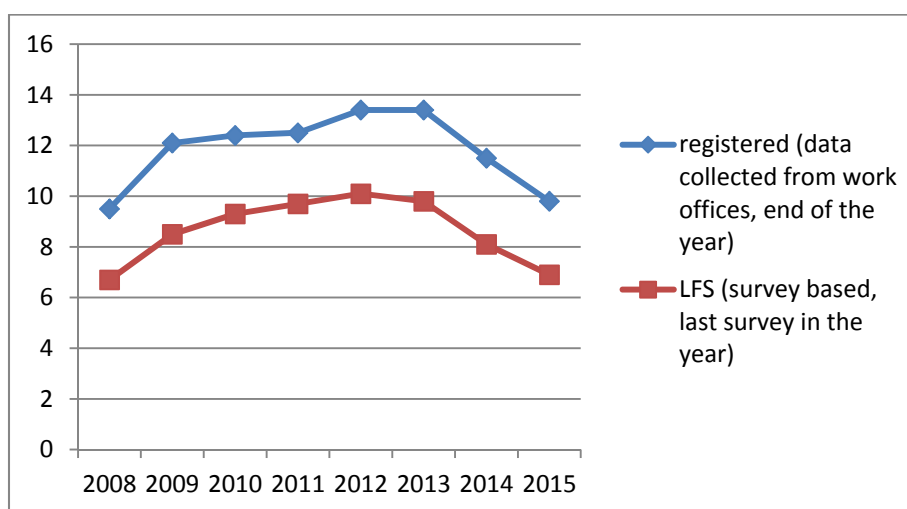
**Table: Employed persons in the national economy (end of period)**

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015
In thous.	13 771.1	14 037.2	13 782.3	14 106.9	14 232.9	14 172.0	14 244.3	14.563.4	14 802.6
Previous year=100%	104.2	101.9	98.2	102.4	100.9	99.6	100.5	102.5	101.6

Source of data: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III, Labour Market*, updated: 4.07.2016

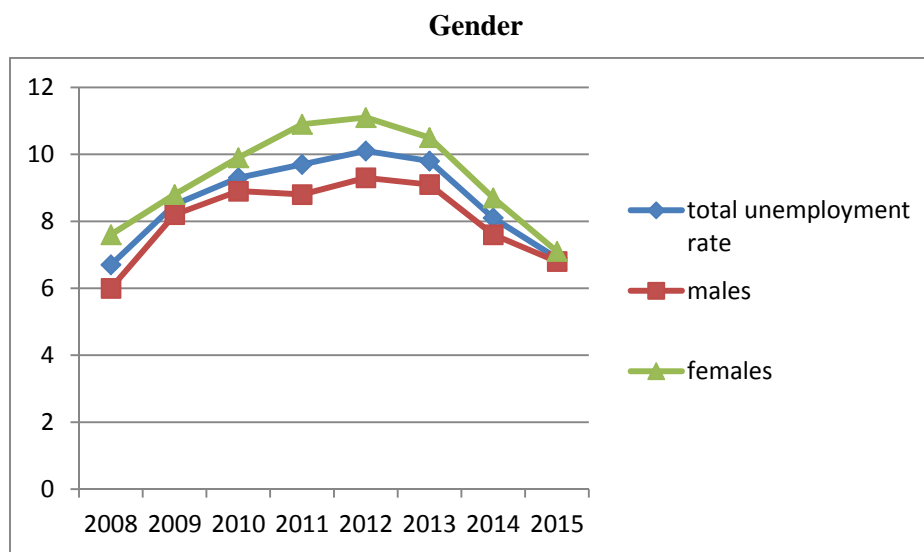
Limited impact of the global recession on the Polish economy, and therefore on the Polish labour market in 2008-2010, could be clearly distinguished from those registered in the past (especially in 2001-2002) fluctuations in the level of employment and unemployment, when the economic downturn with a similar depth resulted in a much stronger labour market adjustments. During the last crisis a significant increase in the number of people losing their jobs was not observed, a rise in unemployment resulted mainly from the reduction in demand for new workers, which affected mostly young people who should enter into the labour market.

**Graph: Total unemployment rate**

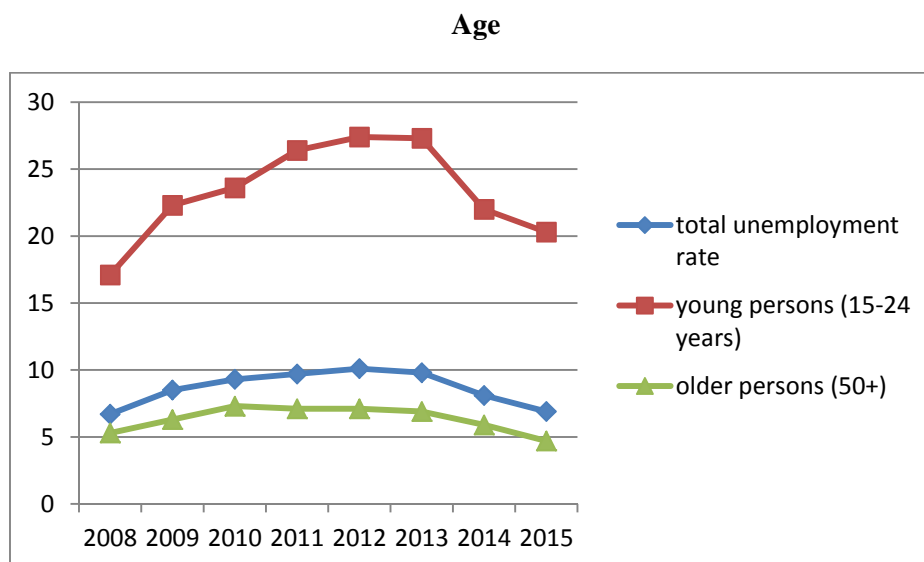


Source of data: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III, Labour Market*, updated: 24.06.2016

**Graph: Total unemployment rate by Labour Force Survey<sup>19</sup> (last survey in the year, in %)**



Source of data: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III, Labour Market*, updated: 24.06.2016



Source of data: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III, Labour Market*, updated: 24.06.2016

**Table: Unemployment**

Year		2007	2008	2009	2010	2011	2012	2013	2014	2015
Total registered unemployed persons (end of the year)	in thous.	1 746.6	1 473.8	1 892.7	1 954.7	1 982.7	2 136.8	2 157.9	1 825.2	1 563.3
males	in thous.	729.2	640.4	926.3	939.9	922.5	1 037.6	1 058.4	885.5	747.2

<sup>19</sup> Labour Force Survey is said to be adjusted for the shadow-economy employment and eliminate those who register only to be covered by social insurance, but do not really seek for employment (inactive in LFS).

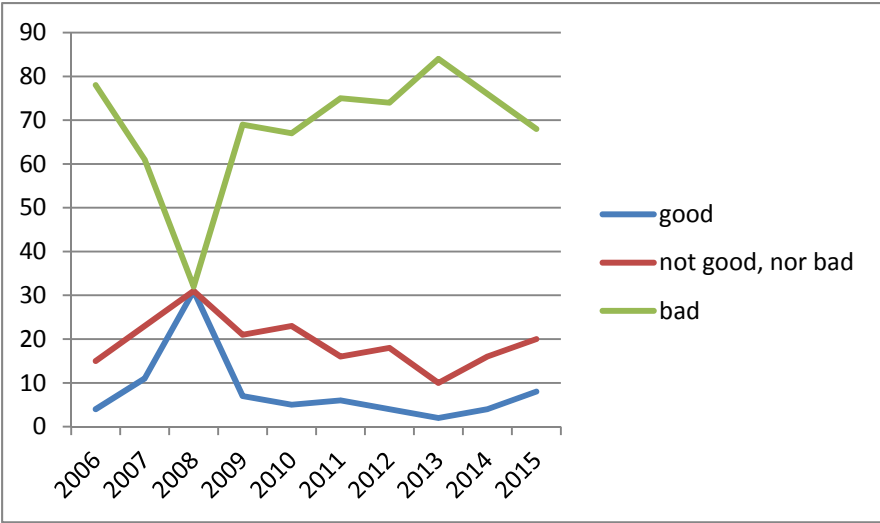
females	in thous.	1 017.3	833.4	966.4	1 014.8	1 060.2	1 099.2	1 099.5	939.6	816.1
Total registered unemployed persons (end of the year)	in %	11.2	9.5	12.1	12.4	12.5	13.4	13.4	11.5	9.8
Total unemployment rate by LFS (last survey in the year)	in %	8.5	6.7	8.5	9.3	9.7	10.1	9.8	8.1	6.9
males	in %	7.8	6.0	8.2	8.9	8.8	9.3	9.1	7.6	6.8
females	in %	9.4	7.6	8.8	9.9	10.8	11.1	10.5	8.7	7.1
Young persons (15-24)	in %	18.7	17.1	22.3	23.6	26.4	27.4	27.3	22.0	20.3
Older persons (50+)	in %	7.0	5.3	6.3	7.3	7.1	7.1	6.9	5.9	4.7
Unemployment rate by LFS in urban areas (last survey in the year)	in %	8.8	6.9	8.6	9.5	9.7	10.2	9.8	7.8	6.5
males	in %	8.1	6.3	8.4	9.3	9.1	9.6	9.4	7.6	6.5
females	in %	9.7	7.6	8.9	9.7	10.4	10.9	10.3	8.1	6.5
Unemployment rate by LFS in rural areas (last survey in the year)	in %	8.0	6.4	8.2	9.0	9.8	10.0	9.7	8.5	7.6
males	in %	7.3	5.5	7.9	8.1	8.5	9.0	8.8	7.6	7.2
females	in %	9.0	7.7	8.7	10.2	11.6	11.3	10.9	9.8	8.2
Total long-term unemployment rate by LFS	in %	4.9	2.4	2.5	3.0	3.6	4.1	4.4	3.8	2.9
males	in %	4.6	2.0	2.2	2.9	3.3	3.7	4.0	3.6	2.9
females	in %	5.4	2.8	2.9	3.2	4.0	4.6	4.8	4.1	3.0

Source of data: Central Statistical Office for Poland (GUS), *Annual macroeconomic indicators. Part III, Labour Market*, updated: 4.07.2016

It is also worth looking at opinions on labour market situation as to a large degree social assessment reflect reality. After a substantial increase in satisfaction, recorded in the years 2006-2008, in 2009 – with the arrival of the first wave of economic crisis in Europe – opinions about the domestic labour market significantly deteriorated and began visible downward trend, which, however, in subsequent years slowed down quite considerably, with the exception of 2013, when again the economic situation worsen<sup>20</sup>.

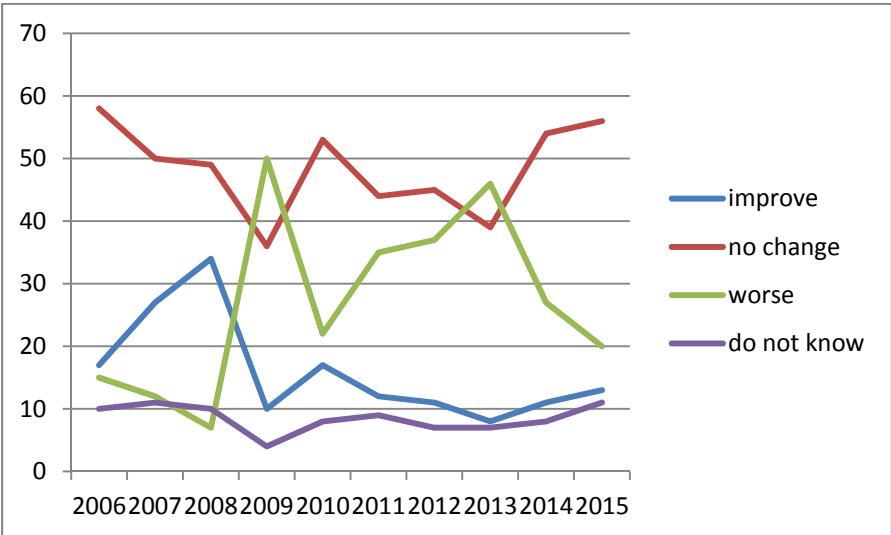
<sup>20</sup> *Oceny sytuacji na rynku pracy i poczucie zagrożenia bezrobociem [Assess the situation on the labor market and a sense of threat unemployment]*, CBOS: Warszawa 2015, nr 53/2015.

**Graph: Opinions on labour market situation (in %)**



Source: CBOS, 2015.

**Graph: How the situation on labour market is going to change (in %)**



Source: CBOS, 2015.

The increasing tendency both in the world and in Poland is replacing full-time employment with various forms of labour relations. **Non-regular employment** – that is all forms of employment that do not benefit from the same degree of protection against contract termination as permanent employees with open-ended contracts<sup>21</sup> – is a **common feature of**

<sup>21</sup> Temporary employment: 1. fixed-term contracts and temporary-work-agency (TWA) employment, 2. casual contracts and 3. contracts for services regulated by commercial law but entailing conditions of work that are similar to those of employees (dependent self-employed workers, DSEWs). Definition as of *OECD Employment Outlook 2014*, see [http://www.oecd-ilibrary.org/employment/oecd-employment-outlook-2015\\_empl\\_outlook-2015-en;jsessionid=6lag6c3oii481.x-oecd-live-02](http://www.oecd-ilibrary.org/employment/oecd-employment-outlook-2015_empl_outlook-2015-en;jsessionid=6lag6c3oii481.x-oecd-live-02).

**the Polish labour market.** The share of temporary contracts (including civil-law contracts) was on an upward trend since the early 2000s, and since 2006 it has been fluctuating between 25% and 30%, which is among the highest rates in EU countries<sup>22</sup>. Fixed-term contracts are the most common way to ensure more flexible employment. Some companies apply them with the high rate of turnover as a way to loosen up labor costs.

The partial abuse of self-employment and contracts which are not governed by labour law appear to be a cause of labour market segmentation and in-work poverty<sup>23</sup> – as they are predominantly offered to low-skilled workers or people from specific groups (especially young people) – which also reaches high numbers compared to other EU Member States.

Non-regular, temporary jobs provide a useful buffer of adjustment and flexibility for employers in case of uncertain or fixed-term activities. Above all, they are generally less costly for an employer, which is especially attractive for those who do not need to build high-skilled, sustainable company human resources. It should be noted that sometimes this form of employment is a genuine, voluntary choice of a person. Quite often, however, it is forced and offered as the only solution<sup>24</sup>.

According to official data for 2014, about 1.1 million persons were self-employed and 1.3 million were employed on civil-law contracts<sup>25</sup>. In another research study, performance in 2014 of any work in atypical form of employment declared 1.087 million people, which accounted for 6.9% of total number of working people. For 700 000 thousand people (4.4% of all working) this form was their primary employment, 80.2% of them declared that working

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<sup>22</sup> Employees with limited duration contracts accounted for 14.0 % of all employees in the EU. Compared with 2013, the proportion did not change significantly (+0.3 pps). The highest proportions were recorded in Poland (28.4 %), Spain (24.0 %), the Netherlands (21.7 %) and Portugal (21.4 %), while it was below 5 % in Romania (1.5 %), Lithuania (2.8 %), Estonia (3.2 %) and Latvia (3.3 %), *European Union Labour force survey - Annual results 2014*, EUROSTAT.

[http://ec.europa.eu/eurostat/statistics-explained/index.php/Labour\\_market\\_and\\_Labour\\_force\\_survey\\_\(LFS\)\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Labour_market_and_Labour_force_survey_(LFS)_statistics).

<sup>23</sup> See: EUROSTAT data: *People at risk of poverty and social exclusion* and *In-work poverty*, <http://ec.europa.eu/eurostat/web/income-and-living-conditions/data/database>.

<sup>24</sup> See: *Sytuacja zawodowa Polaków [Professional situation of Poles]*, CBOS: Warszawa 2015, nr 147/2015. According to this research on representative group of people almost half of the active population is employed under a labour-law contract of indefinite duration (49%), one-fifth (19%) has a fixed-term contract, one in eight (12%) conducts own business, and every eleventh is working (9%) is own farm. One tenth (10%) is employed under civil-law contracts. 5% are working without a formal contract. The majority (81%) is satisfied with the type of the contract, although it declines depending on the form of the contract: open-ended contract 94%, self-employment – 89%, farmers – 74%, fixed-term labour-law contracts – 70%, and only 53% are pleased to work on the basis of civil-law contract. On the other hand, 59% of the last group would not decide to change the type of agreement which would result in wage lowering because of additional public dues, one third however would rather have labour-law contract.

<sup>25</sup> GUS (Central Statistical Office), *Wybrane zagadnienia rynku pracy. Notatka informacyjna*, 10.12.2015. Estimates based on corporate reporting and administrative systems (Ministry of Finance and the ZUS - Social Insurance Institution) data.

on civil-law contracts was not their choice; for self-employed – this concerned 51.3% people. In total, primary employment on civil-law contracts or self-employment without the possibility to choose another form of employment, accounted for 3.3% of all working people<sup>26</sup>.

Having acknowledged the labour market trend, the Chief Labour Inspectorate took up special measures. Within the Inspectorate control duties have been found to be of the least concern for companies employing 250 or more people, while the biggest concern for small(micro) and medium-sized companies when trying to conclude civil-law contracts. This problem was most often confirmed in construction companies (48.9% audited contracts), engaged in the industrial processing (40.4%), in trade and repairs (32.3%), and transport and storage (30.4%)<sup>27</sup>.

The problem was present in social partners agenda and much activity was focused on the issue of atypical form of employment.

## **2. Main domestic labour and social law reforms**

### **2.1. Before the crisis: reduction of tax wedge**

Some decisions are relevant to be indicated, i.e.: a) a two-stage (2007 and 2008) reduction of disability contributions in total by 7 basis points (from 13% to 6%) and increased from 6% to 8% in 2012, b) restoration (2007) of the indexation of tax thresholds in PIT, the tax-free amount and revenue-earning costs, c) introduction (in 2009) of two personal income tax (PIT) rates 18% and 32% instead of three 19%, 30% and 40% before the change<sup>28</sup>.

### **2.2. Labour law measures to tackle the crisis**

#### **2.2.1. Act on mitigating the effects of economic crisis on employees and enterprises**

The major change in the legislative framework, considered as a response to the forthcoming economic crisis, was the Act of 1<sup>st</sup> July 2009 on mitigating the effects of economic crisis on

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<sup>26</sup> GUS (Central Statistical Office), *Pracujący w nietypowych formach zatrudnienia. Notatka informacyjna [Working in atypical forms of employment. Information note]*, 27.01.2016. Module research - based on a sample, lower scores obtained compared to the results based on administrative data.

<sup>27</sup> It must be noticed that findings made during the inspections are not survey based on a random sample. See: Państwowa Inspekcja Pracy (Chief Labour Inspectorate), *Ocena skali zjawiska zawierania umów cywilnoprawnych i zatrudnienie w szarej strefie [An assessment of a scale of phenomenon of civil law contracts and employment in a grey zone]*, 2016.

<sup>28</sup> P. Strzelecki, R. Wszyński, *Poland's labour market adjustment in times of economic slowdown – WDN3 survey results. NBP Working Paper No. 233*. Warsaw, 2016, p. 71.

employees and enterprises (referred further: Anti-crisis Law)<sup>29</sup>. The Anti-crisis Law entered into force on 22 August 2009 and, as a provisional act, was due to expire at the end of 2011. It introduced **provisions on working time arrangements and access to public aid**. Most of the arrangements were addressed to all entrepreneurs, while some only to those in “**temporary economic difficulties**”. Certain conditions should have been met to be considered as such entrepreneur, in particular: decrease in sales by at least 25% experienced over three consecutive months after 1 July 2008, compared to the same three months between 1 July 2007 and 30 June 2008 (in October 2010 the threshold was lowered to 15%<sup>30</sup>); no arrears in regulating mandatory public dues; on 1 July 2008 not in position of economic difficulties; reparative programme with an aim to improve the situation during consecutive year is prepared (as set forth in Clause 3).

The Anti-crisis Law introduced **measures on working-time allowed to be used by all entrepreneurs**:

#### 1. **Extending working hours settlement period to 12 months**<sup>31</sup>

According to Anti-crisis Law working hours settlement period could be extended up to 12 months, provided that technological regime or mode of work organization made such a change reasonable and all general principles concerning safety at work are guaranteed (Clause 9, item 1).

In order to make use of the 12-month settlement period, the employer had to fulfil the following conditions:

- 1) ensure that extension of the settlement period does not abuse the general right of employees to daily (11 hours a day) and weekly rest (Clause 9, item 3), and
- 2) ensure that monthly remuneration received by the employees is not lower than statutory national minimum wage (Clause 9, item 4.1), and

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<sup>29</sup> The Act of 1<sup>st</sup> July 2009 (Journal of Laws No. 125, item 1035) - Ustawa z dnia 1 lipca 2009 r. o łagodzeniu skutków kryzysu ekonomicznego dla pracowników i przedsiębiorców (Dz.U. Nr 25, poz. 1035). The Act introduced amendments to some other acts, i.e. Act of 26 July 1991 on personal income tax; Act of 15 February 1992 on corporate income tax; Act of 20 April 2004 on promoting employment and labour market institutions; Act of 13 July 2006 on protection of employees claims in the event of insolvency of their employer.

<sup>30</sup> The Act of 29<sup>th</sup> October 2010 (Journal of Laws No. 219, item 1445), which amended respectively the Anti-crisis Law.

<sup>31</sup> Regular provisions, as set by the Labour Code, were as follow: Working hours settlement period cannot exceed 4 weeks – in case of continuous workflow; 1 month – in case of weekend and shortened working week as well as in the equivalent working time system; 4-months – in the basic, task, and revolving working time system; 6-months – in farming and agriculture, and in security services; 12-months – in unusual work organisational and technical conditions influencing work process.

- 3) individual work schedules might be drawn for a period shorter than 12 months but lasting for at least two months (Clause 9, item 4.2), and
- 4) introduction of an extended settlement period had to be consulted with trade unions, or in case of absence of such, with employee representatives. If the employer had a collective agreement in place, then the changes would have to be incorporated into the agreement (Clause 9, item 5-6).

## **2. Flexibility of daily working time – individual work-schedule for the crew or the individual employee**

According to Anti-crisis Law it was allowed to vary the time of commencing work and finishing work (the work may be resumed) during the day, with no obligation on the part of employer ensuring to pay overtime (Clause 10, item 1)<sup>32</sup>. It had to be guaranteed that such regulations of daily working time do not abuse the general right of employees to daily and weekly rest (Clause 10, item 2). Flexible daily working-time could be introduced both by decision of an employer and upon request of employees. If the initiative came from the employer, then trade unions, or in case of absence of such, employee representatives had to be consulted (Clause 10, item 3-4). On the other hand, if employee who takes care of a child up to 14 years old or other dependent person wished to be granted a flexible daily working-time, the request ought to be accepted by the employer, unless the organization of work in the workplace and/or nature of the employee's job prevented such a solution (Clause 11, item 2).

## **3. Fixed-time employment contract, and unlimited number of such contracts between the same parties, allowed for up to 24 months**

The Anti-crisis Law set no limits on the number of fixed-time employment contracts, provided their combined duration does not exceed 24 months and the brake between two consecutive contracts lasted for no more than 3 months (Clause 13)<sup>33</sup>. The aim was to restrict temporary job contracts between the same parties.

Fixed-time employment contracts running as of the day of the Anti-crisis Law coming into force, i.e. 22<sup>nd</sup> August 2009, would be dealt with under the new, temporary regulation which allowed for unlimited number of fixed term contracts (Clause 35, item 1 and 2). After the Anti-crisis Law expired, i.e. those fixed-time employment contracts running as of 1 January

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<sup>32</sup> In comparison to the Labour Code – for the purpose of daily working time calculation, a day lasts for 24 hours beginning from the commencement of work in line with the work schedule. Even if the employee may take advantage of 11 hour daily rest but resumes work within the same day, he/she is entitled to overtime pay.

<sup>33</sup> In comparison to the Labour Code – only two consecutive fixed-time employment contracts were allowed, the third contract by virtue of law becomes permanent.



2012, should be governed by the temporarily suspended Clause 25<sup>1</sup> of the Labour Code, which meant that third contract is open-ended (Clause 34, item 2).

The Anti-crisis Law also included **measures on working-time available only to entrepreneurs in temporary economic difficulties**. Two interesting options were introduced:

### 1. Working-time reduction

The Anti-crisis Law allowed to reduce working time and remuneration without the obligation to amend the labour contract respectively<sup>34</sup>. As the above mentioned regulations, working time reduction had to be consulted with trade unions, or in case of absence of such, with employee representatives. If the employer had a collective agreement in place, then the changes would have to be incorporated into the agreement. Moreover, the following conditions had to be pre-determined: the job groups to be affected, scale of working time reduction, and length of period for which the working time was reduced. The regular working time could be reduced by half at most and the measure could not be used for more than six months (Clause 12).

### 2. Economic downtime

The employee, upon his/her individual consent, during inactivity for reasons not related to him/her and while being ready for work, is entitled to benefit and salary which together are no lower than minimum national wage (Clause 4).

The second group of exceptional regulations offered some **forms of public aid** for such entrepreneurs. The Anti-crisis Law secured support by subsidizing employees pay in certain circumstances and by introducing possibility of co-financing mandatory public dues. These measures were to be financed by the Guaranteed Employee Benefits Fund (Fundusz Gwarantowanych Świadczeń Pracowniczych) and were dedicated to **employees** (Clause 14 item 1.1): subsidies to cover part of the remuneration of staff off work due to temporary halt in operations paid for up to six months in the amount of the unemployment benefit; compensation for the part of remuneration lost due to a reduction in working time, paid for up to six months in the amount of up to 70 % of the unemployment benefit, depending on the scale of reduction, and to **employers** (Clause 14, item 1 2-3): subsidies available to employers for the purpose of mandatory dues to be paid to the social security system; new conditions under which overdue payment to the Guaranteed Employee Benefits Fund (Fundusz

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<sup>34</sup> In comparison to the Labour Code – working time reduction and parallel reduction of the remuneration required amending of the labour contract, in which the new, lowered amount of working time would be defined, or replacing the current contract with a new one (art. 42 § 1-3).

Gwarantowanych Świadczeń Pracowniczych) may be re-paid by employers. The conditions under which the employers might apply for financial support were specified by the Ordinance of the Minister of Labour and Social Policy regarding eligibility to and rules of granting aid to the entrepreneurs suffering from temporary economic difficulties from the Guarantee Employee Benefits Fund<sup>35</sup>.

The Anti-crisis Law stipulated also that the entrepreneur in temporary economic difficulties, who established internal training fund, may apply for support to extend his/her ability to invest in human capital development. Based on Clause 26 of the Anti-crisis Law, the Ordinance of the Minister of Labour and Social Policy<sup>36</sup> was issued, specifically defining the terms and conditions under which employers in temporary economic difficulties might take advantage of the public subsidies from the Labour Fund (Fundusz Pracy) to cover the costs of vocational training and continuous education. The employer could be entitled to have co-financed the costs of vocational training and of post-graduate courses at university level for the employees up to the level of 80%, however the maximum amount of support granted could not exceed the level of 300% of the gross national average pay. In the event of the employer being granted support, the Labour Fund might also participate in the costs of scholarships and social security dues paid from such scholarships. The employee could be trained within the period of working time reduction or temporary halt in operations, but was entitled only to one benefit from public funds.

Employee was protected within the period when public aid was applied in individual case and within maximum period of six consecutive months - employer could not terminate the employment contract for reasons not concerning the employee (Clause 6).

### **2.2.2. Act on specific measures aiming at work-places protection**

The effects of Anti-crisis Law were taken into account when another act was drafted, with a similar basic aim, i.e. **supporting employment in temporary economic difficulties**. The Act of 11<sup>th</sup> October 2013 on specific measures aiming at work-places protection<sup>37</sup> (referred further: Act on Protection) allow to use of previously applied measures of working time reduction and temporary halt in operations. Public aid was envisaged from Guaranteed Employee Benefits Fund (Fundusz Gwarantowanych Świadczeń Pracowniczych) and Labour

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<sup>35</sup> Ordinance of 24<sup>th</sup> August 2009, Journal of Laws No. 135, item 1112.

<sup>36</sup> Ordinance of 24<sup>th</sup> August 2009, Journal of Laws No. 136, item 1119.

<sup>37</sup> Ustawa o szczególnych rozwiązaniach związanych z ochroną miejsc pracy, Journal of Laws 2013, item 1291.

Fund (Fundusz Pracy), in order to maintain the employment and encourage training of employees in times of working-hours reduction.

Measures are at disposal for entrepreneur who encounter decrease in sales by at least 15% experienced over six consecutive months within 12 months before applying for public aid (Clause 3, item 1)<sup>38</sup>. The entrepreneur should also meet further conditions, i.e. no arrears in regulating mandatory public dues or is able to present how these arrears might be regulated and there are no prerequisites for the bankrupt Tripartite Commission announcement.

According to the Act on Protection the conditions of applying temporary halt in operations or working time reduction have to be consulted with trade unions, or in case of absence of such, with employee representatives. If the employer has a collective agreement in place, than the changes have to be incorporated into the agreement. Moreover, further conditions have to be pre-determined: job groups to be affected, the scale of working time reduction, and length of period for which special measures are to be in force.

When these provisions apply, an employee is entitled to salary which is not lower than the minimum national wage. It is financed by the Guaranteed Employee Benefits Fund - maximum by 100% of unemployment benefit, and employer. Social benefits are also covered from the this Fund (Clause 5). These measures and public aid may be in force for no more than six months, within twelve months from signing the agreement between the entrepreneur and voivodship marshal. The employee cannot be made redundant within the period when public aid is granted and up to three months afterwards (Clause 13), from the reasons that are not on his/her side.

The entrepreneur, who is in the course of an above mentioned agreement, may also apply for public aid from Labour Fund for support of vocational training of his/her employees, if such training is properly justified by present or future needs of the company. This aid may be up to the level of 80%, however the maximum amount of support granted per person could not exceed the level of 300% of the gross national average pay.

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<sup>38</sup> Special conditions were also introduced when Russia Federation entered into force limitations on trade with Poland (Clause 3, item 1a – for years 2015-2017).

### 2.2.3. Amendments to the Labour Code

The Act of 12<sup>th</sup> July 2013<sup>39</sup> introduced important changes to provisions on working-time to make them more flexible. Above all, temporary regulation from the Anti-crisis Law was introduced to the Labour Code, i.e. the possibility of **extending working hours settlement period up to 12 months**, provided that technological regime or mode of work organisation made such a change reasonable and all general principles concerning safety at work are guaranteed. The employer has to create, with some exceptions, working time schedules for at least one month and inform employee one week ahead at the latest (art. 129). It is important to underline, that when an employee does not work in a certain month according to the schedule, he/she is still entitled to remuneration of an amount no less than the minimum national salary.

The second important regulation introduced, that could previously be found in the Anti-crisis Law, is that which allow for **more flexible daily working time**. There are two options for implementing flexible working hours, which cannot abuse the general right of employees to daily and weekly rest: allowing different time for commencing work or indicating interval when an employee decides to start working in the scheduled working-days (art. 140<sup>1</sup>).

Introduction of an extended settlement period and flexible daily working time has to be consulted with trade unions, or in case of absence of such, with employee representatives. If the employer had a collective agreement in place, than the changes would have to be incorporated into the agreement. Agreement on extending working hours settlement period has to be also notified to the Regional Labour Inspectorate (art. 150).

The Act of 25<sup>th</sup> July 2015<sup>40</sup> adopted provisions aiming at **limitation of unjustified use of temporary contracts**. After the law entered into force<sup>41</sup>, the maximum period of a temporary work agreement between the same parties is 33 months, and 3 months for a trial period<sup>42</sup>. According to law, no more than 3 contracts may be concluded as temporary work agreements – as the fourth is treated as open-ended contract<sup>43</sup>. The aim of these new provisions is to limit abuse of atypical forms of employment, through reducing the asymmetric conditions for entering and solving permanent contracts and other types of contracts.

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<sup>39</sup> Journal of Laws 2013, item 896.

<sup>40</sup> Journal of Laws 2015, item 1220.

<sup>41</sup> 22<sup>nd</sup> February 2016.

<sup>42</sup> Violation of these provisions committed by an employer constitutes an offence, for which the labour inspector may impose a fine.

<sup>43</sup> Exemptions from this rule apply to fixed-term employment contracts established: 1. for the purpose of replacing an employee during his or her justified absence from work, 2. in order to perform casual or seasonal work, 3. to perform work for the time of one's term of office, or 4. where the employer indicates objective reasons for lying on his side.

This amendment to the Labour Code also introduced uniformity with regard to the **notice periods** for indefinite (permanent) and fixed-term contracts. The notice period for contracts concluded for a defined period of time has been aligned with the notice period for contracts concluded for an indefinite period, and depends on the aggregate period of service for a given employer. The parties to each permitted type of employment contract (i.e. probationary period, fixed term or indefinite term) are able to terminate the contract with notice. It is not necessary any longer for a fixed-term employment contract to include express provisions enabling the parties to terminate the contract pre-expiry, as this right is now expressly provided for in the regulations. The right to terminate an employment contract will no longer depend on the contract's duration. The length of notice periods will depend on the period of employment with a given employer and not on the type of contract as it was before. The minimum notice periods for fixed-term and indefinite employment contracts are then as follows: two weeks for service of less than six months, one month for service of six months or more, and three months for service of three years or more. There is still no obligation to indicate the reason for termination in fixed-term contracts, thus it is still a more flexible form of an employment contract than an open-ended one.

In this last case the judgement of EU Tribunal of Justice<sup>44</sup> – according to which the non-discrimination rule in the Fixed-Term Work Directive also applies to notice periods – encouraged legislative changes which allow the employees to be treated alike in comparable situations.

### **2.3. Amendments to other legal acts**

**TBC**

### **2.4. Reform of the Public Employment Services**

**Public Employment Services (PES)** fail to adequately address the labour market performance. Weak monitoring, insufficient coordination of the fragmented PES system and a lack of skilled personnel hinder its efficient functioning. The amendment of the Act on employment promotion and labour market institutions<sup>45</sup> introduced a major reform of the PES

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<sup>44</sup> Judgement of the Court of 13<sup>th</sup> March 2014, Case C-38/13: preliminary ruling concerns the interpretation of clauses 1 and 4 of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (Fixed-Term Work Directive, OJ 1999 L 175, p. 43). The request has been made in proceedings between a nursing assistant and her former employer, concerning the termination of a fixed-term.

<sup>45</sup> Act of 14<sup>th</sup> March 2014, which amended Act of 20<sup>th</sup> April 2004 (Journal of Laws 2014, item 598).

and active labour market policies. An individualized approach of PES towards jobseekers and improved career guidance and counselling were introduced. New measures were also envisaged, including activation vouchers, loans from the Labour Fund and activation benefits for employers hiring parents who return to work. Ensuring effective policy coordination between the bodies concerned, including monitoring and evaluation, is of key importance now.

### 3. Position and role of the social partners in reforms

#### 3.1. Institutional structure

The Constitution of Poland is based on respect for social dialogue. Dialogue and cooperation between social partners is one of the pillars of the social market economy, next to freedom of economic activity, private ownership, and solidarity<sup>46</sup>. The fundamental regulation for functioning of trade unions and employers organizations is freedom of association, which stem from art. 58 of the Constitution.

Poland operates on a pluralistic model of the union movement, characterized by a multitude of players and based both on the sector-professional and territorial structure. Detailed rules for the creation and functioning of **trade union organizations** are specified in the Act on Trade Unions of 23<sup>rd</sup> May 1991<sup>47</sup>, according to which the trade union is a voluntary and self-governing organization of working people, established to represent and defend their rights, social and professional interests. The trade union is independent in its statutory activities of employers, state administration and local government, and other organizations.

According to data<sup>48</sup>, in 2014 1.6 million people belonged to trade unions, which is 5% of the total adult population, 11% – of all working people, 17% – of employees on the basis of employment and 19% – employees of companies employing more than 9 persons. **Union density** within recent years has **remained relatively stable and** – compared to the previous period – **relatively low**<sup>49</sup>. The vast majority of members (83%) belonged to organizations

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<sup>46</sup> See Preamble and art. 20 of the Polish Constitution of 2<sup>nd</sup> April 1997 (Journal of Laws 1997 No. 78, item 483, as amended; English translation accessible: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>).

<sup>47</sup> Journal of Laws 1991 No. 55, item 234, as amended.

<sup>48</sup> *Związki zawodowe w Polsce*, Główny Urząd Statystyczny 2014 [*Trade unions in Poland*, Central Statistical Office, 2014]: <http://stat.gov.pl/obszary-tematyczne/gospodarka-spoleczna-wolontariat/gospodarka-spoleczna-trzeci-sektor/zwiazki-zawodowe-w-polsce-w-2014-r-10,1.html>.

<sup>49</sup> In the early nineties of the XX century almost every fifth Pole belonged to trade unions. In a few consecutive years the number has decreased almost by half, and in the past decade, the percentage of people declaring membership in trade unions did not exceed 9%. See: M. Feliksiak, *Związki zawodowe i prawa pracownicze* [*Trade unions and employees' rights*], CBOS: Warszawa 2014.

affiliated to the three union centrals, which represented the union side in the Tripartite Commission for Social and Economic Affairs.

The structure of membership of trade union organizations indicates that most people belonged to those acting within the framework of education (24%), followed by manufacturing and health care and social assistance (12% each). However, when we compare the data on the membership with the total number of employees in sectoral industries employing more than 9 people, the largest share of workers belonging to the union stood out in mining, where 72% of workers are declared to be trade unions members.

Labour unions usually act most in medium-sized enterprises, employing between 50 and 249 people (55% of unionized workplaces), moderately in large workplaces, i.e. with more than 250 people employed (31%), and least in companies employing less than 50 people (14%). There are more workplaces with trade unions in the public sector (62%) than the private sector (38%).

Taking into consideration the share of people who are employed on the civil law contract basis or are self-employed, the trade unions should adequately use the effects of the Constitutional Tribunal judgement, on motion from the All-Polish Trade Union Alliance (OPZZ)<sup>50</sup>, issued on 2<sup>nd</sup> June 2015<sup>51</sup>, where the **provision according to which membership in trade unions can only be for those having employment contracts was declared unconstitutional**. The Tribunal ordered immediate alignment with the judgment. The Ministry of Family, Labour and Social Policy presented an amendment to the Act on trade unions which assumes that the right to form and join trade union will have all persons providing paid employment – regardless of the basis of employment – and, therefore, also working on the basis of civil law contracts and self-employment. This may result in increasing trade union density in the future.

Although the perception of trade union activity is varied, growth in positive opinions on the effectiveness of their actions for employees is observed in recent years. The proportion of positive and negative opinions nevertheless is still not satisfactory, but it must be also translated by the external factors that influence the possibility of adequate trade unions efficiency and real impact on important for employees decision-making processes. More often

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<sup>50</sup> Motion of 27<sup>th</sup> June 2012.

<sup>51</sup> Case: K 1/13. Published: Journal of Laws 2015, item 791; OTK ZU No. 6A/2015, item 80.

people think that trade unions' influence on decisions of the authorities is too low rather than appropriate or too big<sup>52</sup>.

Principles of creation and functioning of **employers' organizations** regulate the Act on organizations of employers of 23<sup>th</sup> May 1991<sup>53</sup>. These organizations are established to protect the rights and represent the interests of its members towards trade unions, public authorities and public administration units. Employers' organizations, as part of their statutory activities, enjoy independence in relation to public administration and other organizations.

The basic organization of employers may assume a minimum of 10 employers. The number of active employers' organizations persisted in recent years at the same level – about 0.3 thousand. In 2014, the employers' organizations counted 16.3 thousand members. These were mainly legal persons, i.e. various types of enterprises, institutions and organizations of lower level (74%), but also individuals engaged in business activities (26%). Also in 2014, one employers' organization had 57 members, however, half of the organizations comprised no more than 24 members. Organizations usually indicated their members act within the framework of healthcare (21%), services (20%), professional, scientific and consulting activities (17%), information and communication (15%), as well as industrial processing and construction (12% each).<sup>54</sup>

The most important national dialogue institution was the **Tripartite Commission for Social and Economic Affairs** (further: Tripartite Commission). Its rules of conduct were introduced in the Act of 6<sup>th</sup> July 2001<sup>55</sup>. According to the Act, the Tripartite Commission is a forum of social dialogue held in order to conciliate the interests of employees, the interests of employers and public welfare. The aim of the Commission's activity is to achieve and maintain the social peace through holding social dialogue in the matters of salaries and social

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<sup>52</sup> See: *Opinie o związkach zawodowych i protestach górników [Opinions on trade unions and miners protests]*, CBOS: Warszawa 2015, nr 66/2015. Activities of trade unions meets with approval almost as often as criticism: between 2008 and 2015 between 38% and 45% of people declared favorable opinion, of unfavorable opinion was between 26% to 36% people. Regarding the effectiveness of actions the opinions were as follow: effective 2008-33%, 2010-26%, 2012-29%, 2013-28%, 2014-27%, 2015-34%, and ineffective 2008-49%, 2010-52%, 2012-48%, 2013-57%, 2014-55%, 2015-46%. The opinions on the influence of trade unions on decisions of authorities are as follow: too big 2008-16%, 2010-12%, 2012-11%, 2013-8%, 2014-10%, 2015-18%, appropriate 2008-22%, 2010-15%, 2012-15%, 2013-14%, 2014-15%, 2015-16%, and too small 2008-44%, 2010-49%, 2012-51%, 2013-61%, 2014-54%, 2015-46%.

<sup>53</sup> Journal of Laws s 1991 No. 55, item 235, as amended.

<sup>54</sup> *Organizacje pracodawców w Polsce w latach 2010-2014 [Employers organizations in Poland 2010-2014]*, Główny Urząd Statystyczny, Notatka informacyjna z dnia 16.12.2015 – Central Statistical Office 2015.

<sup>55</sup> The Act on Tripartite Commission for Social and Economic Affairs and on voivodship social dialogue commissions (Journal of Laws 2001 No. 100, item 1080, as amended). The Tripartite Commission was established already in 1994, by the Council of Ministers Act.



benefits as well as other social or economic matters<sup>56</sup>; examination of cases of great social or economic importance inferred by one of the parties if its solution is essential in order to maintain social peace; participation in works on the project of Budgetary Act as well as acts connected with it.

The Tripartite Commission was composed of representatives of government, employees' and employers' parties. The employees' are represented by the representative (on the national level) trade union organizations<sup>57</sup>, i.e.: Independent Self-Governed Trade Union "Solidarity" (NSZZ "Solidarność"), All-Polish Trade Union Alliance (OPZZ) and Trade Union Forum (FZZ). The employers' party – by the representative employers' organizations<sup>58</sup>, i.e.: Polish Employers' Confederation (KPP), Polish Confederation of Private Employers (PKPP), Polish Artisan Association (ZRP) and Business Centre Club – Employers' Union (BCC-ZP).

The governmental side in the Tripartite Commission was represented by representatives of the Council of Ministers appointed by the Prime Minister, including the Tripartite Commission chairperson. As the experience showed, individual activity of the appointed chairperson and current attitude of the government to the social dialogue was of high importance for effectiveness of the Tripartite Commission work. The chairperson duty was to call the plenary sessions – depending on the needs, not less frequently than once every two months – and Tripartite Commission Presidium meetings.

Within the Tripartite Commission, nine working groups were established: working group for social insurance, working group for labour law and collective agreements, working group for budget, salaries and social benefits, working group for economic policy and labour market, working group for social dialogue development, working group for public services, working

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<sup>56</sup> The tasks of Tripartite Commission are regulated by the: Act of 23<sup>rd</sup> December 1999 on creation of wages in the national budgetary sphere (Journal of Laws 1999 No. 110, item 1255, as amended); Act of 10<sup>th</sup> October 2002 on minimum wage for work (Journal of Laws 2002 No. 200, item 1679, as amended); Act of 28<sup>th</sup> November 2003 on family benefits (Journal of Laws 2003 No. 228, item 2255, as amended); Act of 12<sup>th</sup> March 2004 on social support (Journal of Laws 2004 No. 64, item 593, as amended); Act of 28<sup>th</sup> July 2005 on change of Act on pensions and annuities from Social Insurance Fund (Journal of Laws 2005 No. 169, item 1421); Act of 16<sup>th</sup> December 1994 on negotiation system of fixing the average pay growth in corporations (Journal of Laws 1995 No. 1, item 2, as amended; Act repealed, Journal of Laws 2009 No. 219, item 1707).

<sup>57</sup> National trade unions, trade unions' alliances (federations) and inter-trade union national organizations (confederations) that meet the following criteria: they affiliate more than 300.000 member employees, they are active in those fields of national economy the basic kind of activity of which is listed in more than one half of sections of the Polish Activity Classification (PKD), mentioned in dispositions relative to public statistics.

<sup>58</sup> Representativeness criteria for employers' organizations are: they affiliate employers employing more than 300.000 workers, they have a nation-wide range of activity, they are active in those fields of national economy the basic kind of activity of which is listed in more than one half of sections of the Polish Activity Classification (PKD), mentioned in dispositions relative to public statistics.

group for co-operation with ILO, working group for structural funds of the EU, working group for European Social Charter (Revised), and one consultative group – for issues connected with the European Union.

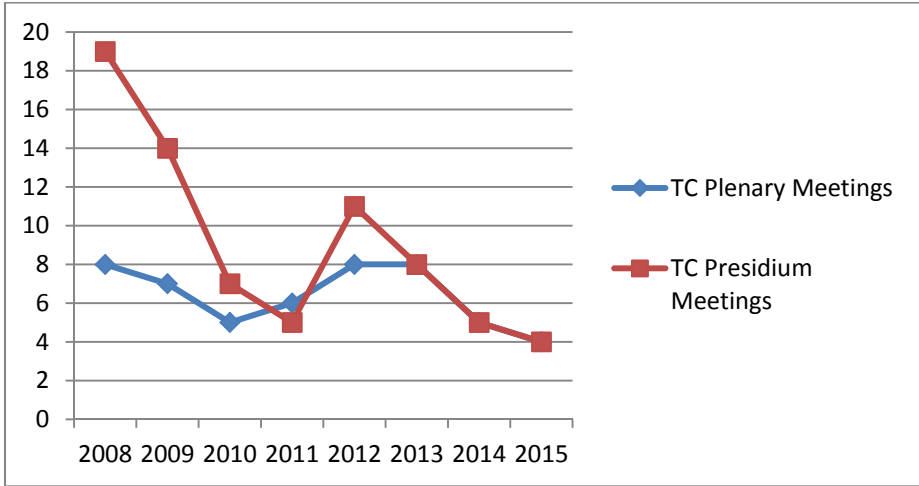
As data on the Tripartite Commission and its internal bodies activities show, within the years 2001-2015 we could observed periods of accelerated and intensive dialog, but also times of visible slowdown, and even crisis. It is important to notice that at the beginning of the crisis, especially in 2008, the institutional social dialog was vibrant, and autonomous dialog for the first time appeared to be efficient. The government, at this stage showed its willingness to cooperate, but it did not last long, as the impact of global economic crisis in Poland was not that strong as many feared.

**Table: Tripartite Commission for Social and Economic Affairs plenary and Presidium meetings**

Tripartite Commission for Social and Economic Affairs <b>plenary meetings</b>															
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
No.	2	10	9	7	5	5	4	8	7	5	6	8	8	5	4
Tripartite Commission for Social and Economic Affairs <b>Presidium meetings</b>															
Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
No.	2	26	28	26	11	18	15	19	14	7	5	11	8	5	4

Source of data: Ministry of Family, Labour and Social Policy

**Graph: Tripartite Commission for Social and Economic Affairs Plenary and Presidium meetings**



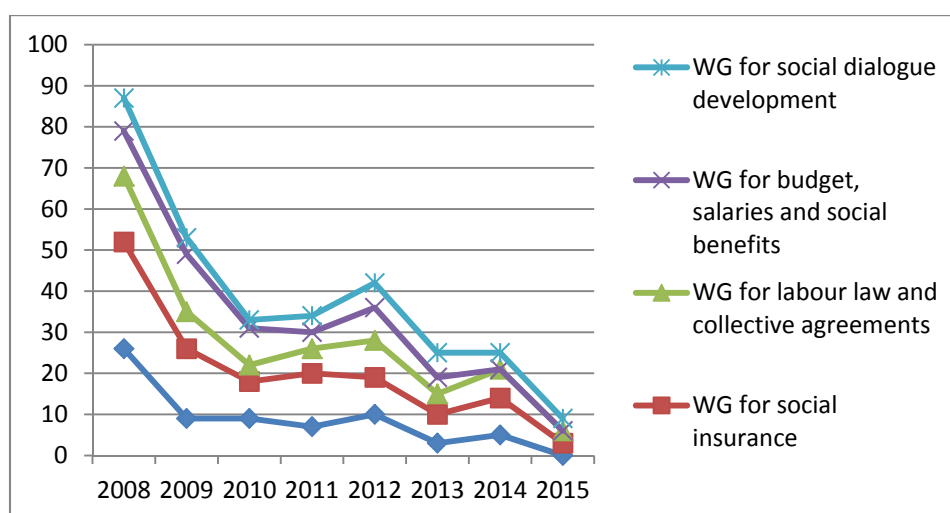
Source of data: Ministry of Family, Labour and Social Policy

**Table: Activity of selected working groups:**

working group for economic policy and labour market														
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
No.	8	11	4	5	4	3	26	9	9	7	10	3	5	0
working group for social insurance														
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
No.	11	16	15	9	8	13	26	17	9	13	9	7	9	3
working group for labour law and collective agreements														
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
No.	12	15	9	3	6	11	16	9	4	6	9	5	7	3
working group for budget, salaries and social benefits														
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
No.	14	14	11	7	6	11	11	14	9	4	8	4	0	0
working group for social dialogue development														
Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
No.	6	3	3	1	2	2	8	4	2	4	6	6	4	3

Source of data: Ministry of Family, Labour and Social Policy

**Graph: Activity of selected working groups**



Source of data: Ministry of Family, Labour and Social Policy

Knowledge in the society about the Tripartite Commission was rather small. According to data, only 14% of people were familiarized with its work, and one-third (33%) have heard of the Commission, but knew little about its activities. Half of the respondents (49%) never have heard of it. The knowledge about the Commission work was better among trade unionists (20% of people familiarized with its work), but also in this group people with such orientation were in minority (20%), more over, 36% declared that has never heard of the Commission. According to people who have heard of the Commission, the participation in its work is the most profitable for the government, and then for trade unions and employers. The opinion of equal profits expressed one fifth (18%) of respondents. Within the social dialogue divergence

of positions, rather than community interests is observed. Most often the view that the various issues raised in the Commission require variables coalition, or that each party has different interests, was presented. If you can identify common interests, it will be between the government and employers<sup>59</sup>. The experience proved this observation was adequate.

Social dialogue and its institutions remain rather poorly known to Poles. If you compare Poland to “old” EU countries, you may notice a small role of social partners negotiations in socio-economic system. Employers' organizations have little power to enforce the execution of decisions by their members and trade unions represent only a small number of employees. One may say that the knowledge of the social dialogue is adequate to its current role in socio-economic sphere.

### 3.2. Initiatives of national level social partners

Social dialogue in Poland for years 2008-2015, when global economic crisis and domestic slowdown took place, proceeded at an uneven pace. Analyzing ex post the activities within tripartite institutions and the intensity of autonomous dialogue it is possible to distinguish a few phases:

- first, significant **activation of social dialogue**, both in bi- and tripartite configuration, finalized by enactment of the Anti-crisis Law and other regulations (early period of global recession, i.e. late 2008 and 2009),
- second, **weakening impact of social partners** and growing tendency of adopting important regulations through **unilateral decision-making process within the government**, which ended up in withdrawal of trade unions from the Tripartite Commission (late 2009-2013),
- third, **suspension of tripartite dialog** (late 2013-first half of 2015),
- fourth, **hope for revival**, marked by passing the Act on Social Dialogue Council and other institutions of social dialogue<sup>60</sup> (from mid of 2015).

In late 2008, with economic recession rapidly advancing in Europe, both the Polish government and the national-level social partners became aware of the vital need for anti-crisis policy.

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<sup>59</sup> See: *Opinie o związkach zawodowych i dialogu społecznym* [Opinions on trade unions and social dialogues], CBOS: Warszawa 2009, BS/2/2009.

<sup>60</sup> The Act of 24<sup>th</sup> July 2015 (Journal of Laws, item 1240).

In November 2008, the government prepared a draft anti-crisis strategy, presented as **Plan for Stability and Development** – strengthening the economy of Poland during global financial crisis<sup>61</sup> and subsequently handed it over to the Tripartite Commission. This Plan envisaged complex activities aiming at stabilization of public finances and financial system, but also encouraging economic growth. In this document, Anti-crisis Plan could also be found, which was focused on pro-investments impulses for the economy and preparing conducive conditions for an increase in consumer demand<sup>62</sup>. The reactions of the representative social partners to this Plan varied. Trade unions assessed the means to combat recession envisaged by the government as inadequate. In particular, the insufficient measures regarding job protection were criticized.

The government was considered to be not active enough and its proposals did not satisfy any of the social dialog partners. Having acknowledged the consequences of continued deterioration of the macroeconomic conditions the opposite sides of the labour market, although from different reasons – i.e. protecting jobs and supporting companies – decided to take up autonomous talks aiming at elaborating a framework for viable policy responses to foreseeable crisis. It was also important that the government declared to respect the outcomes of these negotiations and to consider them in the course of preparing the anti-crisis policy<sup>63</sup>.

In the initial phase of negotiations three main measures were discussed:

1. Introducing a 12-month working hours settlement period and increasing flexibility of working time, in particular by allowing the use of flexible working time and rationalization of the 24-hour work cycle;
2. Introducing individual working-time accounts as a new form of work organisation;
3. Launching publicly funded subsidies to compensate the employees working reduced hours for the lost income and to prevent group dismissals.

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<sup>61</sup> *Plan Stabilności i Rozwoju – wzmocnienie gospodarki Polski wobec światowego kryzysu finansowego [Plan of Stability and Development – strengthening the economy of Poland during global financial crisis]* was presented by the government on 30<sup>th</sup> November, 2008.

<sup>62</sup> Aims: 1. Increased availability of credits for enterprises - an increase in the limit warranties and guarantees; 2. Support for the financial market institutions; 3. Strengthening the system of guarantees for SMEs; 4. Speeding up investments co-financed from EU funds; 5. The introduction of higher investment relief for newly established companies; 6. Elimination of barriers to investment in the telecommunication infrastructure; 7. Allowing inclusion into the tax cost expenditures for research work; 8. Promoting investment in renewable energy; 9. Empowering consumers of energy, strengthen competition and the position of the regulator to protect the economy and households against the uncontrolled increase in energy prices; 10. Creation of the Social Solidarity Reserve.

<sup>63</sup> J. Czarzasty, and D. Owczarek, *The economic crisis and social dialogue in Poland*, Institute of Public Affairs, Warsaw 2012, pp. 92-93.

Additional concepts were also presented. Trade unions underlined the need for increasing in the coming years of the national minimum wage, which should – in their opinion – reach the level of 50% of the national average pay, but also the proposal to limit the extent of use of fixed-term employment contracts was also important. On the other hand, the employers focused on means that could allow enterprises to quickly respond to shifts in the market environment. Creating more flexible working time and remuneration systems were the core ideas presented, i.a. such instruments as the right to reduce working hours or effectuate a temporary halt in operations, if necessary due to decrease in demand, or introduction of individual working time accounts, or temporary suspension of pay bonuses. These measures were to allow for reducing labour costs and minimize the risk of employment restructuring and redundancies.

The success of the negotiations demanded from partners inventing a satisfactory combination of measures that would support the enterprises, thus sheltering workplaces, while not hurting employees' interests overtly. The parties agreed to devise a special “safety valve” consisting of two basic conditions, which would have to be met jointly in order to proceed with the implementation of the content of the agreement, provided that it would be concluded. First, the anti-crisis measures agreed upon and put into force would remain valid for a definite period of two years. Second, the provisions, if enacted, could only be effectuated on the enterprise-level upon mutual consent of the company with the relevant workers' representation, that is with trade unions, or non-union forms of representation in non-unionised workplaces<sup>64</sup>.

In the course of this work, the concept of “individual working time accounts”, which employers pressed to introduce, appeared to be highly controversial, and eventually was abandoned. Trade unions accepted – although with some reservations – the working hours settlement period to be extended to 12 months. In return, the employers declared to limit the extent of fixed-time contracts, which were of high importance for the trade unions. The win-win strategy applied in this work.

These bipartite negotiations were conducted within the confinement of the Tripartite Commission and its Working Committees<sup>65</sup>, only with government representatives absent.

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<sup>64</sup> J. Czarzasty, and D. Owczarek, *op.cit.*, p. 95.

<sup>65</sup> In particular, the technical details of each of the concepts being considered by trade unions and employers organisations were discussed in such Working Committees of the Tripartite Commission as: the Labour Law and Collective Bargaining Committee, the Economic Policy and Labour Market Committee, the Structural Funds Committee and the Social Security Committee.

Both sides proved to be able to reach consensus on the most significant issues. First and foremost, trade unions and employers agreed on the need to introduce a subsidized employment scheme. The public aid for the employers of poor economic standing was to be financed with the means accumulated within the Labour Fund<sup>66</sup>.

The autonomous negotiations began in February and finished in late March 2009. The social partners followed two main principles: the final result must reflect a balance in the interests of capital and labour, and once it is adopted, it could only be implemented in its entirety.

In March 2009 the social partners presented a **list of 13 proposals** on which they had achieved consensus and submitted the list to the government.

The Package consisted of the proposals divided into three main thematic areas:

### **I. Pay and social security**

1. Programme of crisis social support, in particular, for the least affluent families, and increasing social welfare benefits in response to the rising number of redundant employees;
2. Tax exemption of allowances paid by trade unions and benefits from enterprise social funds;
3. Exemption of vouchers convertible to goods or services from personal income tax;
4. Repealing the Act on Negotiation System of Fixing the Average Pay Growth in Corporations and revoking the Act on Remuneration of Management Executives in State-owned Companies (stipulating a “salary cap”);
5. Gradually increasing the national minimum wage up to the level of 50% of national average pay.

### **II. Labour market and employment relations**

6. Introduction of a 12-month working hours settlement period (with limitations applying to employers suffering from negative effects of the crisis);
7. Introduction of enterprise training funds;
8. Rationalizing 24-hour work cycle in the context of working hours settlement period;
9. Social packages as a source of labour law;
10. Flexible working hours as way of reconciling family and occupational duties;
11. Stabilising employment with constraints on fixed-time employment contracts;

### **III. Economic policy**

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<sup>66</sup> The Labour Fund is a special public financial plan comprising of mandatory contributions calculated on remunerations.

12. Introduction of accelerated amortization;
13. Subsidized employment as an alternative to group dismissals.

In late March 2009, the Package was handed over to the government, as the basis for preparing the draft anti-crisis legislation. Some of the presented recommendations were reflected in the Act on mitigating the effects of economic crisis on employees and employers (Anti-crisis Law), supplemented by other, minor legislation.

The Anti-crisis Law directly adopted 6 proposals made by social partners in the Package, that is: 12-month working hours settlement period, the rationalization of the provisions on employee day, flexible working hours, stabilization of employment by reducing the use of fixed-term contracts, start-up capital fund training, subsidized employment as an alternative to redundancies.

Completion of the Package marked the end of active involvement of the social partners in the shaping of the anti-crisis economic policy.

In this respect social partners exercised also effective pressure on the government to introduce amendments to the Anti-crisis Law, following a low interest of employers in taking advantage of the public aid under the regime of the anti-crisis laws. In 2009, OPZZ suggested that the threshold regarding the decrease in sales suffered by an enterprise should be lowered from 25% to 15%. The union also promoted the idea of extending the reference period over which loss in sales happened in enterprises interested in using the subsidies, so it would be counted from 1<sup>st</sup> January 2008. Furthermore, OPZZ opted for repealing the provision suspending the regulations of the Labour Code limiting the number of fixed-term employment contracts to two. On the employers side, voices stressing the need to simplify the eligibility criteria could also be heard. KPP advocated the idea of cutting the threshold down to 20% and to simplify formal requirements for the potential recipients of subsidized employment. The government considered the request to lower the threshold legitimate, and consequently proposed to amend the provision, so the decrease in sales would have to amount to at least 15%, but the reference period would remain unchanged. The amendments were eventually passed into law in October 2010<sup>67</sup>, yet no significant rise in interest among the employers has been induced.

As the experience showed, not all postulates of the Anti-crisis Package were fulfilled during the legislation process. In trade unions opinion, the adopted act (Anti-crisis Law) was not

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<sup>67</sup> The Act of 29 October 2010 on the amendment of the Act on mitigating the effects of economic crisis on employees and employers (Journal of Laws No. 125, item 1035).



satisfactory as it responded mainly to the needs of employers<sup>68</sup>. The government was also criticized that it took over only initiatives of the social partners which were consistent with its own policy<sup>69</sup>. The social dialogue was especially undermined by the refusal of the government to give its approval of the minimum wage negotiated by the social partners in 2010-2011<sup>70</sup>.

The Anti-crisis Package was the last agreement signed in the Tripartite Commission. In the mid-2013, the dialogue in the Tripartite Commission was suspended due to the refusal of trade unions to discuss with the government. The trade union organizations reproached the government especially in that it neglected the social dialogue and that the amendments to the Labour Code – making the working time more flexible – were promulgated in spite of the negative opinion of the trade unions. The trade union organizations decided they can come back to the table within the Tripartite Commission dependent on the demission of the Minister of Labour and Social Policy and the withdrawal of the amendments on working time<sup>71</sup>.

Since 26<sup>th</sup> June 2013 the tripartite dialogue within the Tripartite Commission have been suspended by the three largest central trade unions due to lack of response to the opinions and postulates of the union side, among others, on changes in the working time. The government has consistently introduced planned changes, simulating only tripartite dialogue. During this last Tripartite Commission meeting the “Solidarity” chairman Piotr Duda, on behalf of the three trade unions, gave a statement that they did not intend any longer “to legitimize the social dialogue, which actually does not exist, and is fake.” The time of common actions of the three trade unions began, which was also quite exceptional looking at the previous history of cooperation of these organizations.

As the working conditions were critically assessed by the trade union side, not only domestic measures were applied, but – as they appeared to be ineffective – also means of external support.

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<sup>68</sup> For details see i.a. A. Kwiatkiewicz, National Fiche: *Poland, Joint Study of the European Social Partners The Implementation of Flexicurity and the Role of the Social Partners*, p. 17. It was also criticized in the legal writing for this reason, see: J. Stelina, *Prawo pracy a kryzys gospodarczy (Labour law and the economic crisis)*, PiP 3/2010, p. 19.

<sup>69</sup> See: J. Czarzasty, *Mixed reaction to anti-crisis legislation*, EIROOnline, <http://www.eurofound.europa.eu/eiro/2009/09/articles/pl0909019i.htm>.

<sup>70</sup> See: J. Czarzasty, *Minimum wage under debate*, <http://www.eurofound.europa.eu/eiro/2011/10/articles/pl1110019i.htm>.

<sup>71</sup> See: J. Gardawski, *Social dialogue reaches critical juncture*, EurWork, European Observatory of Working Life - <http://www.eurofound.europa.eu/observatories/eurwork/articles/industrial-relations/social-dialogue-reaches-critical-juncture> .

On 12<sup>th</sup> September 2012, the “Solidarność” complained to the European Commission, claiming the improper application of Council Directive 99/70/EC<sup>72</sup> in Poland<sup>73</sup>. The union argued that Poland’s Labour Code provisions failed to comply with the Directive 99/70/EC because they fail to establish a framework to prevent abuse arising from successive fixed-term employment contracts, they exclude fixed-term contracts for specific work and trial period contracts, the maximum one-month gap permitted between contracts to prevent them being deemed successive is too short, and that allowing the exclusion of periodically performed tasks justifies the issuing of multiple successive fixed-term contracts.

The Directive is aiming at preventing abuse arising from the use of successive fixed-term employment contracts or relationships. In Poland, this issue is regulated by Article 25<sup>1</sup> of the Labour Code. It stipulates that the conclusion of a third consecutive fixed-term contract between a company and an individual worker is the legal equivalent of concluding a contract for an indefinite period, unless there has been a break of more than one month between contracts. This does not apply to fixed-term employment contracts that replace an employee during a justified absence from work, or for ad hoc or seasonal work, or periodically performed tasks. Under Polish law, fixed-term contracts can be terminated with two weeks’ notice regardless of the length of the contract (art. 33 of the Labour Code). By comparison, the minimum notice period for an open-ended employment contract is two weeks, one month or three months, depending on length of service (art. 36 of the Labour Code).

The European Commission has supported this complaint. In its reply of 11 December 2013, the European Commission upheld some of NSZZ Solidarność’s arguments. It also objected to the legal situation in Poland, as a separate unrelated issue. The Commission identified key areas of concern: the differences between the notice period for fixed-term contracts and indefinite contracts means that fixed-term employees are treated less favourably, without any objective justification; the maximum one-month gap between two fixed-term contracts to prevent them being deemed successive is too short; the notion of ‘periodically performed tasks’, which allows an indefinite number of successive fixed-term contracts, is not sufficiently unambiguous to prevent the use of an excessive number of such contracts; Polish legislation wrongly excludes apprenticeships and public or publicly supported training, integration or re-skilling programmes from the Labour Code’s protection against an excessive

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<sup>72</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (Official Journal L 175, 10/07/1999 P. 0043 - 0048).

<sup>73</sup> The complaint on fixed-term contracts - <http://www.solidarnosc.org.pl/en/biura-eksperckie2/kontrola-prawa/komisja-europejska/item/8231-skarga-dot-umow-na-czas-okreslony>.

number of sequential fixed-term contracts<sup>74</sup>. The government presented its position within EU-Pilot and infringement procedure<sup>75</sup>, which resulted in amending of the Labour Code<sup>76</sup>.

Another example is also the “Solidarity” complaint of 14<sup>th</sup> January 2014<sup>77</sup> submitted to the European Commission on extending working hours settlement period up to 12 months<sup>78</sup>, imposing inconsistency of Polish regulations with 2003/88/EC directive concerning certain aspects of the organisation of working time<sup>79</sup>.

#### 4. Labour market effects of the reforms

Poland did not share the experience of many UE countries negatively impacted by the recession during 2008 global financial crisis and its aftermath. It is crucial to underline that among different factors that allowed for such good performance, Polish economy has benefited from relatively **low labour costs** and medium level of **labour market flexibility**. This supported the country’s competitive advantage. From employees perspective it is their burden, enhanced by other labour market problems – i.e. low certain groups participation, persistent segmentation and low geographic and occupational mobility.

The preventive actions undertaken by the government together with social partners supposed to be the Tripartite Commission outcome of social dialogue, but adopted legislative measures should be assessed as **rather top-down policies**. Out of compromise proposals made by trade unions and employers associations, which aimed at limiting the expected scope of job loss and financial losses of the companies operating in Poland, the government introduced mostly those which would keep the economy growth stable and increase labour flexibility without enforcing labour protection.

Anti-crisis Law (2009) allowed for further deregulation and flexibilisation of the labour market, introducing presented above instruments such as: allowing employers to conclude the unlimited number of fixed term contracts in the period of 24 months and extend the reference

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<sup>74</sup> See B. Surdykowska, *Fixed-term contract regulation under EU scrutiny*, EurWork, European Observatory of Working Life - <http://www.eurofound.europa.eu/observatories/eurwork/articles/fixed-term-contract-regulation-under-eu-scrutiny>.

<sup>75</sup> EU-Pilot file no. 4392/12/EMPL started in January, 2013, closed and further treatment decided in July, 2013. Infringement no. 2013/4161, closed 19 November 2015.

<sup>76</sup> Act of 25 July 2015, see 2.2.3. of this report.

<sup>77</sup> See: <http://www.solidarnosc.pkw.pl/dokfirma/dokument2014/skarga.pdf>.

<sup>78</sup> Provision introduced to the Labour Code – Act of 12 July 2013.

<sup>79</sup> Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 (OJ L 299, 18.11.2003, p. 9–19).

period for calculating working time from 4 to 12 months; option of flexible working hours (24-work cycle), public subsidies for enterprises suffering from temporary economic difficulties.

The impact of anti-crisis policy measures were not satisfactory<sup>80</sup>. The number of requests for financial aid, offered by the Guaranteed Employee Benefits Fund, aimed to provide for the “subsidized employment” slightly exceeded 12,000 cases: motions for subsidies to cover part of the remuneration of staff off work due to temporary halt in operations concerned 6 989 persons, and due to a reduction in working time – 5 376 persons (12 365 in total). The value of contracts concluded by the Fund for the payment of these benefits was 8 460 377.93 zł and 6 880 931.57 zł respectively. Only 14 agreements were adopted, concerning covering costs of vocational training and continuous education of 1 277 persons – Labour Fund allocated for this task 1 833 739.51 zł<sup>81</sup>. The data with final results show that the real application of subsidized forms of employment were even more limited: they were applied to 7 230 persons, 7 820 thous. zł spent for this tasks<sup>82</sup>.

Adopted provisions did not introduce significant changes in the practical functioning of employers, companies did not gain previously assumed benefits, and implementation of the provisions often caused interpretive difficulties. It is also said that also lack of knowledge about available instruments, bureaucratic barriers hindering access to benefits, too stringent conditions of accessing to benefits, but also reluctant attitude of employers, contributed to a limited application of the Act<sup>83</sup>. One can also assess that subsidies for preservation of employment were not so interesting as other forms aiming at the same purpose, that is flexible, atypical forms of employment, were sufficient.

A relatively more successful measure was extending the working time settlement periods. According to the National Labour Inspectorate (PIP), total of 1 060 cases of extension of the settlement periods were notified to the authorities by mid-August 2011. In 707 cases, such extension was adopted due to agreement with the workers' representatives, in 333 cases - agreement with trade unions, and in 20 cases, the settlement period was extended in collective bargaining agreement. More such agreements were adopted in bigger companies:

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<sup>80</sup> See reports presented by the Ministry of Labour and Social Policy <http://www.mpips.gov.pl/praca/pakiet-antykryzysowy/stan-realizacji-pakietu-dzialan-antykryzysowych/>.

<sup>81</sup> See: Guaranteed Employee Benefits Fund Information of 27.12.2011, presented by the Ministry of Labour and Social Policy.

<sup>82</sup> See: Data on realization of the Act on mitigating the effects of economic crisis on employees and enterprises from entering into force until October 2011, presented by the Ministry of Labour and Social Policy.

<sup>83</sup> See: G. Spytek-Bandurska, Ochrona miejsc pracy w okresie spowolnienia gospodarczego, Dialog 1/2014.

105 in companies of 1-9 employees, 196 in companies of 10-49 employees, 445 in companies of 50-249 employees, and 314 in companies of more than 250 employees. Industrial processing was the branch where extension of the settlement periods were mostly adopted – 592 agreements were reported, next was construction branch with 116 agreements<sup>84</sup>.

Employers during the last downturn have used a range of instruments aimed at maintaining employment up to the recovery phase, expected to have a faster, less expensive possibility to increase production when economic situation is improved. Depending on the characteristics of the sector, they have used various forms of increasing flexibility of labour costs: fixed-term contracts and non-standard forms of performing work (on the basis of the Civil Code, or encouraging employees to transition to form self-employment), increased staff turnover, flexible remuneration components or direct remuneration for the product. Companies in the first phase of the crisis, preparing for the expected slowdown, have adapted the characteristics of the contracts with the employees, so in a flexible they could regulate employment depending on the current economic situation<sup>85</sup>. The results confirm a relatively high real and nominal wage flexibility and a limited impact of labour market reforms in the period 2009-2013.

One of the most important recommendation from the trade unions, presented in Anti-crisis Package, was to gradually increasing the national minimum wage up to the level of 50% of national average pay. Although this aim was not succeeded it must underlined that a significant progress have been made. Decisions, although not satisfactory and often taken up without social partners consent, resulted in doubling the minimum wage between 2005 and 2014. It is even more important, as many people earn only this statutory minimum: 1.36 million people employed in the national economy received a salary that does not exceeded the applicable minimum wage (in 2014 - 1 680 zł, ca. 400 Euro), which represents approximately 13% of the total number of employed workers (as in 2012 and 2013)<sup>86</sup>.

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<sup>84</sup> See: Chief Labour Inspectorate Information of 27.12.2011, presented by the Ministry of Labour and Social Policy.

<sup>85</sup> See: *Raport z Badań Ankiety Rynku Pracy*, NBP 2012 (reports prepared for NBP on the labour market situation) - <http://www.nbp.pl/home.aspx?f=/publikacje/arp/arp.html>.

<sup>86</sup> GUS (Central Statistical Office), *Wybrane zagadnienia rynku pracy. Notatka informacyjna*, 10.12.2015.

**Table: Minimum monthly wage**

<b>Duration</b>	<b>Minimum monthly wage in zł</b>	<b>In % of average monthly wage in national economy</b>
From 1 January to 31 December 2005 (Journal of Laws 2004 No. 201, item 2062)	849,00	36,0
From 1 January to 31 December 2006 (Journal of Laws 2005 No. 177, item 1469)	899,10	36,3
From 1 January to 31 December 2007 (Journal of Laws 2006 No. 171, item 1227)	936,00	35,0
From 1 January to 31 December 2008 (Journal of Laws 2007 No. 171, item 1209)	1126,00	38,3
From 1 January to 31 December 2009 (Polish Monitor 2008 No. 55, item 499)	1276,00	41,1
From 1 January to 31 December 2010 (Polish Monitor 2009 No. 48, item 709)	1317,00	40,8
From 1 January to 31 December 2011 (Journal of Laws 2010 No. 194, item 1288)	1386,00	40,7
From 1 January to 31 December 2012 (Journal of Laws 2011 No. 192, item 1141)	1500,00	42,5
From 1 January to 31 December 2013 (Journal of Laws 2012 item 1026)	1600,00	44,3
From 1 January to 31 December 2014 (Journal of Laws 2013 item 1074)	1680,00	45,0

Source: announcements of the Prime Minister about the amount of the minimum monthly wage in 2009 and 2010, another years by the Regulations of the Council of Ministers: Central Statistical Office (GUS), *Yearbook of Labour Statistics*, Warsaw 2015, p. 318.

It is worth to underline that during last years the relation of minimum wage to average monthly wage since 2009 exceeded 40% and the relation is moving towards much-desired by employees direction. During the crisis Poland did not decided to freeze or only a bit increase the minimum wage, as some other countries did (in 2011 such decision adopted for instance in Czech Republic, Spain, Estonia, Latvia, Lithuania, Ireland, Portugal).

## **5. Concluding remarks**

### **5.1. New formula of national social dialog**

In the middle of 2013 trade unions in Poland decided unilaterally to suspend their membership in the Tripartite Commission. This decision was one of the most dramatic decisions within social dialogue in Poland, caused by deep disappointment of trade union's side in Tripartite Commission by governmental unilateral decision-making and neglecting of

trade union's voice in the social sphere. Unilateral governmental decisions eroded social trust and the very essence of the Tripartite Commission<sup>87</sup>.

Following this decision social partners enhanced their bilateral cooperation, setting up regular coordination meetings with a purpose to propose new principles of social dialogue, which will be more effective and inclusive. Both, the trade unions and employers' organizations, were of opinion that the "new opening" is needed<sup>88</sup>. Such opinion was shared by social dialogue experts<sup>89</sup>. The idea, from the very beginning, included also new institutionalization of social dialogue, in a form of Social Dialogue Council, replacing the Tripartite Commission<sup>90</sup>. The basic assumptions of such a body called for its autonomous and consultative position, having more competences than the Tripartite Commission, although not substituting public authorities in their decision-making responsibility. The issue of strengthened independence of a new social dialogue institution was especially important for social partners<sup>91</sup>.

Having in mind, that the absence of trade unions in Tripartite Commission resulted in a serious social dialogue crisis, the government was quite willing to take new bilateral proposal on legislative agenda. The draft Act on Social Dialogue Council was prepared in a bilateral dialogue of social partners (their work started in November 2013 and ended in January 2015). The Ministry of Labour and Social Policy (including especially Secretary of State Mr Jacek Męcina) took the proposal as a basis for a new law. After having consulted it with all social partners the new law was sent to the Parliament. On 24<sup>th</sup> July 2015, the Parliament passed a new Act on the Social Dialogue Council and other Institutions of Social Dialogue<sup>92</sup>. This Act repealed the Act on Tripartite Commission as of 2001.

According to this Act, the Council of Social Dialogue is a forum of tri-partite cooperation among the employee representatives, the employer representatives and the government. The Council enables dialogue to ensure conditions for social and economic development, enhancing the competitiveness of Poland's economy and social cohesion. The Council acts

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<sup>87</sup> See: A. Maciejewski, *Czy dialog społeczny jest na rozdrożu? [Is the social dialogue at crossroads?]*, „Dialog” 2/2014, p. 115-119.

<sup>88</sup> A. Maciejewski, *Dialog społeczny – konieczne nowe otwarcie [Social dialogue – new opening needed]*, „Dialog” 4/2013, p. 110-127.

<sup>89</sup> A. Zybala, *Dialog w trudnych okolicznościach [Dialogue in difficult circumstances]*, „Dialog” 3/2015, p. 22-30.

<sup>90</sup> Z. Żurek, *Propozycje strony pracodawców nowych form dialogu społecznego [Employers' proposals on new forms of social dialogue]*, „Dialog” 3/2014, p. 53-62.

<sup>91</sup> J. Gardawski, [in:] *Dyskusja o nowych możliwościach i zagrożeniach dialogu społecznego w Polsce na posiedzeniu Rady Naukowej kwartalnika „Dialog” 17 czerwca 2015 r. [Discussion on new opportunities and threats of social dialogue in Poland – meeting of the Scientific Board of the quarterly „Dialog”, 17 June 2015]*, „Dialog” 3/2015 (46), p. 6.

<sup>92</sup> Journal of Laws 2015, item 1240.

with the purpose of realizing the principle of participation and social solidarity in the field of employment relations. The Council also acts with the purpose of improving the quality of formulating and introducing socio-economic policies and strategies, as well as building social consensus on these matters based on transparent, substantial and regular dialogue among the representatives of employees and employers and the government. The Council supports social dialogue at all levels of territorial self-government<sup>93</sup>.

The Council is composed of three parties (the government, employee's organizations, employers organizations) and representatives of the President of the Republic, President of National Bank and President of Statistical Office with advisory powers. According to Article 23 employee's party is represented by a representative trade unions, namely those trade unions which are composed of more than 300,000 employees and are active in various sectors of the economy. Employers are represented by representative employers' organizations, that is organizations that consist of employers who employ at least 300,000 employees, of employers that are active in various sectors of the economy and have regional structures in at least half of voivodships (Polish regions). Members of the Council are nominated and revoked by the President of Poland according to the motions of each respective party. One of the most valuable changes is that the presidency of the Council is exercised alternately by representatives of all parties – they would replace each other on a regular basis, the period of office of the Council's president would amount to one year. The first president of the Council is Piotr Duda – the chairman of "Solidarność" trade union.

As regards organization of the Council, apart from the issues of composition of the Council as explained above, it must be noted that the organizational, expert, technical and office support of the Council is ensured by the Office of the Council (Article 37). The office is a budget unit, subordinated to the Ministry of Labour. In practice this may affect the independence of the Council.

The Council possesses many more competences, when comparing with the previous Tripartite Commission. The Council may express opinions and present its positions, especially as regards legislative proposals. Drafts of legal acts elaborated by the government shall be presented to social partners in the Council to obtain their opinions. Where the government does not take their opinions into account, it must be substantially motivated at further stages of the legislative process.

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<sup>93</sup> Article 1.



The social partners in the Council may also inspire legislative process – submit to the competent minister mutually agreed drafts of legal acts on issues described in Article 1. If such a draft is not accepted by the government it must be explained in writing within four months period (article 7.4).

Chapter 2 of the Act on the Council provides that the parties to the Council can conclude agreements on the realization of the Council's tasks and present common positions. Employee and employer representatives in the Council have the right to conclude multi-enterprise collective agreements. The Council may deliberate any issue being important for maintaining social peace. The Council may ask public authorities to explain issues important in the social field or it may ask public bodies for a public hearing.

An interesting and yet important competence of the Council is the possibility to approach the Supreme Court with cases calling for a judgment solving discrepancies in judicial interpretation of the legislation (Article 14).

Each year the government presents an economic forecast which will constitute the basis for preparing the State budget for the following year. Subsequently, employee and employer representatives can jointly present an opinion on the raise in remuneration in the national economy, minimum wage and pensions.

Also each year, the Council must present a plan of its activities, taking into account the current social and economic situation based on the information on legislative activities submitted by the government. The priorities for social dialogue should be indicated. The Council shall present positions on matters submitted for deliberation by the government, members of the Council or other institutions.

The Act on Council of Social Dialogue foresees possibility of establishment of voivodship councils of social dialogue (WRDS; Chapter 4 of the Act). The voivodship marshal (head of voivodship self-government) can create a voivodship council of social dialogue upon a joint request of at least one representative trade union and a representative employers' organization. The council consists of social partners, the voivodship self-government, the voivode (government representative on the regional level).

WRDS can express opinions in the area of social affairs in the voivodship, they may conclude agreements in the scope of their competences, they may also analyze and deliberate any social or economic issues being important for maintaining social peace. Voivodship councils' proposals concerning state level are deliberated by the Council of Social Dialogue.

The establishment of the Council of Social Dialogue should be perceived as a great success of social partners<sup>94</sup>, and less by the government. **Trade unions' and employer's organizations initiative allowed to find new institutional architecture after nearly two years of a profound crisis of social dialogue in Poland.** If the new Council will prove to be effective and friendly place for a social dialogue, and if it will create a “new quality” of social dialogue<sup>95</sup>, remains to be seen. The legal mechanism of such a review is already established: in the period of 24 months after the law taking effect, the Council will assess its functioning and will submit recommendations to the President of Poland on enhancing the organizational independence of the Council (art. 87). Besides, each year (until May, 31) the report on the activities of the Council of Social Dialogue in the previous year should be presented to the Parliament (art. 32.3). First report was already prepared and is focused on the presentation of the preparatory work to establish a new institution of social dialog and the future plans of the Council. Once again, the government dominant position in previous years was pointed out, which introduced solutions without regard for the arguments of the other parties. According to the Council's Chairman, “the new law strengthens the social side so strongly that the ignorance of the government, known for years in the framework of the Tripartite Commission, should be forgotten”, but further was also added that “In the course of work not once we met with inaccurate legal and organizational regulations on the Council, that correction and clarification in the provisions of the Act will be required”<sup>96</sup>.

## **5.2. Flexible employment, less security – labour market segmentation**

Labour market flexibility was the central idea behind the changes of the Labour Code in the early 2000s, as well as in the anti-crisis legislation adopted in 2009 and 2013.

The notion of dual labour market, or more broadly, labour market segmentation assumes the division of the labour force into more or less privileged categories of workers due to a range of structural, institutional, organizational and cultural factors, as well as workers characteristics that go beyond their marketable skills.

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<sup>94</sup> See: G. Baczewski [in:] *Dyskusja o nowych możliwościach i zagrożeniach dialogu społecznego w Polsce na posiedzeniu Rady Naukowej kwartalnika „Dialog” 17 czerwca 2015 r.*, „Dialog” 3/2015 (46), p. 5.

<sup>95</sup> Żurek, Zbigniew *Krajobraz po bitwie czy przed bitwą? Ustawa o Radzie Dialogu Społecznego uchwalona* [The landscape after the battle or before the battle? The law on the Council of Social Dialogue enacted], „Dialog” 3/2015 (46), p. 48.

<sup>96</sup> See: Report on the activities of the Council of Social Dialogue presented to the Parliament (for the period from October, 2015 to March, 2016) – druk senacki 167.

The **precarisation of employment** is defined as the mechanisms which create, reproduce and possibly extend the disadvantaged segment(s) of labour market in terms of: low wages, limited or no social security entitlements, low job security and other labour conditions less favourable than in standard employment contracts regulated, e.g. limited access to training.

In Poland this process is related to several factors: 1. the rapid increase of unemployment and the emergence of job and employment insecurity as a consequence of the restructuring and privatisation of state-owned enterprises and public services; 2. the variety of measures aimed at putting pressure on wages, security and flexibilising employment, to maintain the Polish economy competitiveness and counteract job losses; 3. the weakness of industrial relations actors and institutions, including low union and employer organizations density, the emergence of very low unionised private sector and union focus on employees with stable, employment contracts, strongly decentralised collective bargaining; 4. the side effects of the systemic adjustment of the Polish labour law to the EU regulations and European employment strategies which focused on flexible employment; 4. economic crisis which triggered both bottom-up adaptive practices of employers aimed at counteracting instability by using flexible job contracts and top-down anti-crisis measures including those focused on supporting temporary, flexible employment.<sup>97</sup>

**TBC**

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<sup>97</sup> M. Maciejewska, A. Mrozowicki, *The rise of dual labour market: fighting precarious employment in the new member states through industrial relations (PRECARIR). Country report: Poland*, CELSI Research Report no. 13, April 2016, p. 4.