

**JACEK MĘCINA**

**Social Dialogue  
in Face of Changes  
on the Labour Market  
in Poland.  
From Crisis  
to Breakthrough**



International  
Labour  
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# Autor's Introduction

The international financial crisis was a main source of a significant deterioration of the situation on the labour market both in Poland and in other countries, not only in Europe. The level of unemployment increased, especially among young people, household incomes decreased, while the poverty scale grew. Also, labour relationships and work standards suffered unfavourable changes. On one hand, this situation resulted in a quest for new solutions on the labour market, such as working time flexibility, protection of jobs, and new forms of support for the unemployed and job-seekers, on the other hand, employers more frequently resorted to flexibility of employment or forms of work without an employment contract, which in turn led to aggravation of structural problems on the labour market in many countries. Social effects of the crisis became a source of tensions and a crisis of trust which obviously negatively impacted the effectiveness and intensity of the social dialogue. It is worth emphasising that for the ILO challenges and dangers related to the crisis, the beginnings of which were visible in some countries already in 2008, constituted a main trend of trilateral discussions during ILO's subsequent sessions, whereas conclusions and initiatives, as well as recommendations of the International Labour Conference and International Labour Office for many countries came as an inspiration and the ILO Decent Work Agenda became a point of reference for the adopted measures. Crisis-related challenges were also taken up by other organisations, in particular the European Union, which in face of economic and structural crises of many of its member states, launched into integrated and supportive activities, also engaging in multiple so-

cio-economic initiatives. One of the more important of those was a joint initiative under the heading of the Youth Guarantee, aimed at improving the labour market situation of young people. The aggregated experience of many countries has shown that recovering from the crisis and returning to the path of growth entails a search for and introduction of new economic and social concepts. Attempts were embarked upon to create a new model of balance and stabilisation that should be set on foundations of social dialogue and compromises arrived at in the frames of tripartite agreements between trade unions, organisations of employers, and governments. While searching for solutions, governments have to bear in mind social priorities, employment in particular, not forgetting about the economy and stability of public finances. Trade unions increasingly more vocally demand more effective and efficient solutions to problems of unemployment and social exclusion calling for an improvement of labour relations or, more broadly speaking, employment relationships. Employers in their quest for a new modern technology based model, also notice a need for a discussion regarding a flexible, but simultaneously more stable model of labour relations, greater effectiveness of the vocational education system, and access to good quality human capital.

Poland, which has been building its market economy for less than a quarter of a century, has been a member of the European Union for ten years and it came to feel the results of the international crisis later than other countries of Europe. However, despite its stable economic development and relatively low increase in unemployment, Poland saw a deterioration in the quality of labour relations, and recorded a rapid increase in such forms of employment as employment for specific period and work without an employment contract, reaching the highest levels among the EU countries. A high share of young people in the general population of unemployed definitely constitutes another problem of the Polish labour market. In search for job opportunities, young people have been emigrating to other EU countries, a phenomenon which for Poland constitutes a risk of loss of valuable human capital. An unprecedented initiative of trade unions and employers who of-

ferred the government the *Anti-Crisis Package* came as a reaction to the dangers noticed in 2009 on financial markets. Perhaps the above-mentioned project was not of crucial significance from the perspective of Polish economy, nevertheless, it saved thousands of jobs from liquidation and, above all else, reduced a drop in consumption, this way stimulating economic growth, whereas thanks to the EU structural funds the level of investments was also maintained. It definitely constituted an evidence of a positive impact the social dialogue may have on a socio-economic situation. It contributed to a better situation of Polish economy when compared with other EU countries, which in turn facilitated the decreasing of the gap separating Poland from the average level of development in the EU in the scope of main indicators describing the situation on the market. Only the second onslaught of the crisis in mid-2012 took a negative toll on Polish economy and labour market. Not only unemployment, but a deteriorating quality of employment became the main axis of conflict between the government and trade unions, who demanded specific actions aimed at improving quality of employment and limiting the unemployment level. Reforms undertaken by Prime Minister D. Tusk's government - raising the retirement age and introducing into the Labour Code regulations in the scope of flexible working time combined with the government's cautious policy in the scope of raising the minimum wage and social benefits resulted in the trade unions' suspending their participation in the works of the Tripartite Commission for Socio-Economic Affairs, which resulted in a crisis of social dialogue. Despite government's numerous pro-employee initiatives undertaken in 2014 and 2015, social dialogue was tortuously reconstructed in the new formula of the Social Dialogue Council, first agreed upon in the frames of an autonomous dialogue, and then elaborated in cooperation with the government. The ILO played a major role in this process as it accepted an initiative of the government and organised a mission to Poland in 2014. One cannot omit to mention the involvement of social partners and the will of all the parties to return to tripartite dialogue. The Act adopted in July 2015 establishes a new institution for a tripartite dialogue – the Social

Dialogue Council - which provides the setting for a new impulse to negotiations and future agreements between the government, trade unions, and employers.

Polish experiences of the recent years being discussed hereby, on one hand indicating the potential and significance of social dialogue between the government and social partners, while on the other pointing to the ability to react to key problems and challenges, especially in the area of the labour market and labour relations, have provided the Author with an inspiration to present them in a wider context of socio-economic conditions. Despite numerous problems, they are fundamentally positive and optimistic, although the Author devotes much room to the analysis of dangers, challenges and, finally, concepts which may be familiar, yet due to their significance for the search for a new way of development, may also lead to further closing of the economic and social gap existing between Poland and the old EU countries.

The first chapter is dedicated to the presentation of the significance and role of social dialogue mechanisms in the systemic transformation and in building market economy. These mechanisms designated the place and role of social partners in the shaping of labour relations and solving of problems faced by the Polish labour market. Social dialogue which in Poland developed in a tripartite formula, in the first decade of the 21st century had lived to receive a mature institutional framework. Yet, this framework did not stand the test of time and - according to social partners, experts, and the government - it required a substantial adjustment to be able to more effectively solve economic and social problems and, in particular, to shape changes on the labour market and in labour relations, thus finally providing a new impulse for development.

The second chapter presents the concept and mechanisms of the European dialogue and its significance for the solving of problems related to the labour market. The analysis of the European social model is presented from Poland's perspective - an evolution of ideas and European legislation from the European Employment Strategy, through the Lisbon Strategy, as far as the Europe 2020

Strategy. Much discussion has been dedicated to the development of European legislation, building of the European social model, significance of the labour market flexibility and the *flexicurity* model. Presentation of the ILO and the EU initiatives pertaining to solving labour market problems comes as a direct reference to reactions to the international crisis. The chapter presents the international and the European context of problems and challenges which Poland must be able to cope with in the area of labour market and labour relations.

The third chapter presents the situation on Polish labour market by discussing changes and problems which Poland faced within the past decade, but also during the period of the economic and social transformation which made accession to the EU possible. The chapter also constitutes a presentation of the evolution of Polish labour law and labour relations model in Poland, referring to concepts presented in documents and agendas of the ILO and the EU. It is from this perspective that the most important characteristics of the Polish labour market and unemployment, wages, demographic challenges, migration and, lastly, evolution of labour relations and the phenomenon of flexibility have been discussed.

The subsequent fourth chapter constitutes an analysis of Polish labour law in the context of the increasing share of work without an employment contract on Polish labour market. New phenomena on the labour market have been presented in a wider perspective of evolution of employment relationships in the world conditioned by such processes as globalisation, increasing role of digital technologies and biotechnology and, finally, new management models, including ILO recommendations and EU documents. The problem of flexible forms of employment has been discussed from a legal, economic, and social perspective, with an indication of dilemmas related to the economic development model and dangers such as the phenomenon of segmentation on the labour market. The analysis is concluded by an attempt to indicate recommendations in the form of *de lege lata* and *de lege ferenda* conclusions addressed at the labour law systems and the new domain of employment law.

The fifth chapter presents the new labour market policy as a Polish response to the phenomenon of increasing unemployment and labour market problems. The presented institutional reform of the labour market points to the public employment services and state's active policy as opportunities for quick improvement of the situation also in terms of a new offer of activating and assisting employment of groups facing the risk of unemployment. The presented Polish model covers the new solutions which within state's operations also include the private and NGO sectors in the partnership formula. This part also presents the National Training Fund, co-managed by social partners as a solution favouring public investment in continuing training of employees. The chapter also discusses the Polish response to the European initiative for supporting young people on the labour market. The Youth Guarantee provides for the involvement of key public institutions, the financial sector, and NGOs in joint initiatives aimed at promoting employment and entrepreneurship of young people.

The final sixth chapter refers to the thesis proposed at the beginning, i.e. that the experience of the recent years, on one hand, points to the potential and significance of social dialogue between the government and social partners but, on the other, that social dialogue and its mechanisms constitute a condition required to correctly react to key problems and challenges, especially in the area of the labour market and labour relations. A discussion of trade unions' postulates and presentation of measures adopted by the government, as well as challenges related to their realisation filled the period for which the trade unions had suspended participation in the works within the frames of the tripartite dialogue. A direct reference to the Decent Work Agenda and a presentation of the importance of the ILO technical mission to Poland in 2014 are also important aspects of the analysis. An autonomous dialogue engaged in by trade unions and organisations of employers, activities undertaken by the government as well as the proposal to return to the new formula of the dialogue constitute a good basis for cooperation in the frames of the Social Dialogue Council, a tri-lateral body with a strengthened position of social partners, who

have been awarded numerous competences and entrusted with numerous new tasks.

In Author's opinion, the presented construction of the book confirms the thesis that in order to react to economic changes and social challenges, modern states, economies, and societies need mobilisation and human capital in order to react to economic changes and social challenges. Mobilisation is necessary also due to the requirements of the moment - economic and social recovery after the crisis, which at the same time strained the social trust capital. In Europe, this role has for long time been played by social dialogue which, despite problems and tensions, was reborn as social agreements and pacts. Taking advantage of these experiences, Poland constitutes an example of following this road, with difficulties and failures, yet in an overall assessment recording a positive balance.

Jacek Męcina



# ILO Introduction

The International Labour Organization established a sub-regional office in 1993 in Budapest, Hungary, to accompany and support the labour and social dimensions of the process of transition from a planned economy to a market economy and to democratic rule in Central and Eastern European countries. This support included the establishment of institutions and mechanisms for tripartite and bipartite social dialogue. Since then, labour legislation has gradually undergone a process of transformation from a prominently statutory to a negotiated one, whose main feature is the central role of collective bargaining in establishing working conditions and terms of employment. Generally, tripartite social dialogue and collective bargaining frameworks as well as those for dispute resolution have been laid down by labour law in the target countries.

Presently, the system of industrial relations in Central and Eastern Europe is still characterised by the predominance of tripartite consultation at policy level as compared to bipartite social dialogue and collective bargaining. Over the last few years a reasonable infrastructure for tripartite consultation at policy level has been put in place in most countries of the sub-region supported by a wide ratification of fundamental conventions No 87 and 98 and Governance Convention No 144. The legal and institutional framework for tripartite social dialogue has been enhanced in most countries, often with the support of the ILO.

Since the creation of the office in Budapest, however, the Central and Eastern European countries have taken different paths. Eleven countries joined the European Union between 2013 and 2014. Other countries are in a process of EU accession or have

signed association agreements with the Union. At the same time, the performance of the labour market and the effectiveness of social dialogue is quite uneven. The transition process has been hampered by political instability in some countries of the region as well as by the global financial and economic crisis and slow recovery over the past few years. The delays in the transition process resulted in some cases in an increase of unemployment and decline of wages and consequently an extension of poverty and social rights and benefits.

Such context has been taking a toll on the effectiveness of social dialogue and industrial relations processes. In a context of crisis and uncertainty, it has become more challenging to reconcile different views and standpoints between governments, employers' and workers' organizations on key issues related to labour market reforms. Employers' representatives and often governments insist to take measures meant to increase flexibility on the labour market as a response to the economic crisis. Trade unions strongly oppose these measures and rather emphasize poor law enforcement and the need to ensure a better application of the current legislation (undeclared work being a big problem). Similarly, there are very radical differences between employers and workers on the scope, coverage and duration of collective agreements at all levels. On their part, governments are faced with serious challenges in undertaking long-term economic and social reforms in a context of low recovery and fiscal austerity and consolidation.

Against this background, the ILO has been emphasizing the need for an effective tripartite social dialogue process based on mutual recognition and trust. It has also encouraged sub-regional cooperation and cross-fertilization to help constituents assess how controversial legal and policy issues are addressed in other relevant European countries to help identify reasonable common ground. Finally, the ILO has been consistently advocating for a policy package combining labour law and labour market reforms with employment-friendly macro-economic policies and effective measures to ensure the sustainability and coverage of social protection systems to reduce the costs of transition.

In this effort, the ILO has consistently ensured an effective policy dialogue with the European Union and its institutions, such as the European Commission, the European Parliament, and the European Economic and Social Committee. Also, the ILO has been maintaining close relationships with the EU representation of social partners. While semantic or policy differences remain, the ILO and the EU share a common vision of an economic and labour agenda based on social inclusion and social dialogue. Given the nature of the EU institutional set-up, operational co-operation in Europe is more frequent in EU accession and neighbouring countries. At the same time, policy dialogue has been systematically sustained also in relation to the EU internal social agenda and, in particular, the recent EU initiative for the establishment the European Pillar of Social Rights.

As part of its ongoing dialogue with the EU institutions and member countries, the ILO has welcomed the initiative of prof. Jacek Męcina to publish a joint book on labour market and social dialogue experiences in Poland. Prof. Męcina was a Secretary of State in the Ministry of Labour and Social Policy from 2012 to 2015. He is currently a professor of the University of Warsaw and a representative of the Polish Confederation of Private Employers `Lewiatan`. He is therefore in a very good position to provide a thoughtful insight of the evolution of labour market policies and social dialogue in the sixth largest economy and the largest new member country of the European Union.

Poland has a recent economic history and performance that stands out from the group of the EU member countries. That includes a consistent economic growth over the past 26 years — Poland was the only EU country that did not suffer an economic recession during the years of the global financial crisis; a rate of unemployment that has fallen from 20 percent in 2002 to 8.7 percent in January 2017; a fiscal deficit and public debt consistently remaining much below the EU average. Like other countries in the region, Poland is faced with challenges, such as an ageing society, large flows of both emigration and immigration, and a wide range of non-standard forms of employment. In recent years, the process of social dialogue has also undergone some ups and downs. At the

same time, its labour market policies and practices do deserve a closer look, as many lessons can be learnt for other countries.

Prof. Męcina's book indeed touches on many issues of high relevance and interest to the ILO. It provides a thorough analytical review of employment and labour market trends, practices and options in the recent history of Poland. His strong call for promoting social dialogue as a basis for policy making is particularly significant.

In relation to labour market flexibility — a significant thread throughout the book — opinions remain divided between employers' and workers' representatives and the empirical evidence has not produced results that only go in one direction. From the employers' perspective, flexibility entails opportunities to allocate resources in accordance to market demand and reach greater efficiency. From the workers' perspective, it generates insecurity and precariousness and lowers the threshold of social protection. Against this background, the *flexicurity* model, developed and tested in Denmark and Northern Europe over the past two decades, does imply significant progress in reconciling labour market efficiency with adequate social protection. For these reasons, the author advocates the benefits of introducing *flexicurity* into the economies and societies of the Central and Eastern European countries. The question remains however as to the fiscal and institutional capacity of national systems to sustain strong active labour market policy, life-long learning, and adequate social security coverage.

While the publication of the book by the ILO does not automatically imply the ILO's endorsement of the views and positions expressed by the author, we consider this publication to make a very useful contribution to an important ongoing policy debate throughout the European region. We wish to thank prof. Męcina for his commitment to share and disseminate his views and his experience through this book.

Antonio Graziosi  
Director, ILO Decent Work Technical Support Team  
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17 July, 2017

# Social Dialogue and Challenges in the Area of Labour Market and Labour Relations – Experience and Challenges for Poland

## 1.1. Social Dialogue and Labour Relations in Poland – Introduction

When we realise that it has been a mere decade since Poland became a member of the EU, and less than a quarter of a century since it entered the path of democracy, it is difficult to resist an impression that changes in the economic and social sphere are occurring at a fast pace. Globalisation and technical progress - factors accelerating social processes - are not without significance, either. Good economic indicators, relative political stability, and durability of democratic structures define an outcome of the changes, while the speed at which they are transpiring is a measure of success. Yet, Poland still belongs to the poorer countries of the wealthy EU, while many problems, including unemployment, low birth rate, and ageing society still constitute a challenge. Poland's greatest success of recent years is undoubtedly its stable economic development and systematic growth of the GDP, despite a deep crisis which has affected most of European countries. The membership in the EU and accessibility of structural funds this membership entails surely help Poland catch up on civilisational development, finance great infrastructural investments, and satisfy some social needs. Social costs of the transformation from the last quarter of

a century, however, also have had this result that social expectations for a qualitative change in the sphere of employment, wages, health services, or social insurance are nowadays being voiced with increasing impatience. This situation requires a good strategy for development of and social approval for public policy priorities and methods for accomplishing the goals. Similarly, as 25 years ago, on the wave of *Solidarity*, a huge social movement, difficult and painful reforms were successfully carried out in Poland, so today, by way of conducting a social dialogue, it is necessary to obtain an approval for further reforms - an approval given by representatives of employees and employers. In the Author's opinion, only the social dialogue in a new formula of operation is able to perpetuate thinking on the necessity of changes and on one hand arrive at compromise while, on the other, develop social capital indispensable to introduce the necessary reforms, also due to the fact that in the conditions of strong polarisation of the political scene, bold decisions bearing positive effects observable in future years are difficult to make. This is where the intention to bring the idea of social dialogue back into focus originates from - to remind of its significance, especially in terms of durability of democracy and its institutions. Despite the fact that, in the opinion of many Polish scholars, achievements of social dialogue in Poland are rather modest, and many experts are rather sceptical when it comes to effectiveness of the domestic social dialogue<sup>1</sup>, the Author is embarking on an attempt at demonstrating its significance in Poland, especially in the periods of crises and increasing social problems. When making an attempt at demonstrating that in order to preserve social peace maintaining the dialogue is indispensable for both the labour market and labour relations, it deserves to be underlined, in accordance with the International Labour Organization, that dialogue means all forms of exchange of information, consultations and negotiations between representatives of a government, employers and employees on matters connected with social and economic

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<sup>1</sup> W. Pańków, B. Gąciarz, *Dialog społeczny w Polsce w okresie adaptacji polskiej gospodarki do wymogów Unii Europejskiej*, Fundacja F. Eberta, Warsaw 2001, p. 54.

policy. It is ILO's objective to work out standards that pertain to living and working conditions<sup>2</sup>. The potential of social dialogue may not be measured only by indicators of the institutions' effectiveness, but also by the level of social capital of people and organisations participating in it. Its effects may be measured by the level of involvement of social partners in the process of consulting and negotiating social security and labour standards or more widely, of the socio-economic development.

Social dialogue means exchanging arguments, searching for compromises, arriving at agreements aimed to ensure conditions of cooperation and avoid confrontations in conflict situations; it means arriving at a consensus that is satisfactory to all parties thereto, it is searching for common values in relation to which parties declare their concessions or actions. Social dialogue may be investigated from many a plane, especially a political, legal, economic, and social one. Such an understanding of dialogue allows for incorporating its mechanisms within a wider process of creating contemporary systems of democracy and modern forms of state, as well as shaping the socio-economic system. A particular plane of dialogue is collective labour relations and the forming of principles of individual labour relations, while dialogue mechanisms in this area extend to all levels – starting from international, through national, sectoral, and regional, to end at the level of a workplace. Social dialogue is defined in legislation of many European countries, including Poland. Inscribed in constitutions, it is an important element of systemic regulations. It is also subject to regulations and operational practices in the European Union, it appears in numerous international acts, particularly in documents of the International Labour Organisation<sup>3</sup>.

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<sup>2</sup> H.B. dela Cruz, G von Potobsky, L. Swepston, International Labour Organization: The International Standards System and Basic Human Rights, Westview Press, Boulder, CO, 1996.

<sup>3</sup> Cf. W. Sanetra, *Dialog społeczny jako element ustroju społecznego i politycznego w świetle Konstytucji RP*, [in:] *Zbiorowe prawo pracy w XXI wieku*, A. Wypych-Żywicka, M. Tomaszewska, J. Stelina [eds.], Fundacja Rozwoju Uniwersytetu Gdańskiego, Gdańsk 2010, p. 9 at seq.; C. Fabre, *Social Rights Under the Constitution*, Government and the Decent Life, Clarendon Press, Oxford 2000.

Defining and characterising social dialogue, embedding it within the system of a modern state, and analysing its impact on shaping labour relations require a description of the subject, the plane and levels, but also forms of dialogue, as well as specific legal mechanisms of its functioning. In recent years an increasing significance is being attributed to expansion of social dialogue's space to reach beyond its traditional domain, i.e. labour relations and industrial relations, to include also such issues as economic policy, fiscal policy, public finances, functioning of social security systems, as well as a demographic situation, health service system, and even questions from the area of international policy. In this sense, social dialogue covers communication between representatives of groups, most often in an institutionalised form, with the view of negotiating specific solutions or public policies aimed at solving concrete problems<sup>4</sup>.

For the needs of the analysis, it has been adopted that the social dialogue means relations between social partners and, therefore, first and foremost trade unions and employers' organisations, their bipartite or tripartite relations with state bodies, such as the government and its agencies, as well as local and regional self-government. The subject of social dialogue thus defined covers numerous areas in the scope of economic and social policy, however, the joint shaping of labour relations, conditions of work, pay, and social benefits is of key importance. The aforementioned relations are expressed in mechanisms of information, consultation, negotiation, conclusion of pacts and agreements, and resolution of collective disputes by amicable methods such as mediation and conciliation, or by application of legal measures for exerting pressure, which in Polish conditions means a strike as the ultimate form of conducting a collective dispute. Thus defined, social dialogue is treated as a form of conducting negotiations or building relations on the plane of labour relations, but also on other planes such as political, social, and economic relations. A dialogue revolving around such

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<sup>4</sup> *Polski talk show. Dialog społeczny a integracja europejska, EU-monitoring* V, J. Hausner, M. Marody [eds.], Małopolska Szkoła Administracji Publicznej AE in Krakow, Fundacja im. F. Eberta, Kraków 2001.

values as economic freedom or social justice shall be treated as one of the forms for attaining a social consensus. Engaging in an analysis of the current state of affairs, we may not forget the entire process of shaping institutional forms and mechanisms of social dialogue during the period of twenty-five years of building the democratic system in Poland. Within the analysed period, social dialogue in Poland, similarly as was the case in many countries of Europe, had its better and worse years, its ups and downs, it was possible to observe an increasing intensity of the dialogue and peculiar stagnation, or even crisis, of its institutions. Almost a quarter of a century of the functioning and developing of social dialogue in Poland allows us to distinguish caesurae and outline periods of the shaping of the institution of dialogue and relations between the parties involved.

The first period, until 1989, constituted the beginnings of formation of free and democratic institutions for representing interests, preceded by the erosion of the communist system and emergence of the enormous social movement - *Solidarity*. The struggle for trade unions' and democratic liberties was integrated with social postulates, which were addressed at the non-democratic state. It was also this state that was a party to the first August Agreements, which were concluded after the famous and successful Gdansk Shipyard strike and constitute an example of the successful dialogue between trade unions and a non-democratic government. The change of the political system and the concept of a systemic transformation were preceded by a dialogue conducted in the frames of the *Round Table Talks* by the standing down authorities of the People's Republic of Poland with opposition forces led by the *Independent Self-Governing Trade Union 'Solidarity' [hereinafter NSZZ 'Solidarność']*. Key demands of the democratic opposition, apart from free elections, pertained to trade unions freedoms, compliance with the fundamental ILO conventions as well as to ratification of conventions on the most important labour and social security standards. The urgent ratification of ILO Convention No 144 Convention concerning Tripartite Consultations to Promote the Implementation of International Labour Standards. It

was also considered necessary to withdraw these elements of legislation which were in breach of the provisions of already ratified ILO conventions, in particular No 87 and No 98 on trade unions' rights, Conventions No 29 and 105 on abolition of forced labour, and Convention No 122 on Employment Policy. It was also agreed that a programme should be developed in order to ensure gradual ratification of ILO conventions from the period 1971-1986 pertaining to protecting employees from workplace threats and to occupational health services – namely conventions 136, 139, 148, 152, 155, 161, 162<sup>5</sup>.

Since 1989, Poland had already been building a new democratic, economic, and social model, while the shock concept of economic reforms and social costs of the changes resulted in trade unions' protests. The process found its final in the talks between the trade unions, newly formed organisations of employers, and the government; during these negotiations the parties discussed the first social pact in Poland – *Pact on State-Owned Enterprise under Transition* of 22 February 1993, which established, among others, the first institution of social dialogue in Poland - the *Tripartite Commission for Socio-Economic Affairs* as a forum for a tripartite dialogue of trade unions, organisations of employers, and the government.

During the second period from 1994 until the end of the 1990s, the Tripartite Commission for Socio-Economic Affairs (TKSG) built standards of dialogue in Poland, serving also as the most important plane for negotiations of wage-related issues, questions of disability and retirement pensions indexation rates, but also important social and economic reforms. It took up a set of problems concerning the Labour Code, reform of the retirement system, privatisation, key issues in the area of social policy and restructuring processes. The Commissions entered a crisis against the background of disputes between two biggest trade union confederations - the NSZZ '*Solidarność*' and the All-Poland Alliance of Trade Unions [hereinafter: OPZZ], which in 1999 suspended its activities within

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<sup>5</sup> *Round Table Agreements*, Warsaw, 6th February - 5th April 1989, pp. 9 - 14.

the TKSG. Against the background of the crisis of this institution, a discussion on the Commission's new formula and, in particular, on the wider participation of the private entrepreneurs sector in its works was initiated.

2001 marks another turning point as it is then that the new Act on the Tripartite Commission for Socio-Economic Affairs and Voivodeship [Provincial] Social Dialogue Commissions, setting new standards for dialogue and representation of interests, was adopted. The new dialogue institution represents the biggest trade union confederations and employers' organisations complying with the statutory representativeness criteria. The Act formulates new prerogatives, it also establishes regional dialogue institutions. The first years of new institution's functioning came as a spectacular activity in the area of negotiations and successes related to conclusion of several agreements. In 2006, the Commission embarked on attempts to work out the *Social Pact* which, however, yielded little effect. In 2008, the Commission yet again adopted a resolution on engaging into works on changes in the area of collective labour law, i.e. the Act on Trade Unions, the Act on Employers' Organisations, and the Act on Collective Dispute Resolution, and changing the functioning of collective labour agreements in Part XI of the Labour Code. Autonomous works of social partners on the change of the formula of the Tripartite Commission and voivodeship [provincial] social dialogue commissions were underway. Their objective was to reinforce the institution of dialogue. However, these works did not result in arriving at a homogeneous concept.

Nevertheless, social partners' response to the international crisis is deemed to have been a spectacular achievement. Before the end of 2008 social partners initiated negotiations on measures that were to protect the society and the economy of Poland against the consequences of the international crisis. The pact was concluded first autonomously, and later on the Commission's forum in March 2009 - the *Anti-Crisis Pact* -. It consisted of provisions aimed at protecting jobs, increasing spending on labour market policy and social assistance as well as protecting the system of increasing the minimum wage. In the Author's opinion this pact

constituted a proof of the social dialogue's potential that drew inspiration from discussions held on the ILO forum. This pact, however, did not stand the test of time and another onslaught of the financial crisis in 2012. On one hand, the difficult situation in public finances, on the other, the economic situation that at the end of 2012 was deteriorating, combined with increasing unemployment limited the government's space for realisation of some of the trade unions' postulates, such as the rising of the minimum wage, radically limiting the use of work without an employment contract or, finally, verifying income thresholds in social aid and family benefits. Additionally, employers and trade unions within the Tripartite Commission failed to arrive at an agreement in terms of changes to labour law providing for extension of application of flexible work time management, with the permanent regulation within the Labour Code stipulating a possibility of extending work time settlement periods to twelve months, and regulation of flexitime and intermittent working time. Directing the draft of changes to the Parliament by the government caused a crisis and on 13 June 2013 trade unions suspended their participation in the works of the Tripartite Commission. Adopting the decision on the suspension of their activities within the Tripartite Commission, trade unions formulated a number of postulates addressed to the government in the scope of labour law, social insurance, economic and social policy, expecting their implementation.

Since June 2013 until July 2015, the Commission met in the frames of representations of the governmental side and employers, whereas autonomous works of employers' organisations and trade unions dedicated to developing a new formula of dialogue were underway in parallel. Despite the trade unions' suspended activity in the works of the Tripartite Commission, meetings and consultations were held, while the unions did not resign on actively formulating demands and opinions addressed to the government. The ILO mission to Poland in 2014 was another important initiative. This mission's programme included bilateral meetings with the government and social partners on the right to association and the conditions for re-establishment of tripartite dialogue in Poland.

In January 2015, for the first time since June 2013, the government met with organisations of employers and trade unions in the frames of a discussion dedicated to the new formula of dialogue as proposed by social partners - the postulated establishment of a new tripartite dialogue institution - the Social Dialogue Council and provincial social dialogue councils meant to replace the Tripartite Commission for Socio-Economic Affairs. At the meeting held on 18 February, the government presented a draft of a new legal act in accordance with solutions proposed by social partners, which would establish the new institution compliant with the partners' intentions, and at the same time declared speedy works on its adoption. Although the draft required some further consultations, there was a chance for a swift establishment of a new institution that would end the period of crisis in the tripartite dialogue. There was also an opportunity to use the synergy of change in order to return to social dialogue and embark on new initiatives. After a round of negotiations, the new act was finally adopted in July 2015.

### **1.2. The Shaping of the Idea of Social Dialogue in Poland**

To define the contemporary form of social dialogue in Poland as well as perspectives for its development, of key importance are such areas of analysis as distinguishing and characterising individual planes and forms of social dialogue in Poland, combined with demonstrating to-date achievements and experience, analysing the evolution of legal regulations and institutional forms of collective labour relations and social dialogue, together with distinguishing and characterising social dialogue on the national, sectoral, and regional level, as well as characterising the dimension of a dialogue between employer and employees along with their representation, as well as its most prominent features and directions for development.

An increase in the significance of social dialogue - not only as a form of building relations between social partners, but more broadly - as a new method of exercising government could be ob-

served in countries of Western Europe already in 2nd half of the 20th century, while in Poland - only after the year 1989. In Poland, dialogue was being shaped under conditions of transformation and a range of political, economic, and social reforms. Its institutional forms as well as legal and organisational conditions had to overcome numerous challenges and problems, in particular such as transformation of economy dominated by state ownership, based on concentration, central planning and heavy industry, as well as irrational employment, into the market economy - in majority based on private ownership and rational employment, in its development taking new sectors of economy into account. Development of dialogue was accompanied by a progressing decentralisation of the state's tasks and the shaping of a territorial self-government with rather precisely defined goals and implementation instruments, accompanied by a far-reaching autonomy<sup>6</sup>. It also constituted an answer to the progressing globalisation in economic relations and new phenomena on the labour market and in labour relations which accompanied this process. A fundamental breakthrough in the practice of shaping social dialogue in Poland came as the *August Agreements* of 1980 and the later *Round Table* agreements of 1989<sup>7</sup>. During the era of the People's Republic of Poland the idea of social dialogue developed through pragmatic political compromises opening a space for negotiations and conclusion of agreements. The models of relations penetrated into Poland from the International Labour Organisation and from the countries of Western Europe, but it is not possible to omit the influence of the social teaching of the Church, which in the years after the World War II frequently took up work-related issues. There is no doubt that the strength of this influence stemmed from the ties between independent trade unions, a part of the democratic opposition,

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<sup>6</sup> H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Liber, Warsaw 1998.

<sup>7</sup> W. Morawski correctly indicates that innovativeness of *Solidarity* consisted in the fact that the Polish road to democracy was becoming different to the Western one: in the West political democracy led to industrial democracy, while in Poland it was the other way round.; *Ibidem*, p. 221.

and the Polish Catholic Church, as well as from the fact that Pope Karol Wojtyła sat on the Apostolic See<sup>8</sup>. Issues related to work constituted one of the fundamental subjects John Paul II raised in his speeches and writings. In an appropriate understanding of labour, he saw for the human a way to avoid multiple dangers, arising in the modern society in connection with work. The Pope claimed that work is a moral duty and obligation, the human's vocation, something inherent in human life. It was to this issue that he devoted an entire encyclical issued in 1981 under the title *Laborem exercens (On Human Work)*<sup>9</sup>. According to K. Wojtyła 'Work is a good thing for man - a good thing for his humanity - because through work man not only transforms nature, adapting it to his own needs, but he also achieves fulfilment as a human being and indeed, in a sense, becomes 'more a human being'<sup>10</sup>. The encyclical constituted a reflection on work as a key to the entire social question. John Paul II wrote that the fact that the human being belongs to a specific society or nation has this result that they perceive their work as a multiplication of the common good generated by their fellow countrymen. This should be accompanied by a realisation that along this way, the work serves to multiply achievements of the entire human family, all people living in the world<sup>11</sup>.

The necessity of a philosophical and ethical reflection on work was also indicated by Rev. Józef Tischner. He took it up using the notion of the grammar of work, principles establishing the rules for understanding work, which change depending on the freedom experienced by labourers. 'The less free the work, connected with coercion [...], the more order-oriented the grammar of work will be, connected with the requirement of obedience. What dominates then is the grammar of struggle - struggle against nature, against God, against, the owner, manifest in the system of rules of coercion

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<sup>8</sup> *Człowiek w społeczności. Refleksje nad społecznym nauczaniem Jana Pawła II*, L. Dyczewski [ed.], Wyd. Ojców Franciszkanów, Niepokalanów 1988.

<sup>9</sup> Jan Paweł II, *Laborem exercens*, 14 September 1981.

<sup>10</sup> *Ibidem*, pp. 12.

<sup>11</sup> *Ibidem*, pp. 13.

and control'<sup>12</sup>. In the history of labour there were periods when it became more dialogical, while its 'grammar' placed understanding with other labourers in its centre. A permanent profession, hired work provided grounds for remuneration which, in turn, served the purpose of exchange for other goods and facilitated communication with other generators of social goods: it engendered social dialogue. This direct reference to the idea of social dialogue in the social thought of the Church constituted an important element for the building of a vision of social order which should be binding in the new socio-economic system.

The introduction of the Martial Law and delegalisation of *Solidarity* interrupted the process of democratisation of social relations and development of social dialogue<sup>13</sup>. Only the Round Table negotiations, held between 6 February and 5 April 1989, forged a breakthrough of political, economic, and social significance. Arrangements arrived at in their course were of momentous significance for the shaping of social dialogue conditions in Poland. Yet, the very fact that the process of negotiations itself adhered to the formula of dialogue was of a considerable significance. Both parties to negotiations and the final document invoked the idea of dialogue<sup>14</sup>. The first area of the agreements were issues regarding the process of democratisation of the state. The agreement supplied the basis for future political reforms by establishing the following rules: political pluralism based on the freedom of association within the frames of democratic constitutional order in political, social, and professional organisations; freedom of speech, including access to all types of media for all organisations; democratic mode of appointment of all representative state authority bodies; independence of the judiciary; democratically elected territorial government. The changes introduced im-

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<sup>12</sup> Cf. J. Tischner, *Etyka solidarności*, Wydawnictwo Pryzmat, Warsaw 1989.; P.J. Śliwiński, *Człowiek do przepracowania*, [in:] *Praca i bezczynność. Szkice o polityce, społeczeństwie i kulturze*, R. Borkowski [ed.], AGH, Uczelniane Wydawnictwa Naukowo-Dydaktyczne, Kraków 2009, p. 28.

<sup>13</sup> Delegalisation of *Solidarity* attracted a critical reaction of the international opinion and caused a response from the ILO.

<sup>14</sup> Cf. The introduction to the final document of the *Round Table Agreements*, Warsaw, 6 February – 5 April 1989.

mediately were deemed to be of crucial importance; they included among others the implementation of trade union and social pluralism achieved by: legalising activities of the NSZZ 'Solidarność' and Independent Self-Governing Trade Union of Independent Farmers 'Solidarity', legalising the Independent Students' Association, recognising the political opposition's right to act legally, passing a new Act on Associations, reforming the law and the judiciary, increasing the scope of freedom of speech and democratising principles of election of representative bodies. Most of the above-mentioned issues were concretised in the form of drafts of legal regulations or extensive assumptions constituting a specific agreement [arrived at] in the frames of negotiations.

An important area around which negotiations were revolving came as the issues of systemic reforms as well as social and economic policy. The arrangements pertained to improving market supply and living standards of the population, activities aimed at reducing inflation and restoring balance to the economy, protection of the population against effects of inflation, labour and employment protection programme, and new economic order<sup>15</sup>. Arrangements related to the new economic order assumed developing employee self-governance and participation, free shaping of ownership structure, developing market relations and competition, dismantling the command and control system as well as the central planning system, shaping economic policy through economic measures, uniform financial policy towards enterprises, and subjecting selection of management to competence criteria<sup>16</sup>.

The stance concerning pluralism of trade unions was of crucial significance for the shaping of future principles of social dialogue. In reference to the August Agreements of 1980, the Universal Declara-

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<sup>15</sup> Negotiations touched upon a range of other issues of economic, political, and social nature; the agreements also included a review of matters of importance for sectors and industries, among others, changes in the system of education, science, and health service were agreed upon while discussions covered the questions related to the areas of mining and transport, but also systemic matters, such as changes in the economic structure or problems related to foreign debt.

<sup>16</sup> *Round Table Agreements*, Warsaw, 6 February – 5 April 1989, pp. 15–27.

tion of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966<sup>17</sup>, and the ILO Declaration on Fundamental Principles and Rights at Work as well as ILO fundamental conventions, it was found indispensable to remove the existing limitations on the freedom of creation and association of employees and farmers in trade unions. It was found that not only would trade union pluralism be a guarantee of better representation of employee interests, but it also would reduce a threat of social conflict and open up a space for new initiatives, as well as economic and socio-political reforms. A significant provision of the final document came as an indication of the role of trade unions in the process of reform, recognising that the process of democratisation of political life should lead to trade unions' concentrating on their statutory goals, i.e. guaranteeing and protecting employee rights and interest. At the same time difficulties which trade union pluralism may generate in negotiations with employers were hardly overlooked. To avoid a contest of demands, the team found that positions on issues of collective employee rights should be articulated towards the manager of the employing institution by a joint representation<sup>18</sup>. It was also found that in order to prevent conflict and facilitate amicable resolution of disputes, so as to render the strike a final measure, it is necessary to develop a mechanism for resolution of collective disputes. It was assumed that works would be launched to amend the Act on Trade Unions in terms of collective disputes and the right to strike, as well as the right to associate in trade unions.

A momentous event from the point of view of a change in terms of the model of labour relations was the labour and employment

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<sup>17</sup> International Human Rights Covenants is a collective name for two international agreements adopted by the UN general Assembly in 1966: International Covenant on Civil and Political Rights and International Covenant on Economic, Social, and Cultural Rights.

<sup>18</sup> This agreement constitutes a proof of long-sightedness of participants of the negotiations, for it turns out that currently this principle constitutes one of the key problems of effectiveness of collective labour agreements. Despite a clear-cut idea, this principle was not fully taken into account in provisions of the Act on Trade Unions, which caused difficulties in agreeing on multiple issues - from collective labour agreements and covenants to wage negotiations.

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protection programme adopted in the frames of the Round Table Reforms. It came as a harbinger of implementation within the socio-economic system of tripartite mechanisms based on cooperation of the government, trade unions, and employers, who at that time constituted the representation of state-owned enterprises management. It was found necessary to remove from the legislation the provisions violating the ILO conventions ratified by Poland. Also, development of a programme of gradual ratification of the ILO conventions from the years 1971-1986 was agreed on. The parties agreed on directions for the Labour Code reform, assuming the introduction of regulations rendering the possibility of flow of employees between workplaces more flexible. It was decided that the principle of full employment would be respected, whereas the reform of and the increase in effectiveness of economic mechanisms were to result in adaptive processes on the labour market. Decisions in terms of reconstruction of local employment services were made, with the view of turning them into an institution providing services for all job seekers. In the scope of the future labour market policy, it was resolved that job-seeker benefits should be treated as the last resort, whereas the state should become actively engaged in creation of jobs for people requiring special care due to their health condition or age. Guaranteeing redundant workers a possibility of acquiring new qualifications was to be an important function of the labour market policy, in particular in cases of liquidation of workplaces and mass lay-offs. Guidelines for the Act on Collective Redundancies were also agreed on; the act was to guarantee a possibility of consulting the intention of lay-offs with trade unions as well as severance packages.

The analysis of the scope of the covenant permits us to treat the Round Table Agreements as a type of a social pact with a very complex structure of arrangements - ranging from political, economic, and social issues to numerous questions pertaining to specific industries, sectors, and areas of the state's activity<sup>19</sup>. Although

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<sup>19</sup> The Round Table Agreements contained arrangements pertaining to specific solutions in mining, transport, goods and services supply market, health service, and finally planned changes in education, science, and administration.

the 'Solidarity' period is treated as a period of an authentic quest for a third way - between a statist socialism and liberal democracy, these attempts proved ineffective, while taking power by the Solidarity was equivalent with the globally first ever experiment in 'building capitalism top-down'<sup>20</sup>. From the perspective of the presented analysis, it is worth emphasising that the agreement contained a vision for the construction of a new model of labour relations and its immediate environment, while social dialogue aimed to include trade unions in a process of monitoring deep socio-economic changes.

### **1.3. Institutionalisation of Social Dialogue in Poland – from Liberal Solutions to Characteristics of Neo-Corporationalism**

The economic and social transformation as well as fast reforms became a source of an economic crisis. The reforms were radical, having a distinctly market-oriented and liberal nature<sup>21</sup>. The most important directions of economic changes were the building of basis for a market economy, privatisation, and restructuring of companies<sup>22</sup>. Labour relations and employment also had to become subject to these changes, whereas the most important regulations introduced during this period included the excess wages tax as one of the fundamental inflation limiting tools, the Act on Privatisation of State-Owned Enterprises introducing ownership transformation mechanisms, the Act on Employment as a precaution in the case of increasing unemployment, as well as substantial changes to labour law - regulation of mass lay-offs and regulation of or-

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<sup>20</sup> W. Morawski, *Socjologia ekonomiczna...*, pp. 221.; D. Ost, *Kłęska „Solidarności”. Gniew i polityka w postkomunistycznej Europie*, translated by H. Jankowska, Muza, Warsaw 2007, p. 6.

<sup>21</sup> Cf. T. Kowalik, *Współczesne systemy ekonomiczne. Powstanie, ewolucja, kryzys*, Wyższa Szkoła Przedsiębiorczości i Zarządzania im. L. Koźmińskiego, Warsaw 2000, p. 273.; *Polacy pracujący a kryzys fordyzmu*, J. Gardawski [ed.], Wyd. Nauk. Scholar, p. 17.

<sup>22</sup> Cf. L.K. Gilejko, *Robotnicy w transformacji: ocena ich położenia i szans*, [in:] *Wygrani i przegrani polskiej transformacji*, M. Jarosz [ed.], Oficyna Naukowa, Warsaw 2005, p. 183.

ganisational and legal changes on the part of the employer, which allowed for the fast restructuring of employment<sup>23</sup>. At that time, the state played the fundamental role in the shaping and creating of the new socio-economic order, whereas the top-down character of the changes gave it freedom in setting the directions and tempo of reforms<sup>24</sup>. At the same time, unemployment was increasing rapidly, while social consequences of recession affected also working households. Dissatisfaction was addressed primarily at the government, although it no longer played the role of an employer with a decisive voice in the scope of price increases or improvement of living standards<sup>25</sup>. Growing unemployment was blamed on the economic recession which must yield influenced by the privatisation of economy and as a result of the reforms being implemented. The state was increasingly feeling the pressure of social dissatisfaction. On the wave of this dissatisfaction social actors, trade unions and the newly created representation of employers, took the floor - for the first time on democratic principles. Negotiations of the *Pact on State-Owned Enterprise under Transition* forced the government to adopt an active role in industrial relations. The government engaged in the negotiations and, for the price of maintaining the direction of reforms, it consented to adopting elements of a corporatist model in Poland, engaging social partners in the process of management of socio-economic policy through tripartite dialogue institutions. In the systemic direction, especially in the area of labour relations, this signified a departure from the classic concept of 'market individualism', realised in the years 1990–1992, which

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<sup>23</sup> A majority of statutes facilitating fast changes in labour relations and regulating the basic principles for supporting the unemployed and job seekers on the labour market was passed yet in 1989.

<sup>24</sup> Cf. E. Kryńska, E. Kwiatkowski, H. Zarychta, *Polityka państwa na rynku pracy w Polsce w latach dziewięćdziesiątych*, IPiSS, Warsaw 1998.

<sup>25</sup> Cf. L.K. Gilejko, *Robotnicy w transformacji...*, p. 183.; Gilejko states that in all analyses of social effects of the transformation, two or three separate sets formed as an outcome thereof and an increasing diversification of the society are pointed to. Individual authors provide varying estimates of the number of beneficiaries and losers, but even the greatest optimists do not go beyond 15% in estimating the number of those who benefited from the transformation.

was to be replaced with a redefined role of the state (government, parliament) in labour relations headed in the direction of 'liberal collectivism'<sup>26</sup>. The pact was signed only on 22 February 1993, in the outcome of negotiations conducted by the government, fifteen biggest trade union confederations led by the NSZZ '*Solidarność*' and the OPZZ, and four employers' organisations. The negotiations bore fruit in establishment of the Tripartite Commission for Socio-Economic Affairs (TKSG), which in the legal and institutional sense defined the place and role of the state in industrial relations in Poland<sup>27</sup>. Among others, the Tripartite Commission was to participate in the wage-shaping policy in enterprises and the public sector and exert influence on certain aspects of the social and economic policy. Thus, it became the most important plane for dialogue and conciliation of interests in the name of maintaining social order. Despite the fact that as indicated by numerous studies, especially during the first years of its functioning, the Tripartite Commission played a rather limited role, focusing on wage-related issues, concerning determination of pay-rise indicators, while in other areas acting only in a typical consultative and informational role, it nevertheless strengthened the practice of tripartite talks, also taking up important issues in the area of individual labour law, collective labour relations, labour market, ownership transformations, and social security system<sup>28</sup>.

Already in the first years of the transformation, after 1989, the Acts on Trade Unions, Employers' Organisations, and Collective Dispute Resolution were regulated, which also constituted an implementation of important international obligations, especially

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<sup>26</sup> Cf. A. Buchner-Jeziorska, *Rola państwa w stosunkach pracy*, [in:] *Zbiorowe stosunki pracy w Polsce w perspektywie integracji europejskiej*, W. Kozek [ed.], Wyd. Nauk. Scholar, Warsaw 1997, p. 105.

<sup>27</sup> The Tripartite Commission for Socio-Economic Affairs was established by Resolution of the Council of Ministers No 7/94 of 15 February 1994.

<sup>28</sup> Cf. W. Pańków, B. Gąciarz, *Dialog społeczny w Polsce w okresie adaptacji polskiej gospodarki do wymogów Unii Europejskiej*, Fundacja F. Eberta, Warsaw 2001, p. 54 et seq.; K.W. Frieske et al., *Dialog społeczny. Zasady, procedury i instytucje w odniesieniu do podstawowych kwestii społecznych*, IPS UW, IPISS, Warsaw 1999.

in relation to the ILO. These regulations may be considered of fundamental significance for collective labour relations in Poland<sup>29</sup>. The aforementioned acts guarantee the freedom of association as trade unions and employers' organisations, determine prerogatives of nationwide structures of trade unions and employers' associations, such as, for example, the right to issue opinions on legal acts and amendments thereto, the right to express opinions in matters of key significance for the scope of organisations' activities, and lastly - the right to motion for adoption or amendment of a legal act. Trade unions and employers' organisations were also guaranteed independence and the right to self-government. In turn, the Act on Collective Dispute Resolution enacted procedures for conducting a collective dispute, including a guarantee of the right to strike. Another important form of reinforcement of the dialogue's functioning, was the introduction in 1994 into the Labour Code of provisions regulating collective labour agreements<sup>30</sup>. Strengthening social partners' position and establishing, next to the Tripartite Commission, a legal infrastructure required to build mutual relations and including labour relations issues within the mainstream of the social dialogue, the aforementioned legal institutions served as a basis for development of social dialogue and collective labour agreements. The 1990s also brought an increased significance of dialogue on the sectoral level. Sectoral negotiations enabled restructuring of the key sectors of the Polish economy which would not have been possible to carry out without trade unions' consent. Sectoral dialogue kept extending its scope along with the emergence of plans for restructuring further sectors of economy. At

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<sup>29</sup> The following acts were passed: the Act of 23 May 1991 on Trade Unions (Journal of Laws of 2001, No 79, item 854 as amended); the Act of 23 May 1991 on Employers Organisations (Journal of Laws, No 55, item 235 as amended); the Act of 23 May 1991 on Collective Dispute Resolution (Journal of Laws, No 55, item 236 as amended).

<sup>30</sup> Cf. *Układy zbiorowe pracy w demokratycznym ustroju pracy*, IPIPS, Warsaw 1997.; W. Kozek, *Nowe układy zbiorowe pracy w sektorze prywatnym w poszukiwaniu warunków kooperacji*, [in:] *Związki zawodowe w okresie przeobrażeń politycznych i gospodarczych*, J.P. Georgica [ed.], CPD Dialog, Warsaw 1998, pp. 73–80.

the same time, the significance of collective labour agreements at above enterprise level, being a concern of trade unions which strive to strengthen this mechanism of influencing labour relations<sup>31</sup>, was diminishing.

An important moment for the strengthening of the position of social dialogue in public life came as its recognition as one of the systemic principles in the new Constitution of the Republic of Poland adopted in 1997. This event provided a premise for the change in dialogue's legal bases. Until then, its functioning was regulated by the resolution of the Council of Ministers and it lacked sufficient enshrinement in the system of public bodies and institutions. Upon the passing on 6 July 2001 of the Act on the Tripartite Commission for Socio-Economic Affairs and Voivodeship [Provincial] Social Dialogue Commissions, detailed criteria for social partners' participation in these bodies were adopted. Thanks to this, they also included a representation of private entrepreneurs, whereas the works of the Commission itself became better organised. As it turned out, the strength - or more likely weakness - of the Polish model of (neo)corporationism being created was strictly related to the position of social partners, and in particular to the building of a strong representation of the third, next to the government and trade unions, party - that is organisations of employers. The moment of extending the Commission's composition and ensuring representation equally to trade unions as well as employers, initiated the period of an increase in this body's activity. It is also fitting to mention that the Act on the Tripartite Commission gave rise to operation of voivodeship [provincial] social dialogue commissions (WKDS) and initiated development of social dialogue on the regional level. After the Act was passed, the rank of dialogue, whose institutional frames became more firmly enshrined in the law, increased, yet also its organisational forms guaranteed more efficient manner of conducting talks and negotiations. The compo-

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<sup>31</sup> Cf. L. Gilejko, *Postawy wobec restrukturyzacji*, [in:] *Związki zawodowe a restrukturyzacja. Bariery czy kompromis?*, L. Gilejko [ed.], SGH, Warsaw 2003 pp. 33-37.; J. Gardawski, *Dialog społeczny w Polsce: teoria, historia praktyka*, MPiPS, Katedra Socjologii Ekonomicznej SGH, Warsaw 2009.

sition of the Commission, appointed on the grounds of the representativeness criteria, to a greater degree reflected social partners' actual potential.

### 1.4. Legal Frames for the Functioning of Social Dialogue

The condition for the development of social dialogue is equality of rights of all parties of dialogue and mutual respect and recognition of both legal and factual basis for representing legitimate interests of employers and employees respectively. The particular role of the state, i.e. the government, consists in the necessity of conciliating interests of the parties with general economic and social interest while favouring neither of them. Institutionalisation of social dialogue in Poland commenced still in the first half of the 1990s. The basis for the functioning of the institution of dialogue comes a whole range of diverse legal acts and other documents: the Constitution of the Republic of Poland, statutes and resolutions of the Prime Minister and Council of Ministers, resolutions or decisions of appropriate ministers, acts of local law, resolutions of the Tripartite Commission as a rule pertaining to establishment of working groups or subgroups. It is on the basis of these documents that some of the most important dialogue institutions at government administration agencies and public funds in Poland operate<sup>32</sup>.

The supreme source of law regulating social dialogue principles is the **Constitution of the Republic of Poland**, which defines dialogue as one of the fundamental characteristics of the system of government of the Republic of Poland. The Constitution also defines the most important participants of the dialogue - the state, trade unions, and employers' organisations; it also mentions social partners<sup>33</sup>. Specific areas of social dialogue are regulated in

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<sup>32</sup> *Instytucje dialogu społecznego przy urządach administracji rządowej, Informator 2008*, MPiPS, Departament Dialogu i Partnerstwa Społecznego, Warsaw 2013, p. 275.

<sup>33</sup> Articles 8 and 20 of the Constitution of the Republic of Poland are of fundamental significance.

numerous statutory acts. Next to the Constitution, the following acts are of fundamental significance for the regulation of the principles of social dialogue and its legal frames: the Act on the Tripartite Commission for Socio-Economic Affairs and Voivodeship [Provincial] Social Dialogue Commissions, the Labour Code Act, the Act on Trade Unions, the Act on Employers' Organisations, the Act on Information and Consultation of Employees, and the Act on Collective Dispute Resolution. The mentioned Acts obviously do not constitute an exhaustive catalogue of legal acts regulating forms and principles of social dialogue, but they outline the basic scope which requires to be discussed and analysed. The Preamble to the Constitution of the Republic of Poland contains a reference to social dialogue: '[...] establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities'. Social dialogue is therefore a constitutional principle on which the state's fundamental laws are based. Also, Article 12 of the Constitution plays a substantial role: 'The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations'. Also, Article 20 of the Constitution of the Republic of Poland guarantees the realisation of social dialogue principles as one of the pillars of the social market economy: 'A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland'<sup>34</sup>. Thus, the Constitution guarantees that social dialogue becomes a constitutional obligation of public authority. At the same time, it follows from this provision that the social market economy is based on dialogue and cooperation of social partners, which constitutes one

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<sup>34</sup> The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No 78, item 483).

of the fundamental constitutional principles. As emphasised by W. Sanetra, it is fitting to recognise that next to their 'solidarity' and 'cooperation', in the dialogue of social partners the social sense of market economy is expressed. Therefore, insofar as the market basis of economy is freedom of economic activity and private ownership, the social substance of the economy consists in solidarity, dialogue, and cooperation of social partners<sup>35</sup>. Relative balance in industrial relations ensured by provisions of the Constitution of the Republic of Poland and ILO regulations, and in further order by integration with the EU where the idea of social dialogue enjoys strong traditions, allowed for the strengthening of the role of dialogue in the shaping of social and economic policy of the state and included trade unions and employers' organisations within legally sanctioned mechanisms of consultations and negotiations with the government on the national forum, at the same guaranteeing their participation in European and international dialogue<sup>36</sup>.

The Tripartite Commission for Socio-Economic Affairs functions on the grounds of the **Act of 6 July 2001 on the Tripartite Commission for Socio-Economic Affairs and Voivodeship [Provincial] Social Dialogue Commissions** and Resolution No 2 of 6 March 2002 on the Rules of Proceeding of the Commission. The Rules' provisions have been supplemented with Commission's resolutions: No 6 of 26 June 2002; No 13 of 13 December 2002; No 15 of 20 February 2003. On 23 November 2004, the Parliament (Sejm) passed the Act on the Amendment of the Act on the Tripartite Commission for Socio-Economic Affairs and Voivodeship (Provincial) Social Dia-

<sup>35</sup> W. Sanetra, *Dialog społeczny jako element ustroju społecznego i politycznego w świetle Konstytucji RP*, [in:] *Zbiorowe prawo pracy w XXI wieku*, A. Wypych-Żywicka, M. Tomaszewska, J. Stelina [eds.], Fundacja Rozwoju Uniwersytetu Gdańskiego, Gdańsk 2010, pp. 9–10.

<sup>36</sup> J. Gardawski, *Dialog społeczny w Polsce: teoria, historia praktyka*, MPIPS, Katedra Socjologii Ekonomicznej SGH, Warsaw 2009.; Cf. Article 152 Treaty on the Functioning of the European Union added by the Treaty of Lisbon, where the Union recognises and supports cooperation of social partners on its level, taking into consideration the variety of national systems, facilitating dialogue between them, and respecting their autonomy. The tripartite social summit for growth and employment affairs contributes to social dialogue.; Cf. also Article 154, 155, and 153 of the Treaty.

logue Commissions. The amendment extended the competencies of provincial dialogue institutions and changed the principles for determining representativeness of organisations of which the Tripartite Commission was comprised. The Act defines the Tripartite Commission as a forum for social dialogue conducted with the view of conciliating interests of employees, employers, and common good. Under Article 1 of the Act, it aims to achieve and keep social peace by conducting dialogue in the area of wages and social benefits as well as in other social and economic affairs. According to the current legal status, the Tripartite Commission is comprised of representatives of the governmental side indicated by the Prime Minister and in the number defined by him, agents of representative trade union organisations, and employers' organisations. The Tripartite Commission's competences may be divided into **negotiating, consultative, and advisory prerogatives**. The Commission's negotiating prerogatives include realisation of tasks specified in the Act of 23 December 1999 on Remuneration in the State-Budget Sector and Amendments to Certain Acts by establishing yearly average remuneration increase indicators in the state-budget sector for the upcoming year and tasks provided for in the Act of 10 October 2002 on Minimum Wage for Work for the upcoming year. The negotiating prerogatives are also regulated in the Act on the Social Insurance System in the scope of negotiating the disability and retirement pension indexation rate. All the mentioned prerogatives were confirmed in the Act on the Tripartite Commission regulating the system of negotiating these indicators. The Commission is equipped with particular review competences in the areas of assumptions of the social and economic policy and the Budgetary Act. Social partners represented in the Commission have a possibility of reviewing selected macro-economic values which constitute the basis for the draft of the state's budget, and objectives and state's budget draft for the upcoming year. Another important competence of social partners is also the possibility of reviewing drafts of and amendments to legal acts of national and European law. The Act

#### 1.4. Legal Frames for the Functioning of Social Dialogue

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on Trade Unions<sup>37</sup> and the Act on Employers' Organisations<sup>38</sup> concretise these prerogatives respectively. In practice, this means that representative organisations of employers and trade unions review and give their opinion on a majority of statute drafts and executive acts, whereas in the case of issues related to labour law, social insurance, social benefits, and labour market, but also health service and public finances systems, work groups of the Tripartite Commission consult or negotiate changes proposed by the government.

As follows from the analysis above, the Commission's competences include prerogatives strongly embedded in provisions of law which are not of a constitutive nature, yet they still guarantee the Commission a potential influence on the shape of decisions and, in particular, participation of social partners in processes of negotiations and consultations<sup>39</sup>. Moreover, the Tripartite Commission has been equipped in a whole range of prerogatives of opinion-forming and consultative nature, in particular: examination of matters of substantial social or economic significance raised for the agenda by one of the parties if it deems that solving them is of significance for maintaining social peace. The commission's competences also include a possibility of passing affairs of substantial social or economic significance for regions to be examined by an appropriate provincial social dialogue commission. In terms of principle, the Commission operates in a tripartite system: government – trade unions – employers' organisations, however provisions of the act, next to the fundamental principle of tripartiality, also make a bilateral formula possible. This means that each of the parties participating in the Commission may adopt a position on social or economic policy matters together with another party and also may call on another party to adopt a stance in a case, if it deems this case to be of substantial social or economic significance. The possibility of engaging in activities in a bilateral formula has this consequence

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<sup>37</sup> Journal of Laws of 1991, No 55, item 234.

<sup>38</sup> Journal of Laws of 1991, No 55, item 235.

<sup>39</sup> Social Dialogue Principles. Government's Programme Document adopted by the Council of Ministers on 22 October 2002, the Council of Ministers, Warsaw 2002.

that trade unions and employers within the frames of the Commission have the right to enter into collective labour agreements for more than one enterprise covering the whole of employers affiliated in organisations represented in the Commission or a group of such employers and workers employed by them<sup>40</sup>. This important competence laid down in provisions of the act has never been used in practice so far. The Tripartite Commission (TK) acts through its bodies, **the Presidium of the Commission** and **working groups**, which focus on content-related works entrusted to them by the Presidium. The most important constitutive body is the plenary session of the Tripartite Commission, composed of the Commission's members indicated by individual representative organisations. The sessions of the Commission are convened by the Chairman at the motion of the Presidium, and they are held not less frequently than once every two months. The Commission adopts its decisions in the form of unanimous resolutions, the validity of which is decided by participation of each party to the Commission in the voting. Exercising an advisory vote, representatives of the National Bank of Poland, the Central Statistical Office, local governments, and NGOs also participate in the works of the Commission through the representative of the Public Benefit Works Council.

The Act established **voivodeship [provincial] social dialogue commissions** (WKDS) and specified principles of their operation as structures for communicating on the voivodeship/province level in the most significant social and economic affairs between representatives of the voivode - the government, trade unions, employers' organisations, and self-government represented by the Province Marshall. The WKDSs provide a forum for social dialogue conducted with the view to conciliating interests of employees, employers, and common good on the province level. The regional dialogue conducted in their frames, with the activity of voivodes

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<sup>40</sup> Prerogatives related to concluding sectoral collective labour agreements have never been put to practice, which results, as I have already mentioned, not only from the employers' reluctance to conclude such agreements, but first and foremost from the weak or strongly diversified sectoral representation of both employers and trade unions.

as representatives of the governmental side allows to relieve the nationwide social dialogue institutions and adjust [the dialogue itself] to the government's policy regionally conditioned goals. The works of the WKDSs, according to the Act, are participated in by representatives of representative trade unions and employers' organisations, next to representatives of local authorities and local government administration in the frames of regional social dialogue that functions on quadripartite principles. Amendments to the Act on the Tripartite Commission for Socio-Economic Affairs and Voivodship [Provincial] Social Dialogue Commissions introduced in 2004 rendered the WKDSs' competences more precise<sup>41</sup>. The amendment furnished commissions with a new competence in the scope of expressing opinions in situations causing conflicts between employers and employees if they are considered to be of significance for maintenance of public peace (Article 17a.1). These affairs may be included in the agenda not only by each of the parties to the commission, but also by trade unions and employers' organisations which are not WKDS members, public administration bodies, and parties concerned by the conflict (Article 17b.1). The amendment of the Act introduced a new legal solution extending competences of the WKDSs, making it possible for them to enter into mutual agreements pertaining to parties' obligations in the matters covered by the scope of their operation, to remit by the Tripartite Commission matters of provincial dimension covered by WKDSs' range of competences to be examined by the voivodship/provincial social dialogue commission, to draft development strategies by the Province Marshall to the voivodship/provincial social dialogue commissions for review and opinion, insofar as a motion in this case is filed by employees and employers - parties to the commission.

Social dialogue was also sanctioned in other statutes, first and foremost in the Act of 26 June 1974, the Labour Code, in the principles of labour law and in its Section XI regulating the set of is-

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<sup>41</sup> Cf. J. Męcina, *Dialog społeczny a integracja z Unią Europejską*, Wyd. Aspra-JR, Warsaw 2006.

sues related to collective labour agreements<sup>42</sup> and in other statutes establishing institutionalised forms of social dialogue, such as the Labour Protection Council, the Labour Market Council, provincial and district labour market councils, the Statistical Council, the National Consultation Council for Disabled Persons, the Supervisory Board of the National Fund for the Rehabilitation of Disabled, and the Supervisory Board of the Social Insurance Institution<sup>43</sup>. The notion of a social dialogue institution was for the first time defined in the Act on Promotion of Employment and Labour Market Institutions, which in Article 6.6 specified them as organisations and institutions dealing with labour-related issues: confederations of trade unions, organisations of employers and the unemployed, as well as NGOs cooperating with employment services and voluntary labour corps in the scope of realisation of tasks determined in the Act on Collective Dispute Resolution, the Act on Minimum Wage, the Act on Remuneration in the State-Budget Sector, and several other legal acts. It is also worth emphasising that a different structure of **Tripartite Branch Units** (TZB) operates in Poland as a plane for cooperation in the frames of specific sectors. The TZBs are of autonomous nature in relation to the Tripartite Commission and other bodies - participants of the dialogue.

The Labour Code Act also plays a key role in regulating mutual obligations of employees and employers. The labour law principles listed in Chapter 2 of Section I have the character of a catalogue of general norms occupying a central position in the labour law system and express fundamental ideas and assumptions of the labour system, while reflecting the existing system of socio-economic relations. They establish the most important rights, duties, and obliga-

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<sup>42</sup> The Act of 26 June 1974 the Labour Code, (Journal of Laws of 1998, No 21, item 94 as amended).

<sup>43</sup> Cf. The Act of 13 April 2007 on the National Labour Inspection, the Act of 20 April 2004 on Promotion of Employment and Labour Market Institutions as amended; the Act of 27 August 1997 on Vocational and Social Rehabilitation and Employment of Persons with Disabilities as amended; the Act of 13 October 1998 on the Social Insurance System as amended. More on the functioning of these dialogue institutions [in:] *Informator Ministerstwa Pracy i Polityki Społecznej. Instytucje Dialogu Społecznego w Polsce*, Warsaw 2009.

tions of labour law entities, entities of individual labour relations, as well as entities of collective labour law concerning rights and obligations of parties to a labour relation. The labour law principles fulfil substantial functions also in a normative sense. First and foremost, they constitute legislative guidelines to be adhered to by employers in the law-making process and which should be concretised and developed. The indicated category of the labour law also has a function of interpretative clues, hence they should influence the direction and content for interpretation of provisions of the labour law. The literature draws attention to the fact that the category of labour law principles being the subject of the present discussion also fulfils the role of directives shaping the activity of state administration bodies and local governments agencies, as well as activities of employers<sup>44</sup>. Discussion conducted in the frames of social dialogue between partners in employing institutions many a time revolves around principles of the labour law thus understood. This is because differences in interpretation of social parties' duties and obligations stemming from these principles may become a subject of a discussion, dispute, and at times even a conflict in employing institutions. While performing a division of labour law principles in terms of the social dialogue's interest in them, it is possible to notice a clear dichotomy between principles of individual and collective nature. Such principles as freedom of engaging in work, freedom of entering into a labour relation, the right of respect for dignity and other personal interests, the non-discrimination principle, or the right to rest are principles of individual nature, capable of becoming a subject of direct claims asserted before labour courts or complaints addressed to public administration bodies, in this case to the National Labour Inspectorate (PIP). In turn, social partners discuss principles constituting foundations of the collective labour law, giving their partners a space for negotiations and facilitating a mutual dialogue. The first principle being a subject of social dialogue is the principle mentioned in Article 13 of the LC,

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<sup>44</sup> Cf. Z. Salwa, *Prawo pracy i ubezpieczeń społecznych*, 11th edition, Wydawnictwo Prawnicze LexisNexis, Warsaw 2007, p. 43.

under which the employee has the right to fair compensation for their work. This right is formulated in numerous international acts, drawing, amongst others, from the ILO's concept of decent work. Under Article 23.3 of the Universal Declaration of Human Rights, adopted by the UN General Assembly, everyone who works has the right to just and favourable remuneration ensuring for him and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social assistance. The right to fair compensation appears also in the UN International Covenant on Economic, Social and Cultural Rights of 16 December 1966. Its Article 7a provides that everyone has the right to fair wages which ensure a decent living for themselves and their families. However, this right is most extensively presented in Article 4 of the European Social Charter of 18 October 1961, according to which the right to a fair remuneration extends to the right of workers to a remuneration such as will give them and their families a decent standard of living, thus making a reference to the 'concept of social just wages' or 'right and satisfactory remuneration', the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases, the right of workers to equal pay for work of equal value, permitting deductions from wages only under conditions and to the extent prescribed by generally applicable provisions of law<sup>45</sup>. The notion of a fair remuneration extends not only to remuneration in the strict meaning of this word, but also to other work-related performances and social benefits, such as family, housing, training, and cultural benefits, tax reliefs, and distribution of incomes.

Another principle shaping social dialogue at a workplace is the employer's obligation to meet living, social, and cultural needs of employees according to possibilities and conditions. This principle is defined as an obligation and not duty, due to the wording of the phrase that meeting the needs of employees is possible only accordingly to possibilities and conditions. General clauses of this

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<sup>45</sup> Cf. *Kodeks pracy 2007. Komentarz*, B. Wagner [ed.], Ośrodek Doradztwa i Doskonalenia Kadr Sp. z o.o., Gdańsk 2007, pp. 52–54.

provision have this result that the norm subject to analysis opens up a space for negotiations concerning the satisfaction of personnel's needs. Whereby - as far as living conditions go - on the employer's side these needs are first and foremost realised by a social benefits fund established in compliance with the requirements of the Act on Funds for Social Benefits in Companies<sup>46</sup>.

The duty to provide employees with possibilities of raising their professional qualifications is another labour law principle that creates space for social dialogue. In practice, dialogue can pertain to procedures and rules applicable when sending employees to training in order to raise their qualifications, rules for funding such training as well as obligations of employees, who benefit from training financed by their employers<sup>47</sup>. One of the attributes of modern labour relations is the necessity to constantly raise qualifications of the employees. This should be one of the key areas of interest of social partners.

Next to the labour law principles directly concerning the rights and obligations of parties to a labour relation themselves, the Labour Code also mentions the principles establishing parties of collective labour law. This is because in keeping with the principle mentioned in Article 18<sup>1</sup> §1 of the LC, employees and employers have the right to form organisations and accede such organisations. The principle of freedom of coalition was expressed in two statutes: the Act of 23 May 1991 on Trade Unions<sup>48</sup> and of 23 May 1991 on Employers' Organisations<sup>49</sup>. Another principle of the so-called collective labour relations is the one expressed by Article 18<sup>2</sup> of the LC, according to which employees participate in the management of their workplace in the scope and according to the principles set forth in separate provisions. Appreciating a multi-aspect momentous significance of employee participation, the legislator

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<sup>46</sup> Journal of Laws of 1996, No 70, item 335 as amended.

<sup>47</sup> Amendments to the Labour Code, according to the Law of 20 May 2010 Amending the Labour Code and the Law on the Personal Income Tax (Journal of Laws No 105, item 655).

<sup>48</sup> Journal of Laws of 2001, No 79, item 854 as amended.

<sup>49</sup> Journal of Laws No 55, item 235 as amended.

found it to be a fundamental principle of labour law<sup>50</sup>. *De lege lata*, in Poland there is no common and homogeneous regulation in this scope, whereas provisions to which Article 18<sup>3</sup> of the LC refers are, first and foremost, provisions from the Act of 25 September 1981 on Self-Government of Employees of a State-Owned Enterprise<sup>51</sup> and on State-Owned Enterprises<sup>52</sup>, as well as the Act of 30 August 1996 on Commercialisation and Privatisation<sup>53</sup>.

In Section XI, the Labour Code regulates the system and principles of entering into and remaining in force of collective labour agreements. Collective labour agreements may be entered into on the level of an enterprise, but also on the above enterprise level. Agreements signed at above enterprise level on the employers' side are entered into respectively by employers' organisations, the minister appropriate for state administration employees, or the management of a self-government unit for self-government employees, as well as trade unions' representative sectoral structures, whereas workplace agreements are concluded by an employer and representative trade union organisations. Collective agreements constitute a specific source of labour law, regulating the contract of employment conditions and mutual obligations of parties to such agreements. Agreement regulations may not be less advantageous than generally applicable provisions of labour law<sup>54</sup>.

The most important form of employee representation in Poland are trade unions, in the act awarded a number of prerogatives, both in the scope of individual labour law and particularly in collective relationships with the employer. The legal guarantees of trade union freedom stem not only from the Constitution of the Republic of Poland, but also from provisions of international law, particularly from ILO convention No 87 of 1948 of key importance

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<sup>50</sup> More regarding employee participation in management, cf. K. Rączka, *Uczestnictwo pracowników w zarządzaniu przedsiębiorstwami państwowymi w Polsce. Problematyka prawna*, Wyd. UW, Warsaw 1994.

<sup>51</sup> Journal of Laws No 24, item 123 as amended.

<sup>52</sup> Journal of Laws of 2002 No 112, item 981 as amended.

<sup>53</sup> Journal of Laws of 2002 No 171, item 1397 as amended.

<sup>54</sup> J. Wrątny, *Układy zbiorowe pracy w demokratycznym ustroju pracy*, IPIPS, Warsaw 1997.

for freedom of coalition and ILO Convention No 98 of 1949. The Act of 23 May 1991 on Trade Unions awards these prerogatives on the level of a workplace, but also on sectoral, regional, and national levels. A company union is the basic element of the trade union's structure through which a given trade union operates at the employer's enterprise. The company union may be of a two-fold form, depending on the model of organisation of the trade union movement in the frames of which it operates.

The company union may have a structure of an independent trade union with a legal personality, covering only one employer with the extent of its operations, or it may be an organisational unit of a trade union (national or regional) holding a legal personality by virtue of the trade union's statute which extends its operation to one or more employers. This pertains to a trade union with a territorial or territorial-sectoral nature, associating workers employed by various employers on a given area, most often a country or a region. However, regardless of the mode of a given trade union's operation at an employer's enterprise, only an organisation associating at least 10 members being employees or people performing work under outwork contract at the employer covered by the scope of this organisation's activities are entitled to prerogatives awarded to the company union by the Act on Trade Unions and other provisions of labour law. This is because the Act on Trade Unions awards a number of prerogatives from the scope of labour law only to such trade union organisations<sup>55</sup>.

Prerogatives of a company union defined in the Act may be divided into three groups. A substantial part of them is of an **advisory nature**, which means that the employer is obligated to consult decisions to be adopted with the trade union organisation operating at his enterprise, yet he is not bound by the contents of its opinions. A part of the company union prerogatives is of a **consultative nature**, boiling down to the employer's duty to engage in consultations with the trade union organisation in terms

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<sup>55</sup> Cf. *Prawo pracy 2008*, Dom Wydawniczy ABC, Warsaw 2008; Cf.; K.W. Baran, *Kodeks pracy 2007. Komentarz*, pp. 66–68 B.

of decisions to be adopted. There also exists a number of company union's competences of a **constitutive nature (authoritative)**. This means that effectiveness of an act in law depends on the company union's position in a given case.

The trade union expresses its opinion in the form of a consent or objection. The principles of representation of employee rights and interests by trade unions depend on their nature and have a different form in the scope of collective rights and interests, where the union in principle represents all employees, and a different one in the case of individual rights and employee interests where the union represents only its members. The most important competencies of the company union include participation in the creating and shaping of company sources of labour law. The company sources of labour law constitute: collective labour agreements, working regulations, pay regulations, company social benefit fund resources management regulations, award and bonus regulations. Provisions require the employer to negotiate or consult content of these acts with the company union organisation. The union makes no decisions, but participates in issuance thereof by the employer exercising a constitutive voice, while in the case of a collective labour agreement it is a party thereto. When several trade union organisations are active at the employer's enterprise, then if in the matter of agreeing the content of working regulations, pay regulations, company social benefit fund resources management regulations, award and bonus regulations, they fail to present a joint position within 30 days - decisions regarding these matters are made independently by the employer upon reviewing separate positions of trade union organisations<sup>56</sup>.

The Act on Trade Unions (UZZ) also regulates consultative prerogatives of trade union organisations which impose specific ob-

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<sup>56</sup> Cf. art. 27 of the Act on Trade Unions, concerning consulting with the company union of the social benefit fund resources management principles regulations, as well as regulations related to awards and bonuses and principles of division of funds for remuneration of workers employed at state administration unit, Article 104<sup>2</sup> regulating principles for consulting and issuing Working Regulations, and Article 77<sup>2</sup> § 4 of the Labour Code providing that the employer consults the Remuneration Regulations with the company union organisation.

ligations onto the employer. The most important examples are: Article 28 of the UZZ, obligating the employer to provide at the trade union's demand information necessary for conducting trade union activities, in particular information related to the conditions of work and remuneration principles, Article 26<sup>1</sup> UZZ, obligating the heretofore and new employer to inform company unions active in their institutions about a planned transfer of the employing institution onto a new employer, causes for such a transfer and its date, legal, economic, and social effects for employees, as well as intended actions concerning employment conditions, in particular working, wage, and retraining conditions. Whereas in the event when the heretofore or new employer intends to engage in activities concerning workers' employment conditions, such employer is obligated to initiate negotiations with company unions with the view of concluding an agreement.

As has already been mentioned in this publication, a number of consultative prerogatives is also included in the Act of 26 June 1974 the Labour Code and in other statutes<sup>57</sup>. Provisions of the Code lay down powers for company unions, and in the case of non-existence of such unions at a workplace, in certain cases they also award these powers to representatives of employees, e.g. in the area of establishing special working time systems, company social benefit fund resources management principles, or establishing personnel representations in a European works council or a European company<sup>58</sup>. An important group of trade unions' prerogatives

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<sup>57</sup> Cf. The Act of 4 March 1994 on Funds for Social Benefits in Companies in Article 8.2, regarding consulting the social benefit fund regulations. If no such organisation exists, the regulations are established by the employer in agreement with an employee selected by the personnel to represent its interests.

<sup>58</sup> Cf. European Works Council is an employee representation established by Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, implemented into Polish legislation by the Act of 5 April 2002 on European Works Councils (Journal of Laws of 2002 No 62 item 556) amended by Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009; also cf. the Act of [...] March 2005 on the European Grouping of Economic Interests and a European Company (Journal of Laws 2005 No 62 item 551).

covers supervision over the observance of the law, in particular occupational health and safety regulations. Rights pertaining to occupational safety and health constitute a key area of activity of trade unions, which enjoy a range of powers and guarantees in this field; including appointing social labour inspection (employee health and safety representatives), establishing OHS Committees. Company level trade union organisations have the right to receive information on the results of tests on harmful substances and factors performed in the company. Competences of trade unions include managing activities of the **social labour inspection**. It is a social service performed by employees, and its main goal is to ensure that the employer guarantees safe and hygienic working conditions and protects employees' rights. The social labour inspection represents interests of all workers employed by a given employer. As a principle, only an employee of a given company, simultaneously being a member of the company trade union may serve as a social labour inspector<sup>59</sup>.

The Act on Trade Unions equips the company union with a range of prerogatives in the scope of **supervision of occupational health and safety principles observance** at workplace. Article 29 of the Act in the event of a substantiated suspicion of incidence of danger to life or health of employees in the workplace, furnishes the company union with the right to petition the employer with a motion to perform suitable tests and simultaneously notify the appropriate district labour inspector of this fact<sup>60</sup>. In the scope of supervision of observance of occupational health and safety regulations in the workplace, company union's another very important prerogative is its participation in appointing an occupational health and safety commission. This procedure applies

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<sup>59</sup> Cf. Act of 24 June 1983 on the National Labour Inspection (Journal of Laws No 35, item 163 as amended).

<sup>60</sup> Cf. Act of 30 October 2002 on Social Insurance Against Accidents at Work and Occupational Diseases (Journal of Laws of 2002 No 199, item 1673 as amended) and Council of Ministers' Ordinance of 30 July 2002 on the List of Occupational Diseases, Detailed Procedural Rules Concerning Reporting of Suspicion, Identification and Confirmation of Occupational Diseases and Entities Competent in Such Cases (Journal of Laws No 132, item 1115).

only to employing institutions with the personnel exceeding 250, where such commissions are obligatory and act as advisory and consultative bodies. They are composed of people elected by the company union as representatives of employees. Among competences of the company union in the scope of adopting position in matters concerning employee rights, it is impossible to omit its control powers. If, in the opinion of the trade union, employer or state administration body and local government's conduct in these matters does not comply with the law, the trade union may petition an appropriate body, e.g. the National Labour Inspection, with a demand for removal of a detected non-compliance.

The company union's competences extend also to adopting a position in individual employee matters. They mostly pertain to a dissolution of the employment relationship, or change of work or pay. It is a principle that in individual employment relationship matters the trade union represents rights and interests of its members. If several trade union organisations are active at the employer's enterprise, each of them defends rights of their members and represents their interests. The employer's duty to cooperate with the company union in individual matters arising from the employment relationship allows trade unions to adopt a stance in a matter concerning a specific employee. Company union's advisory-consultative prerogatives in the scope of dissolution of an employment relationship include a possibility of adoption by such an organisation of a position regarding the employer's intention to terminate an employment contract concluded with a given employee for an indefinite period of time<sup>61</sup>. Finally, company union's prerogatives of constitutive nature include the granting or refusing of consent in the event of the employer's intention to terminate with or without notice the employment contract with an employee covered by special protection.

**The Act of 23 May 1991 on Employers' Organisations** determines the principles for formation of organisations of employers, their federations, confederations, as well as their prerogatives.

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<sup>61</sup> Cf. L. Florek, *Prawo pracy*, LexisNexis, Warsaw 2007.

For natural reasons they are substantially more modest than the above-characterised prerogatives of trade unions, and they come down to determining principles, scope, and form of representation of interests. The act sanctions employers' right of association and guarantees them independence and self-government. By virtue of Article 5, employers are guaranteed the right to represent their members' interests, including economic. They may form national and international structures, while multiple prerogatives, particularly in the scope of representation of interests and providing opinions in regard to assumptions and drafts of legal acts as well as amendments to such acts are guaranteed by the act's provisions. Prerogatives guaranteeing representative organisations of employers the right to provide opinions regarding legal acts and to motion for their enactment or amendment are complementary to trade unions' prerogatives and in this sense the principle of equality of parties of social dialogue, in literature also known as the principle of employees and employers' equality in the scope of freedom of association, is realised. The equality principle is a legal expression of the fundamental principle of shaping collective labour relations in the manner which facilitates the balancing of position of the capital and the labour<sup>62</sup>. Despite the fact that in multiple European legislations, there is a tendency to jointly regulate a legal situation of trade union organisations and employers' organisations, the Polish legislator decided to use a separate solution while maintaining the equality principle. Guarantees of forming and operating employer's organisations on equal rights with trade unions are in the fullest extent invoked by the aforementioned ILO Convention No 87 of 1948. Convention No 98 concerns the application of the principles of the right to organise and to bargain collectively, and regulates different aspects of freedom of association. The first of these being adequate protection of workers against any acts interfering with their freedom of association as well as adequate protection for workers' and employers' organisations against any acts

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<sup>62</sup> Cf. Z. Hajn, *Status prawny organizacji pracodawców*, Wydawnictwo C.H. Beck, Warsaw 1999, pp. 18–22.

of interference by each other or each other's agents or members in their establishment, functioning or administration; the second one being an obligation placed on the signatories to support and encourage collective bargaining leading to conclusion of collective labour agreements<sup>63</sup>.

A new form of personnel representation, next to trade unions capable of representing workers' interests, is the **works council** established by the EC Directive 2002/14. The directive aims to regulate in the EU member states conditions for informing personnel of employing institutions and consulting with them the economic situation of the enterprise and changes in organisation of work and employment structure. In Poland, provisions of the Directive were implemented by the Act of 7 April 2006 on Information and Consultation of Employees. Under this act, the employer's most important obligation consists in establishing councils in workplaces employing personnel exceeding 50, at the motion of 10% of the workers, guaranteeing conditions of employee councils operation, protecting their members during their term, and providing works councils with information and consulting with them changes in organisation of work and employment structure. Article 13 of the Act provides that the employer shall provide the works council with information on the economic situation of the enterprise and probable development in the changes of the situation, structure, and employment, as well as information on measures intended to maintain current staff levels and on measures likely to lead to substantial changes in work organisation or in contractual relations. In case of forecasted changes, the employer provides the information upon a written request by the works council. The employer does it at such time, in such fashion, and with such content as appropriate to enable the members of the works council to become acquainted with the subject matter, analyse the information, and prepare for consultation. The works council may present its opinion whereas adoption of the opinion

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<sup>63</sup> Journal of Laws of 1958, No 29, item 126.

shall require approval of the majority of members<sup>64</sup>. The act leaves numerous issues related to principles of operation of works councils, mode of settlement of contentious issues, and council financing principles to be agreed on by the parties, i.e. the employer and the works council. It is fitting to emphasise that in the first period of the act's functioning, i.e. until the year 2009, works councils could be set up on the principles of elections made by employees or by way of appointment by representative trade union organisations. The Judgement of the Constitutional Tribunal of 1 July 2008 and the 2009 amendment of the Act deprived trade unions of these prerogatives. It is fitting to emphasise that insofar as trade unions enjoy an extensive catalogue of prerogatives in terms of representing employees' collective and individual interests, prerogatives of works councils are limited to consultations in the area of changes in the economic standing of their employing institution and their impact on employment<sup>65</sup>.

Another statute introducing European standards into Polish labour law is the Act of 5 April 2002 on European Works Councils which constitutes an implementation of the Directive 1994/45/EC and its amendment by Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. The act aims at introducing dialogue mechanisms in enterprises of European reach and, among others, increasing its influence as well as more effective cooperation with central management, transparent principles of representation, and guaranteeing the flow of information between the European and national level of dialogue conducted in European enterprises.

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<sup>64</sup> P. Pettke, *Rady pracowników po pierwszej kadencji – praktyczne doświadczenia w stosowaniu ustawy*, [in:] *Zbiorowe prawo pracy...*, op.cit., pp. 459–462.

<sup>65</sup> Cf. *Związki zawodowe a niezwiązkowe przedstawicielstwo pracowników w gospodarce posttransformacyjnej*, J. Wratny, M. Bednarski [eds.], IPiSS, Warsaw 2010.; *Dialog społeczny na poziomie zakładu pracy*, J. Męcina [ed.], MPiPS, Warsaw 2009.

Provisions regulating collective disputes between trade unions representing employee interests and employers (and their organisations) are regulated in the **Act of 23 May 1991 on Collective Dispute Resolution**. Under the Act, in a collective dispute the employee side may be represented solely and exclusively by a trade union organisation<sup>66</sup>. In keeping with the definition of a collective dispute, it may concern the following issues: working conditions, wage or social benefit conditions as well as trade union rights and freedoms of employees or other groups enjoying the right of association into trade union. The subject of a collective dispute is demands for satisfying interests of a given group of employees (personnel), given sector, profession, or the total of workers nationwide, this is why the dispute in its nature may pertain to a specific workplace, region, or sector, but also may be of a national character. In Article 4, the Act defines cases where initiating and conducting a dispute between parties is inadmissible. A collective dispute may not pertain to employee demands arising from individual employment relations, even if it pertains to a group of employees, if it is an individual dispute stemming from a claim which may be settled by a labour court or which pertains to issues regulated in company sources of labour law, such as collective law agreements or covenants prior to their termination. Disputes are solved by way of procedures strictly defined by the law, i.e. two mandatory stages of a dispute – negotiations (conciliation), mediation, and facultative arbitration – proceedings before social arbitration panels. The final stage of the dispute can be a strike, which may be announced after the mandatory stages of the dispute have been exhausted. A strike is a final measure for resolution of a collective dispute and may not be announced without previously using dispute resolution possibilities determined in the act. In Poland, the right to strike is an individual right, but it may only be performed collectively. The Act indicates several principles of realisation of the right to strike: the principle of voluntariness of participation in strike, the prin-

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<sup>66</sup> Cf. B. Cudowski, *Reprezentacja zatrudnionych w sporach zbiorowych pracy (de lege lata i de lege ferenda)*, [in:] *Zbiorowe prawo pracy...*, pp. 241–247.

ciple of the ultimate measure, the principle of exclusivity of conducting strikes by trade unions, the consent of minimum of 50% of personnel granted in the personnel referendum, the principle of proportionality of costs to strike-related losses.

The legal acts presented above do not exhaust all regulations pertaining to social dialogue. Nevertheless, they constitute a foundation for determining the principles of social partners cooperation and social dialogue functioning in Poland. As demonstrated above, many principles are confirmed in the acts of European and international law. On this occasion, it is worth pointing to the significance of the Act on Employment Promotion and Labour Market Institutions, the Act on National Labour Inspection, the Act on Professional and Social Rehabilitation and Employment of Disabled Persons, the contents of which only outline the relationships with institutions of social dialogue and its practice in Poland.

### **1.5. Social Dialogue and Social Agreements and Pacts**

An analysis of social dialogue development and its achievements in Poland in the years 1989–2014 requires us to invoke several agreements which serve to confirm the significance and the achievements of social dialogue in Poland. Although the heretofore agreements have not been watershed events, it is impossible to omit them on the occasion of this analysis. The agreement adopted the earliest, since in May 1992, but of an exclusively procedural nature was *the Agreement between the Council of Ministers and the National Commission of Solidarity Trade Union which concerns the rules of procedure of resolving disputes between public administration and Solidarity*. It was concluded during the period of realisation of economic reforms accompanied by strong social unrest, especially strikes of workers. No institutional form of social dialogue between authorities and trade unions, such as the Tripartite Commission for Socio–Economic Affairs, existed at that time. For this reason, the government offered trade unions an agreement determining principles for resolution of social conflicts. Only

the NSZZ ‘*Solidarność*’ signed the agreement, while the OPZZ rejected it. The agreement defined procedures for resolution of conflicts possible to arise at different levels: nationwide, sectoral, or professional, but also local. It was agreed that postulates raised in the course of the dispute may concern only matters within trade unions’ competences. However, these may not be matters which require an adoption or amendment of a statute to be regulated. The agreement determined the procedure for conducting negotiations by parties’ authorised representatives. The significance of this agreement substantially diminished upon the entry into force of the resolution establishing the Tripartite Commission, especially after the passing of the Act on the Tripartite Commission for Social and Economic Affairs and Voivodeship [Provincial] Social Dialogue Commissions, which *de facto* regulated procedures and institutional forms of social dialogue on the national and regional level<sup>67</sup>.

Pacts concluded via the Tripartite Commission for Social and Economic Affairs were: *the Package of Social Guarantees for Citizens* (1995), regional social agreements concluded for the regions of Silesia, Warsaw, and Zielona Góra (1995 and 1996) the *Pact for Agriculture and Rural Areas* (1999). During the turning-point period for the Tripartite Commission’s operation, that is in the year 2001, engagement of the OPZZ, one of the two biggest trade union confederations that had suspended its participation in the Commission’s works, and the Polish Confederation of Private Employers (PKPP), the youngest organisation of private employers, unsuccessfully attempting to accede the group of Tripartite Commission’s partners, in autonomous negotiations related to rendering labour law more flexible and less bureaucratic was an event of special importance. In reaction to the economic crisis the parties agreed upon a number of changes which could lead to protection of employment while facilitating economic activities of companies<sup>68</sup>.

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<sup>67</sup> Cf. J. Męcina, *Dialog społeczny a integracja z Unią Europejską*, IPS UW, Warsaw 2005.

<sup>68</sup> I refer to a detailed analysis of this agreement in Chapter IV of the present book.

Among agreements concluded in the frames of the Tripartite Commission already governed by the Act, a special place goes to the agreement of 2 December 2003. Negotiations conducted in the frames determined by Resolution No 17 of the Tripartite Commission for Socio-Economic Affairs bore fruit in the regulation of socio-economic policy issues. Striking is the fact that the negotiations at issue for the first time ventured so far into economy-related areas, i.e. the introduction of the PIT rate for persons conducting economic activity or issues in the range of public finances. Social partners also dealt extensively with regulation of problems concerning social dialogue and labour relations, indicating that this area constitutes a special domain of trade unions and employers' organisations. The failure of the negotiations substantially limited the scope of the agreement, but on the other hand, the talks positively impacted relations between social partners. Poland, despite that fact that its experience in conducting social dialogue started only 20 years earlier, managed to build a considerable social capital of mutual trust between employers' organisations and trade unions. Since then autonomous talks or bilateral meetings have become a frequent practice, whereas arriving at decisions and compromises, if only in procedural matters, has also become substantially easier. The Tripartite Commission became well-grounded in activities of its bodies and working groups, whereas its Presidium, consisting of the heads of organisations represented in the Commission, began to play the role of an actual forum dictating the tempo of works of the Commission itself. In the course of negotiations, the need to strengthen social partners' expert infrastructure was revealed, as was the role and significance of the governmental side's support and engagement, particularly in the process of negotiating amendments to legislation.

Integration with the European Union and social partners' first experiences in the area of negotiations, combined with a substantial number of issues requiring urgent settlement, opened a space for dispute concerning the conclusion of a pact fashioned after the known social pacts that had been negotiated in Europe. Such attempts were embarked on twice - in 2006 and 2008, yet these plans never moved beyond the phase of planning and initial con-

tent-related discussions. Output from these considerations and talks was partially used in 2009, when in face of the world crisis, trade unions and employers, first autonomously, and then in cooperation with the government, in March 2009 adopted the *Anti-Crisis Package*. The signed agreement was partly implemented in the form of the *Anti-Crisis Act*; periodic changes to labour law were also introduced to regulate solutions connected with the flexitime and limitations in application of employment contracts for specific time. The pact resulted in the reaching of an agreement in terms of the minimum wage in the year 2010 and a declaration of striving to reach the indicator of 50% of the average wage. These regulations expired with the end of 2011 and despite attempts at resuming an agreement in these areas no compromise was reached. Only the new anti-crisis Act on Special Solutions Related to Workplace Protection of 2013 was created jointly by the government and partners, whereas the issue of minimum wage and flexitime became a source of conflict between trade unions and the government.

The above-mentioned agreements do not constitute impressive achievements of social dialogue in Poland, especially in face of the scale of socio-economic changes and reforms from the years 1989–2014 and multiple economic and social challenges. The analysis of individual agreements indicates that majority of documents concentrated on issues related to social and employee rights, although economic policy threads do appear, as well. A broader look at the economic and legal environment was non-existent, whereas social policy was not considered in the context of economic policy and new challenges related to demographic processes, deregulation of the labour market, conditions of development of the small and medium size enterprises sector, vocational and continuing training system, and other issues relevant for the future development of the society and economy<sup>69</sup> were not engaged, either. These issues seemed to be waiting for the renewed formula of tripartite social dialogue.

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<sup>69</sup> K.W. Frieske et al., *Dialog społeczny...*, op.cit.

Searching for reasons for the lack of effectiveness of conducted negotiations may inspire a conclusion that social dialogue still remains to a greater degree partners' response to current socio-economic policy rather than a permanent practice and method for developing socially and economically significant compromises. Realising its economic or social programmes through actions of subsequent governments, the state expected to receive feedback from economic or employee circles rather than attempted to build a socially and economically coherent programme based on the compromises and agreements developed. As an example of difficult reforms which until the end constituted a bone of contention in talks between the government and social partners, although in a different configuration, was the raising of the retirement age to 67 and changes to the retirement system limiting activities of Open Pension Funds. On the other hand, even during the crisis of the Tripartite Commission and trade unions' suspension of participation in it works, the government took on extremely important questions such as labour market policy reform, establishment of the National Training Fund co-managed by employer's organisations and trade unions, extension of parental and maternity leaves, conclusion of an agreement for the reform of vocational training, imposing ZUS contributions on contracts of mandate and members of supervisory boards, and many others, a part of which was postulated by trade unions. An important stage of the government's works was the presentation to social partners and the ILO technical mission, invited by the government, of directions for amendments to the Act on Trade Unions and the Act on Collective Dispute Resolution, which was met with social partners' approval. And finally, [it is fitting to mention] trilateral consultations on the change of the Labour Code towards limiting the use of contracts for specific time. It is, therefore, possible to expect that the period of crisis in tripartite dialogue influenced mobilisation of individual parties to engage in autonomous negotiations between trade unions and employers' organisations, but also reforms undertaken by the government side, which built an institutional potential of social dialogue and may have served to rebuild the trust between parties of dialogue.

However, it must be borne in mind that the quality of social dialogue and chances of arriving at agreements are influenced by such factors as attitudes of dialogue partners and the government, as well as political, economic, and social environment conditions. These factors will be the subject of the further analysis.

### 1.6. Social Dialogue Partners in Poland

Dialogue institutions in Poland can be divided into three groups<sup>70</sup>. The first of them consists of traditionally understood social partners – representatives of organisations of employees and employers engaged in a dialogue with the government administration, and in the case of the WKDSs also with the provincial self-government. This group includes both social dialogue institutions in ministries and central offices - social dialogue bodies (bi-, tri-, quadrilateral) with the main participation of social partners in organisational units of the state, special purpose funds - control and supervision bodies in organisational units of the state. The next category is civic dialogue institutions, represented by NGOs, with the national form of representation – Public Benefit Works Council. There also is a substantial group of institutions where, due to the number of subjects involved, conducted dialogue is of multilateral nature<sup>71</sup>. Beside the three sides: trade unions, employers, and the government, this type of dialogue attracts participants representing organisations of corporational nature, such as professional and economic chambers<sup>72</sup>. In the proposed classification, it is mainly the composition of the appointed dialogue institution that is decisive for attributing it a specific character and dialogue principles. However, it is fitting to emphasise that the special legal nature of social dialogue, supported by international and national guarantees, as well as dialogue mechanisms regulated in the provisions analysed above, follows not only from the composition, but also the subject

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<sup>70</sup> Cf.: J. Męcina, *Dialog społeczny...*, op.cit., p. 47.

<sup>71</sup> *Dialog społeczny. Najnowsze dyskusje i koncepcje*, R. Towalski [ed.], Centrum Partnerstwa Społecznego Dialog, Instytut Spraw Publicznych, Warsaw 2007.

<sup>72</sup> M. Pliszkiwicz, *Social Dialogue in Poland on historical and comparative background*, Praha 2017.

of influence. This subchapter entertains to discuss the role of social partners, i.e. employers' organisations and trade unions, as well as the governmental side, in social dialogue.

**The governmental side.** Social dialogue constitutes a part of the social policy located at the Ministry of Labour and Social Policy, which is responsible for the functioning of social dialogue in its legislative, financial and organisational dimension<sup>73</sup>. The Minister of Labour and Social Policy has also been the most frequent Chairman of the Tripartite Committee. Next to the chairman, the governmental side is represented by representatives of selected departments, among others of the Minister of Labour and Social Policy, Minister of Economy, Minister of Finances, Minister of the State Treasury, Minister of Health, Minister of Education. The Tripartite Commission for Socio-Economic Affairs as the most important nationwide social dialogue institution and its working groups were active at the Ministry of Labour<sup>74</sup>.

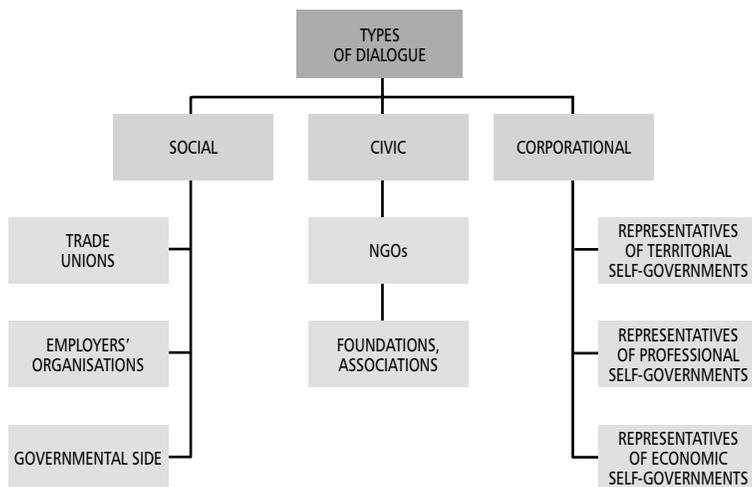
**Trade Unions.** The Act on trade unions gives them a special position in the socio-economic system, guaranteeing not only freedom of coalition, but an entire range of instruments for exerting influence on labour relations and other social policy areas. Although currently the unionising indicator in Poland is merely 15–16%, the trade unions exert considerable influence in relations with employers and the unions enjoy a number of guarantees for the process of consultations and dialogue which has positive impact on negotiations, in particular those conducted at a company level. Trade union confederations also enjoy a number of guarantees of participation in the process of legislative consultations and dialogue, first and foremost in the tripartite formula. Majority of employees with trade union membership are associated in one of three trade union confederations with representatives in the Tripartite Commission. In the meaning of the Act on the Tripartite Commission for Socio-Economic Affairs and Voivodeship

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<sup>73</sup> In the recent years, next to Ministers of Labour, the following persons served as the Chairmen of the Tripartite Commission: Deputy Prime Minister, Minister of Economy, Labour and Social Affairs Jerzy Hausner, Minister of Economy and Labour Jacek Piechota, and Deputy Prime Minister, Minister of Labour Waldemar Pawlak.

<sup>74</sup> Article 1 of the Act of 6 July 2001 on the Tripartite Commission ..., op.cit.

Figure 1. Types of dialogue and its participants



Source: Own study.

[Provincial] Social Dialogue Commissions, the following trade union organisations are representative:

- Independent Self-Governing Trade Union '*Solidarity*' (NSZZ '*Solidarność*'). It covers 38 regions and 16 sectoral secretariats consisting of sectoral sections. The union has inscribed itself in golden letters in Poland's most recent history, on the other hand, its strong political affiliation, persisting with short intervals throughout the period of entire twenty-five years covered by the present analysis, is a certain difficulty. Among weaknesses of this organisation one could indicate its complex structure and problems in relations between the territorial structure and sectoral structures. Its strong points on the other hand include its strong programme and expert basis which resulted in initiatives presented by NSZZ '*Solidarność*' being key trade union initiatives in the framework of tripartite dialogue<sup>75</sup>;

<sup>75</sup> Cf. J. Gardawski, *Dialog społeczny w Polsce. Teoria, historia, praktyka*, MPiPS, Katedra Socjologii Ekonomicznej SGH, Warsaw 2009.

- All-Polish Agreement of the Trade Unions (OPZZ). It associates more than 90 federations and unions and is represented both by the sectoral and territorial structure. A significant phenomenon in the frames of the OPZZ is the 'burgeoning' of territorial structures and development of independent company organisations of OPZZ union structures. This does not remain without an impact on the ability to formulate a homogeneous stance within the frames of the confederation and strong influence of sectoral structures on the confederation's headquarters<sup>76</sup>. The confederation is also politically affiliated;
- Trade Union Forum (FZZ). The confederation was established in an outcome of processes initiated by the Act on the Tripartite Commission dealing with the principles of representativeness on the national level, as if forcing the formation of a trade union confederation through the requirement of representativeness. Due to a high degree of autonomy of its internal structures, dominated by several strong sectors, such as energy, uniformed services, health care, rail transport, an ability to agree on a common position has been problem<sup>77</sup>.

The above-mentioned organisations are the only confederations in Poland meeting the representativeness criteria in the meaning of the Act on the Tripartite Commission. Next to them, there are other sectoral and territorial trade union structures as well as autonomous trade unions operating in specific enterprises. In the meaning of the Act on the Tripartite Commission, only trade union organisations which jointly comply with the following criteria are considered representative:

- organisations associating more than 300,000 members who are employees;
- organisations operating on a national scale;
- organisations operating at national economy entities, where the

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<sup>76</sup> Ibidem.

<sup>77</sup> Ibidem.

basic type of activity is defined in more than a half of sections of the Classification of Business Activities in Poland (PKD).

In establishing the number criterion, mentioned in the first point, not more than 100 thousand of workers employed by employers associated in an organisation of employers, whose basic type of activity is defined in one section of the Classification of Business Activities in Poland, are taken into consideration. A trade union organisation seeking to be recognised as representative, in establishing the number of employees does not take into consideration workers employed in those from among its member organisations which are - or in the period of one year prior to the filing of an application for ascertainment of representativeness - were associated in a representative trade union organisation having representatives in the Commission's composition<sup>78</sup>.

Examining changes in the scope of functioning of trade union structures, in the first order it is necessary to pay attention to the change in their role over the span of the last 25 years. As J. Gardawski highlights 'the situation of Polish trade unions is specific because it was delineated by a long-term confrontation of two large trade union confederations of more-or-less equal membership (...). This resulted in a model of confrontational pluralism and for a certain period of time was a cause of decreased unionising'<sup>79</sup>. The decrease in unionising was also influenced by changes in economy, especially bankruptcy of many large plants characterised by high participation of trade unions and formation of small companies where trade unions are not active. It is also worth indicating that research into unionising also identifies groups of employees, most often well-educated and employed in companies with high level human

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<sup>78</sup> Cf. The Act of 6 July 2001 on the Tripartite Commission for Socio-Economic Affairs and Voivodeship (Provincial) Social Dialogue Commissions (Journal of Laws, No 100, item 1080 as amended ); *Trójstronna Komisja do spraw społeczno-gospodarczych, Informator za rok 2009*, 'Biblioteka Dialogu Społecznego', MPiPS, Warsaw 2010.

<sup>79</sup> J. Gardawski, *Wstęp. Omówienie wyników badań*, [in:] *Polacy pracujący...*, op.cit.

resource management who declare that they themselves best represent their interests in contacts with employers. Poles seem to positively assess the presence of trade unions in workplaces, at the same time disapproving an excessive concentration of trade union organisations in a single employing institution. In particular in state owned companies it may happen that employees' interests are represented by a dozen or so trade union organizations, which hinders the effectiveness of dialogue with employers<sup>80</sup>. Perhaps this is the reason why the assessment of effectiveness of trade unions' operation is rather critical<sup>81</sup>. A substantial issue, which *nota bene* may constitute one of the reasons for the aforementioned critical assessment, is the political affiliation of trade unions. It must be noted that in the recent period trade unions have more frequently been able to present a common stance, and at times they even organise joint demonstrations. An important signal of cooperation between trade union confederations came as their jointly suspending the works in the Tripartite Commission and coordinated actions not only in disputes with the government, but also in negotiating new principles of trilateral dialogue with employers.

**Employers' organisations** are self-governing and independent unions which aim to protect and represent employers' interests and rights, including economic interests, in contacts with trade unions, authorities and administrative bodies<sup>82</sup>. Organisations have the right to participate in collective disputes and enter into collective labour agreements. The number of employers' organisations operating in Poland is difficult to estimate, although it must be highlighted that not all business organisations function in this legal form, many of them operate as associations, foundations, or economic self-governments<sup>83</sup>. Insofar as trade unions in Poland

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<sup>80</sup> Cf. J. Gardawski, *DIALOG społeczny...*, op.cit., p. 216.

<sup>81</sup> Cf. M. Wenzel, *Opinie o związkach zawodowych i dialogu społecznym*, BS/2/2009, Warsaw, January 2009.

<sup>82</sup> Cf. Article 5 of the Act of 23 May 1991 on Employers' Organisations, Journal of Laws No 55, item 235 as amended.

<sup>83</sup> According to various data, approx. 1,500 organisations of employers, entrepreneurs, and different types of associations and self-governments of national, regional, and local scale operate in Poland. Not all of them adopt representing

have a long-standing tradition, in practice uninterrupted since the 19th century, employers' organisations, with exception of the Polish Artisan Association and small-scale trading organisations, did not function in the post-war period until the systemic changes of 1989. In the first phase of the transformation, organisations of employers and entrepreneurs were mostly formed by managers from the state-owned sector, only in time organisations representing the private sector were established. It is fitting to emphasise that contemporary organisations of employers are not of a class nature, while their structure is dominated by managers representing management boards of companies. In this context it is worth referring to J. Burnham and F. Croner's concept of the so-called revolution of managers and clerks. The concept points to the separation of ownership and management in contemporary societies, where not the owner, but the manager and bureaucracy control both the industrial policy and authority<sup>84</sup>. In a critique of this theory, R. Dahrendorf proposes another category – i.e. an interest group, which may be defined in connection with hidden or transparent interests it represents<sup>85</sup>. In labour relations, managers as an interest group play a role similar to the previous role of entrepreneurs. Under the act in force, organisations of employers, representative in the scale of the country, enjoy a guarantee of additional prerogatives, complementary to those of representative trade unions organisations. The most important organisations of employers in Poland include:

- Employers of Poland [Pracodawcy RP]. It is the oldest organisation of employers in Poland. It currently represents more than 19 thousand the company employs 5 milion workes. The organisation

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collective rights and interests for their goals, they are often of a integrative character.

<sup>84</sup> Cf. J. Burnham, *Rewolucja menadżerska*, translated by J. Orzelski, Paryż: Instytut Literacki 1941, Warsaw 1958.

<sup>85</sup> R. Dahrendorf, *Klasy i konflikt klasowy w społeczeństwie przemysłowym*, translated by R. Babińska, Zakład Wydawniczy 'Nomos', Współczesne Teorie Socjologiczne, Warsaw 2008, p. 163.

continues to draw its strength from state treasury companies, also due to a still high share of employed in this sector, representing such sectors as mining, metallurgy, energy, health service, pharmacy, but it is constantly extending its membership base with private sector companies. An increase in the private sector also takes place through a process of privatising state treasury companies<sup>86</sup>.

- Confederation *Lewiatan* is the youngest organisation of employers participating in the works of the Tripartite Commission. It consists of more than 50 sectoral and territorial unions of employers and 23 individual companies. It associates a majority of modern sectors and companies from such sectors as finance and insurance, consulting and PR, automotive industry, aviation, pharmacy, chemistry, private energy, media, food and clothing industry. Confederation creators aspired to establish an expert institution that would be capable of making use of all prerogatives stemming from the Act on Employers' Organisations to represent economic interests not only in Poland but also in the EU. *Lewiatan* emphasises its affiliation with the private sector and is the only organisation with membership in BusinessEurope – the biggest European confederation of employers and entrepreneurs. Confederation *Lewiatan* has more than 4100 companies employing more than 1 million people.
- Polish Artisan Association (ZRP), associating 27 craft and entrepreneurship chambers, 486 guilds, and 186 artisan cooperatives. In 1989, the Act on Craft was passed to replace the Act on Pursuit and Organisation of Craft and it was then that the Association obtained the status of a professional artisan self-government organisation and employers' organisation, while in 2001 it was recognised as a representative organisation of employers. The Association emphasises its mission to represent the SME sector in Poland<sup>87</sup>.

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<sup>86</sup> Cf. Ibidem. In 2010, the Polish Employers' Confederation changed its name to the Employers of Poland.

<sup>87</sup> Cf. <http://www.zrp.pl>

- Business Centre Club – Employers’ Union (BCC-ZP). It has been active since 1991 as an organisation providing lobbying services for business, however in 2002 it created a separate organisation of employers which, meeting criteria of representativeness, entered into the Tripartite Commission. The BCC remains a two-dimensional organisation, since on one hand it is a prestigious club, while on the other - a union of employers<sup>88</sup>.

In order to be represented in the Tripartite Commission, the aforementioned institutions must comply with the criteria analogous to those to be met by trade unions, i.e. associate employers jointly giving employment to more than 300,000 workers<sup>89</sup>, operate on a national scale, and be active in national economy entities whose basic type of activity is defined in more than a half of the sections of the Classification of Business Activities in Poland (PKD)<sup>90</sup>. It is fitting to emphasise that organisations of employers, similarly like trade union organisations adopt competitive positions in relation to one another. Differences of interests can also be noticed, yet despite them, in many areas, such as tax issues, economic freedom, or labour relations, employers’ organisations not only closely cooperate, but also develop common stances. An expression of integration of economic circles came in 2007 as the establishment of the Entrepreneurship Congress and organisation of the first Entrepreneurship Congress in the times of the Third Republic; the congress attracted a majority of organisations associating employers and entrepreneurs, as well as several hundred

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<sup>88</sup> Cf. J. Gardawski, *Dialog społeczny...*, op.cit.

<sup>89</sup> Establishing whether an organisation complies with the requirement in terms of the number of employees, workers employed by those affiliated employers who are, or a during the year prior to the filing of the application for ascertainment of representativeness, were associated in a representative employers’ organisation with representatives in the Commission’s composition are not taken into consideration.

<sup>90</sup> Cf. Act of 6 July 2001 on the Tripartite Commission for Socio-Economic Affairs and Voivodeship [Provincial] Social Dialogue Committees, Journal of Laws, No 100, item 1080 as amended.; *Trójstronna Komisja do spraw społeczno-gospodarczych*, *Informator za rok 2009*, op.cit.

participants. It is also worth drawing attention to the significance that employers' organisations attach to professional participation in the legislative process and cooperation with the media.

Poland's integration with the European Union initiated a number of changes to the legal, economic, and social systems. It also attributed social dialogue actors new tasks and strengthened its role on all decision-making levels. It strengthened social partners' position in dialogue on the European level and established new relationships and obligations in collective and individual labour relations. The very process of preparations for integration with the EU resulted in an increased activity of social partners, who generally expressed support for the process of integration, at times becoming directly involved in informational initiatives and wide social debates preceding the referendum on accession to the EU. Of particular significance was the social partners' involvement in activities of social dialogue institutions on the European level. Even several years before the European partners accession, Polish social partners actively cooperated with European partners and organisations, also participating as observers in sessions of numerous committees, in particular the European Economic and Social Committee, the Social Dialogue Committee, and the Employment Committee. At home, social partners exerted influence on the process of integration through the Council for European Integration, where in the tortuous process of pre-accession negotiations key decisions were being discussed. From the very beginning, employers and trade unions also in accord postulated constructing mechanisms for extensive social control over structural funds, which yielded a result in the form of a concept of monitoring committees, with extensive participation of social partners and representatives of NGOs in the programming and spending of structural funds.

Big impact on directions of social partners' activity is exerted by participation of all representative organisations in the so-called comitology<sup>91</sup> system, i.e. a system of committees and councils oper-

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<sup>91</sup> Comitology is a system of procedures aimed to arrive at common decisions on the EU level; the system consists in permanent, regular consultations between representatives of the EU member states in the frames of councils and committees in the area of socio-economic affairs.

ating on the EU level. Their presence in these bodies guarantees a faster flow of information between national social dialogue institutions, facilitates better coordination of works, and provides a possibility to influence the shape of decisions adopted in the frames of the European Union.

The most important social dialogue institutions on the European level include:

- European Economic and Social Committee – (EESC) which fulfils a consultative-advisory functions. It is a body which realises a broadly understood principle of communication with the organised civic society, which signifies a dialogue not only with social partners, i.e. employers and trade unions, but also with civic circles. Polish social partners participate in sessions of the EESC. They also participate in the works of sectoral dialogue committees by being present in European sectoral organisations associating national sectoral organisations from the EU member states. Polish representatives are present in 9 EU agencies – 6 advisory committees of the **Directorate-General for Employment, Social Affairs and Inclusion** (DG EMPL), 3 councils administrating and managing a European: foundation, agency, and centre, which respectively focus on the issues of collective labour relations and social dialogue (Dublin), occupational health and safety (Bilbao), vocational and continuing education (Thessaloniki).

However, from the point of view of Polish social partners' participation in dialogue on the European level, their activity in European organisations of trade unions and employers is of key significance. The most important of them are the European Trade Union Confederation on the part of trade unions, and the European Association of Craft, Small and Medium-Sized Enterprises [BusinessEurope Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises], as well the European Centre of Employers and Enterprises providing Public Services [Centre Européen des Entreprises à Participation Publique] as far as employers are concerned.

- **European Trade Union Confederation** (ETUC), established in 1973, constitutes the most important central organisation of

trade unions in the European Union. Its main goal is promoting employee interests and representing them in European institutions. It associates national confederations, as well as all-Europe sectoral trade union organisations. From the Polish side, both *NSZZ 'Solidarność'* and the OPZZ are members of the ETUC.

- **Confederation of European Business [*Union des Confédérations de l'Industrie et des Employeurs d'Europe*] (BusinessEurope)**, with its beginnings dating back to 1949. This was the year of establishment of the **European Industry Federations [*Conseil des Fédérations Industrielles d'Europe*]** which, with the formation of the EEC in 1958, was transformed into the present organisation. Its mission consists in promoting entrepreneurship, innovativeness, and employment. Its members are national employers' organisations. The Confederation '*Lewiatan*' is a Polish member.
- **European Association of Craft, Small and Medium-Sized Enterprises [*Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises*] (UEAPME)** is a non-profit organisation without political affiliations, representing interests of craftsmen and small and medium size enterprises on the European level. It associates 78 pan-sectoral national SME organisations and sectoral federations. From among Polish social partners the Polish Artisan Association was invited to participate in the UEAPME.
- **European Centre of Employers and Enterprises providing Public Services [*Centre Européen des Entreprises à Participation Publique*] (CEEP)** is a European association representing enterprises and organisations of employers with public participation and public utility enterprises. Partners from outside of the EU may participate in the organisation on observer rights. From the Polish side, the Employers of Poland confederation participated in the works of the CEEP through representatives of affiliated entrepreneurs.

The ETUC, BusinessEurope, UEAPME, and CEEP are currently the only organisations that the Council of Europe recognises by virtue

of the Treaty on European Union as representative and capable of engaging in pan-sectoral social dialogue on the European level, however, recent years have seen a growing role and significance of the European Trade Union Confederation<sup>92</sup>. The engagement and role of Polish social partners in these organisations is attested by participation of Polish representatives in the managing bodies of all these organisations. After the integration with the EU, a new trend in social partners' activities is the ongoing work on creation of European law and participation of Polish representatives in negotiations on the European level and, simultaneously, the system for agreeing on Poland's position in these cases on the national level<sup>93</sup>. It is fitting to emphasise that the activity of national social partners in the EU is an element integrating around common ideas frequently entertained on the EU forum. This creates a potential and conditions for a discussion on the national forum and, in face of the crisis of social dialogue on the national level, serves to create an important element of the community of interests. The potential of European social dialogue does not lie only in an output of decades of functioning, but also in mechanisms and ideas around which the national debate should revolve. Poland is not an isolated example of a peculiar weakening of social dialogue in the wake of the international crisis which diminished the government's negotiating space in connection with problems in the area of public finances, engendering a host of negative phenomena. Although the international financial crisis weakened the European solidarity and strengthened protectionist tendencies within the EU, Polish social partners more frequently referred to the achievements and the example set by the Labour Organisation. During the period 2009-2015 ILO to a large extent focused its attention on the consequences of the crisis for the world of labour and on a whole range of negative phenomena such as unemployment, difficult situation

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<sup>92</sup> The Trade Union Forum is a Polish member of the European Trade Union Confederation.

<sup>93</sup> Works of Polish social partners on implementation of the European law as well as their involvement in the process of implementation of the European autonomous agreements discussed in the next chapters are a good example.

of the youth, progressing delocation and economic migration. Ideas presented by the ILO became a source of inspiration for domestic dialogue. Preparations for the centenary of the ILO initiated by the International Labour Office revived and inspired discussion on the values of decent work during the times of economic and social change due to a new wave of globalisation and digitalisation.

# Social Dialogue at the EU Level and the Development Priorities of Poland

## 2.1. Evolution and Development of Social Dialogue in the EU

The role of social dialogue was confirmed in numerous international acts and the influence of the International Labour Organization promotes tripartite dialogue in many countries in Europe and beyond<sup>1</sup>. The former European Economic Community was another international platform for the development of social dialogue and the European Union continues to play this role. The EU transposed a number of principles of political, economic and social systems existing in member states onto an international plane<sup>2</sup>. The president of the EEC Commission Jacques Delors during a meeting of the European social partner organizations in 1985 at Val Duchesse, presented a project for building a 'European social environment', and the parties interested in the development of social dialogue at EU level – EC institutions and social partners – set up two committees:

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<sup>1</sup> B. Strath, *The Organization of Labour Markets: Modernity, Culture and Governance in Germany, Sweden, Britain and Japan*, Routledge, New York 1996; *Labour Markets and Social Policy in Central and Eastern Europe: The Accession and Beyond*, ed N. Barr, World Bank, Washington DC 2005.

<sup>2</sup> Compare subsequent remarks concerning the influence of the ILO regulations on the shaping of social dialogue rules in individual countries. Other effective means of influence include recommendations and presentations of best practices and experience in the field.

one for the investigation of the common market in macroeconomic terms, and another for the investigation of the consequences of the introduction of new technologies for the common labour market<sup>3</sup>. On the grounds of the 1986 definition of the term, it was agreed that 'social dialogue' is the practice of tripartite cooperation between representatives of employers, employees and EC authorities. After the introduction, through the Single European Act, of art. 118b to the Treaty of Rome, it was agreed that – should all parties arrive at a decision – social dialogue may lead to agreements of normative character. Social dialogue was formalised in the Maastricht Treaty of 1992, to which an agreement of European social partners was attached. The agreement mentions mandatory consulting, with social partners at the EU-level, on all EU Commission proposals in the social field as well as the possibility of negotiations between social partners leading to framework agreements. The subsequent incorporation of the Agreement on Social Policy into the Treaty of Amsterdam of 1997 meant that the Treaty became a coherent framework for all member states. Articles 138 and 139 of the Treaty establishing the European Community, with subsequent amendments, regarding social dialogue, make reference to consultations of social matters with social partners, the opportunity of successful negotiations to replace EU action as well as the possible routes of implementation, i.e. by Council ruling and EU directive or according to procedures and practices specific to the social partners<sup>4</sup>. In 1998 the European Commission published the statement Communication from the Commission adapting and promoting the social dialogue at Community level<sup>5</sup> which outlined

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<sup>3</sup> A.M. Świątkowski, *Europejskie prawo socjalne, Specyfika, stanowienie i stosowanie europejskiego prawa socjalnego* [The specifics, the drafting and the application of European social law], vol. I, Dom Wydawniczy ABC, Warsaw 1998, p. 100.

<sup>4</sup> *Traktat ustanawiający Wspólnotę Europejską w wersji Traktatu Amsterdamskiego*, [in:] A. Przyborowska-Klimczak, E. Skrzydło-Tefelska, *Dokumenty Europejskie* [European documents], vol. 3, Wyd. Morpol, Lublin 1999, Art.138–139, p. 217.

<sup>5</sup> Communication from the Commission EC COM (1998) 3222, 20 May 1998.; See: Communication from the Commission EC COM(93) 600,14 December 1993.

the directions of future development of social dialogue and underlined the role of social dialogue as a driving force behind economic and social success. In 1998 the Commission also decided to establish sectoral dialogue committees<sup>6</sup>. The Commission underlined the importance of social dialogue on numerous occasions in the following years<sup>7</sup>, defining it as the process of constant interaction between social partners with the aim of reaching agreements on regulatory matters in areas of economic and social policy, both on the macro- and microeconomic levels<sup>8</sup>. The diagram outlines the procedure of European dialogue<sup>9</sup>.

It is worth emphasising that social partners are defined as employers'- and employees' organisations, and social dialogue focuses in this case on issues of the labour market and the relationship between the groups represented by the participating organisations. At the height of European integration, that is after the signing of the Lisbon Treaty, social dialogue reached its strongest formal status. Articles 152-155<sup>10</sup> of the Treaty on the functioning of the European Union contains matters not raised in the Treaty establishing the European Community and deals with social dialogue. Under art. 152 of the Treaty on the functioning of the European Union, which was added by the Lisbon Treaty, the EU

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<sup>6</sup> A. Reda, *Sektorowy dialog społeczny w Unii Europejskiej*, w: *Rozwój dobrych praktyk w międzybranżowym dialogu społecznym w Polsce poprzez wdrażanie europejskiego porozumienia* [Sectoral social dialogue in the European Union, [in:] The development of best practices in interprofessional social dialogue in Poland through the implementation of the European agreement] NEPSI, Katowice 2009.

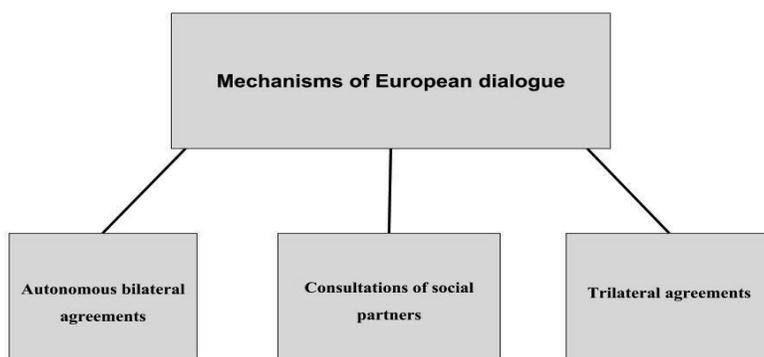
<sup>7</sup> Communication from the Commission EC COM (2002) 341: *European social dialogue: a force for innovation and change*, final version, Brussels, 26 June 2002.

<sup>8</sup> *Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue*, COM(2004) 557 final, Brussels, 12 August 2004.

<sup>9</sup> It is worth mentioning that at the level of private businesses European dialogue is conducted mostly by the European works councils, by employee representation in a European joint stock company, and generally by virtue of the right to be informed and consulted.

<sup>10</sup> Art. 152 of the Treaty on the Functioning of the European Union (TFEU).; Cf. articles 153, 154, 155. W. Sanetra, *Dialog społeczny jako element...*, [Social dialogue as an element...], pp. 12–13.

Figure 1. The mechanisms of European dialogue



Source: Own study.

recognises and supports the role social partners have to play at the EU level, taking into account the diversity of specific arrangements at Member State level and respecting those arrangements while facilitating cross-national dialogue. A tripartite social summit on growth and employment helps foster social dialogue. According to art. 154 of the Treaty, the European Commission is to support consultations between social partners at the EU-level and facilitate dialogue by all available means, assisting all sides in a balanced manner. To achieve this goal, the Commission consults on potential directions of social policy with social partners before submitting its proposals. If, after consulting with social partners, the Commission deems EU action desirable, concrete policy proposals are also consulted on. Social partners address their opinions and recommendations to the Commission, they can also communicate the wish to commence the process leading to the concluding of a collective agreement, with the provision that this process does not last longer than nine months, unless both social partners and the Commission agree to prolong it.

According to art. 155 of the Treaty, EU level social dialogue may lead to the signing of contracts, group contracts included. The execution of group contracts agreed upon at the EU level takes place

in accordance with procedures and practices proper to the social partners and Member States or – in cases falling under art. 153 of the Treaty – upon the joint request of all signatories, by means of a Council decision made at the Commission's request. In such cases the European Parliament is informed of the manner in which the contract is to be fulfilled<sup>11</sup>. The regulation described constitutes the fullest presentation of the role of social dialogue in the legal sense.

The European Commission is obliged to consult on its projects in the field of social policy with social partners, and social partners are free to carry out autonomous dialogue and sign among themselves both European collective agreements and agreements implemented at Member State level<sup>12</sup>. A Member State of the EU may cede the implementation of directives and – in appropriate cases – the execution of Council decisions to social partners, should they all desire it. A Member State, being obliged to take all action necessary to implement EU directives or decisions, guarantees in such cases that social partners will enforce all necessary means by way of agreement (art. 153 par. 3 of the Treaty on the functioning of the European Union) before the transposition or implementation deadline. As stressed by W. Sanetra, it follows from the regulations of the treaty that dialogue between social partners may lead in particular to the signing of a collective agreement or an understanding. The provisions of the treaty clearly state that alongside the dialogue conducted by social partners on the member-state level, there also exists social dialogue at the EU level, which the European Commission is to maintain<sup>13</sup>. It also bears mentioning that the implementation of directives or decisions in a given member-state may be ceded to social partners who implement appropriate measures by way of agreement, which in practice means conclud-

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<sup>11</sup> With regard to analysing the provisions of the TFEU.; Compare: W. Sanetra, *Źródła europejskiego prawa pracy po zmianach traktatowych*, PiZS 2010, No 3, p. 3.

<sup>12</sup> W. Anioł, *Europejska polityka społeczna. Implikacje dla Polski* [European social policy. Implications for Poland], IPS UW, p. 121.

<sup>13</sup> W. Sanetra, *Dialog społeczny jako element...* [Social dialogue as an element...], pp. 12–13.

ing collective labour agreements or agreements in line with existing state legislation<sup>14</sup>.

Social dialogue is subject to regulation not only by EU treaties, but also by European statutory law. The importance of dialogue in labour relations is present in a wide range of EU directives. The first was Directive 94/95/EC of September 22, 1994 concerning the establishing of European Works Councils or procedures of informing and consulting in Community-scale undertakings and groups of undertakings. The directive guarantees employees' right to information and consultation. Works councils established in Community-scale undertakings and groups of undertakings were seen as the main instrument for the securing of these rights, though other mechanisms of consultation and information were also provided<sup>15</sup>. The legal sanctioning of rules governing social dialogue in Community-scale undertakings constituted a turning point for the development of a common European framework for social dialogue on the level of member states.

Concerning setting out the terms of social dialogue at the level of individual businesses, two more directives are of importance: Directive 98/59/EC of July 29, 1998 on the approximation of the laws of the member states relating to collective redundancies and Directive 2001/23/EC of March 12, 2001 on the approximation of the laws of the member states relating to the safeguarding of employees' rights in the event of transfers of undertakings or businesses. In both these directives the employer is bound to cooperate – i.e. enter into negotiations – with representatives of the workforce in order to protect the interests of employees. Thus, once again, social dialogue in the workplace is pointed out as an important way

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<sup>14</sup> In Poland the bill on the Tripartite Committee for Socio-economic Affairs and Social Dialogue Committees at the Regional Level allows for concluding collective agreements (which was unpracticed) and the passing of arrangements in the form of resolution by the Tripartite Committee. The resolution is signed by representatives of employers, employees and the government. The agreement concerning telework was implemented in this manner.

<sup>15</sup> Directive 94/95/EC was implemented into Polish law by act of parliament on 2 April 2002 (Journal of Laws of the Republic of Poland, No 62 point 556); A. Świątkowski, *Europejskie prawo socjalne*, vol. 2, p. 446, p. 463.

of working out decisions concerning the social partners and sanctioning broader dialogue rules at the EU level.

Subsequent legal acts emerged in the 2000s: European Council Regulation No 2157/2001 on the statute for a European company, Directive 2001/86/EC supplementing the statute for a European company with regard to the involvement of employees, Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community and finally Council Regulation 1435/2003 on the statute for a European Cooperative Society together with Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. Directive 2005/56/EC, which guarantees the right to social dialogue in cases of cross-border mergers of limited companies, is also of importance for social dialogue at the workplace. The legal acts mentioned above are important points of reference for national law in the member states. However, social dialogue in the European Union is present not only in the body of EU legislation, or *acquis communautaire*, but also constitutes the basis for consensus-building in labour relations. It is by means of dialogue among social partners that many fundamental EU level practices in labour relations were formed. This was made possible by mechanisms defined in article 4 of the Agreement on social policy, part of the Protocol on social policy attached to the Maastricht Treaty of 1992 and later included into article 139 of the original treaty establishing the European Economic Community, in the wording laid out in the Amsterdam Treaty of 1997. The mechanisms in question allowed for social dialogue at the EU level to conclude, if required, in the establishment of contractual relationships, collective agreements included. The execution of such contracts is carried out according to procedures and practices specific to particular social partners and member states. However, in the fields of: social security and social protection of workers; protection of workers where their employment contract is terminated; representation and collective defence of the interests of workers and employers, including co-determination (but not in application to pay, the right of as-

sociation, the right to strike or the right to impose lock-outs); and conditions of employment for third-country nationals legally residing in Community territory, the execution of contracts ensues by the joint wish of the signatories, by means of Council decision taken at the Commission's request<sup>16</sup>.

In the last few years the European Commission referred 27 issues, which it deemed needed regulation at the Union level, to consultations with social partners. None of these issues were left without reaction from the social partners<sup>17</sup>. Four framework agreements were concluded, which were then passed on to the Commission and transformed the EU Council directives. The framework agreements are: the framework agreement on parental leave<sup>18</sup>, the framework agreement on part-time work<sup>19</sup>, the framework agreement on fixed-term work<sup>20</sup> and the changed agreement concerning parental leave (2009). The directives were then implemented into the legal order of the member states<sup>21</sup>.

Since 2002 the European social partners have been striving to negotiate framework agreements for autonomous implementation, i.e. without engagement from either the Commission or governments at member state level. As of today, four framework agreements of this kind have been reached, concerning: telework (2002), stress at work (2004), violence and harassment at work (2006), and inclusive labour markets (2010).

Moreover, social partners agreed upon two documents referred to as frameworks of actions: The Framework of Actions for the Life-

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<sup>16</sup> 15 Art. 137 and 139 of the Treaty establishing the European Community, with amendments made in the Amsterdam Treaty of 1997.

<sup>17</sup> The Confederation of European Businesses (UNICE, renamed BUSINESSEUROPE in 2007); The European Centre of Employers and Enterprises providing Public Services (CEEP); The European Trade Union Confederation (ETUC).

<sup>18</sup> Directive 96/34/EC.

<sup>19</sup> Directive 97/81/EC.

<sup>20</sup> Directive 99/70/EC.

<sup>21</sup> Compare: L. Florek, *Europejskie prawo pracy* [European labour law], LexisNexis, Warsaw; J. Męcina, *DIALOG społeczny...* [Social dialogue...], op.cit.; S. Adamczyk, *Europejski model społeczny i rola dialogu społecznego w jego rozwoju* [European social model and the role of social dialogue in its development], <http://www.solidarnosc.org.pl>.

long Development of Competences and Qualifications of March 14, 2002 and The Framework of Actions on Gender Equality of March 22, 2005. Also, over 50 joint reports, recommendations, declarations, opinions, best practices compendia, etc., add up to the track record of European social dialogue.

Tripartite social dialogue as a whole – i.e. with the participation of governments – takes place, bar some exceptions, on the cross-sectoral level. One of the most important institutions is the annual Tripartite Social Summit for Growth and Employment, gathering representatives of employers' and employees' organisations under the auspices of the European Commission. The conclusions reached and the standards set within this process apply to enterprises as well as employees across Europe, and the arrangements made therein carry the highest political rank and are recognised by European institutions, governments and the media.

Decisions taken throughout the years at summits in Luxembourg (1997), Lisbon (2000), and Laeken (2001) pointed at the need for strengthening the dialogue between the social partners in order to better coordinate efforts to fight unemployment. Social partners pointed, among other things, to the need for differentiating between bipartite dialogue and coordinated tripartite concertation.

Next, the new guidelines of the Europe 2020 strategy, passed after the Lisbon Strategy, assume that the EU's aim is to increase the potential of social partners and to fully bring into play the opportunities that social dialogue brings for solving problems at all levels – the EU, member state, regional, sectoral and at individual enterprises, as well as to develop the cooperation between institutions operating in the labour market, including public employment services of the member states<sup>22</sup>.

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<sup>22</sup> Communication from the Commission EC(2010)2020, Europa 2020, Brussels, 3 March 2010.

Table 1. The development of European social dialogue

1957	Treaty of Rome	Defined the aims of the EC in terms of advancement of the harmonious development of economic activity, stable and sustainable growth, increased stability, acceleration of the rate at which living standards rise by means of the creation of a single market and the gradual alignment of economic policy in the member states. The treaty created an institution of huge importance to social dialogue – The Economic and Social Committee.
1970	the establishment of the Standing Committee on Employment	committee established to promote joint action between the EC institutions and representatives of employers and trade unions
1971	the passing of the first Social Action Programme	'Preliminary Guidelines for a Social Policy Programme' listing primary objectives: full employment, the improvement of working conditions, more fairness and better quality of life. Social dialogue as an element of the informal relations between the social partners, community institutions and institutions of the member states.
1985	Val Duchesse social dialogue project	The initiation of social dialogue in the sense of tripartite cooperation between representatives of employers, employees and the EC authorities. The EC institutions and the social partners established two task forces: one for the study of the macroeconomic problems of the common market, the other for the study of the consequences of the introduction of new technologies for the common labour market.
1987	the Single European Act	A new fragment concerning economic and social cohesion was added to the EC treaty (art. 23 of the SEA was added to part III, title V <i>Economic and Social Cohesion</i> , art. 130a-130e). The Single European Act also broadened the competences of the Community in terms of the shaping of the social model at the European level by engaging the social partners in supranational dialogue. Newly added art. 118b authorises the European Commission to undertake efforts aimed at the development of dialogue between the social partners at the European level.

## 2.1. Evolution and Development of Social Dialogue in the EU

1992	Treaty of Maastricht	The member states agreed to add the agreement concerning social policy to the treaty. The agreement lays out the following aims for the member states and for the community: supporting employment, improving work conditions and the quality of life, adequate social protection, social dialogue, the development of human resources for stable high levels of employment as well as taking action against exclusion (art. 1 of the agreement). In this vital document the EC also commits itself to support and supplement actions taken by the member states to improve the working environment (health and safety, working conditions, informing and consulting with employees, and gender equality (art. 2 of the agreement)).
1992	the establishment of the Social Dialogue Committee	The establishment of the committee contributed to the development of autonomous dialogue at the European level and increased the importance of reciprocal communication. Through the committee, representatives of employers and employees can exchange their views, launch common initiatives and plan action. The Committee coordinates the implementation of autonomous agreements made by the European social partners.
1997	Treaty of Amsterdam	The most significant treaty change was the amendment of articles 117 and 118 of the Treaty of the European Union, now numbered 136 and 137. In terms of improving working conditions, health and safety, conditions for employees' information and consultation, integrating persons excluded from the labour market as well as gender equality in the labour market and in the workplace, the amendments made in the Treaty of Amsterdam constitute the main legal reference point for the EU. A mechanism added to the Treaty establishing the European Economic Community in art. 139 allows for social dialogue at the Community level to lead to contractual relationships, including collective agreements.
1998	The establishment of the Sectoral Dialogue Committees	The committees are created in sectors where social partners apply for the establishment of social dialogue at the European level and where organisations representing the partners in the dialogue meet certain criteria concerning sectorial expertise, organisational constitution and structure.

## Social Dialogue at the EU Level and the Development Priorities of Poland

2000	the Lisbon Strategy	In implementing new mechanisms, i.a. social policy agendas, the social partners must be even more engaged in the processes of consensus building and implementation. Particular notice is given to the role of social partners in the social agenda.
2001	signing of the Treaty of Nice	The powers of the EU in the field of social policy are strengthened once again. Such matters as the improvement of the working environment to protect workers' health and safety, working conditions, social security and social protection of workers, protection of workers where their employment contract is terminated, representation and collective defence of the interests of workers and employers, including co-determination (matters of pay, the right of association, the right to strike or the right to impose lock-outs excepted), and conditions of employment for third-country nationals were added to art. 137 of the Treaty on European Union, or TEU (formerly art. 188 of the Treaty establishing the European Community).
2005	the renewed Lisbon Strategy	The major change was the reduction in the number of strategic priorities to the following three: knowledge and innovation are to be the engines of sustainable growth; the EU is to stimulate investment and job creation; and growth and employment need to be considered with social cohesion in mind. The role the social partners and civic society have to play in the implementation of the strategy was stressed. Moreover, the social partners' role in improving both businesses' and workers' adaptability, as well as in labour market flexibility, was defined in the treaty.
2007	Treaty of Lisbon	In the Treaty on the functioning of the European Union a completely new article (art. 152) is dedicated to social dialogue; there was no equivalent article in the Treaty establishing the European Economic Community (TEEC). The article points out that the EU recognises and supports the role of social partners at the EU level, allowing for diversity in social dialogue regulation at member state level. Furthermore, the EU facilitates dialogue between the social partners, with respect to their autonomy. The Tripartite Social Summit for Growth and Employment contributes to social dialogue. These are, together with articles 153, 154, and 155 the most comprehensive legally binding indications of the role of social dialogue.

## 2.1. Evolution and Development of Social Dialogue in the EU

2010	Europe 2020 strategy	The European Commission undertook the task of increasing the potential of the social partners and fully benefiting from the opportunities social dialogue brings in solving problems at all levels (EU, national, regional, sectoral, and in individual businesses). The Commission also undertook to support closer cooperation among institutions active in the labour market, i.a. public employment agencies of the member states. With regard to this, the member states were obliged to support and monitor the effective implementation of the outcomes of social dialogue.
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Source: Own study, based on the Treaties and the EU documents; J. Męcina, *Wpływ dialogu społecznego na kształtowanie się stosunków pracy w III Rzeczypospolitej*, ASPRA-JR, Warszawa 2010.

The documents listed in the table indicate that social dialogue has become an inherent part of the decision-making processes of the EU and a permanent mechanism of the EU's administrative strategy. The new approach to issues of social policy is distinguished by a trend that may be referred to as 'the Europeanisation of social policy'<sup>23</sup>. Social dialogue mechanisms enable social partners to influence European measures and solutions, as well as to take part in the process of their implementation at the national level. For Poland and the other new EU member states the frames of labour legislation and the methods of open coordination set standards in labour relations and influence new directions of national employment- and labour market policies. At the international level an increasingly important role and importance of other interest groups is often underlined. Through a wider formula of civic dialogue such groups influence a wider spectrum of problems that go beyond labour and social security standards, widening the scope of dialogue by including consumer protection, environmental issues and quality of life amongst the most pertinent topics. It should be underlined that these topics are now tackled also by the ILO and form a part of social dialogue at the EU level, thus forming part of the social

<sup>23</sup> E. Szyszczak, *The New Paradigm for Social Policy: A Virtuous Circle?*, 'Common Market Law Review' 2001, Vol. 35, No 5, p. 1125 et seq.

dialogue domain. Francis Fukuyama has presented analyses pointing out the difference of approach between American and European politicians, which has to do with their understanding of the role of social dialogue at the supranational level. According to Fukuyama, Europeans are more inclined to demand an international order wherein disputes might be settled on the basis of the respect of law, consensus, dialogue and negotiation. In Europe there is belief in a certain international community founded on moral principle, one giving legitimacy to various international institutions. One may say that republican ideas still echo on the Old Continent. Communal interests – ‘the international interest’ or ‘the common, global good’ – are more than the sum of the interests of the individuals or states that constitute a given community<sup>24</sup>.

It seems that the idea of the common good is of particular importance for the foundations of social dialogue and civic dialogue as such. Recent tensions within the EU – largely due to the international crisis – seemingly cannot threaten the Community which enjoys support not only from democratic institutions and mechanisms, but also by the mechanisms of social dialogue and the vast participatory groups of interest – employers and employees.

If we were to point to the object of social dialogue at the EU level, economic policy, labour market and labour relations policy as well as social policy should all be named. In all these areas EU policy has influence on the policies of the member states. At the EU level, the term ‘European social model’ is often invoked. Both the idea behind this model and its actuality are shaped by social dialogue conducted both at the EU and national levels.

## **2.2. The European Social Model – an Attempted Definition of the Term and an Analysis of Its Evolution in the EU**

A purely semantic definition of the European social model in EU documents is only to be found in the 21<sup>st</sup> century. The term ‘European social model’ is first defined in the 2002 Presidency

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<sup>24</sup> F. Fukuyama, *Budowanie państwa...* [State-Building....], op.cit., pp. 122–132.

## 2.2. The European Social Model – an Attempted Definition of the Term...

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Conclusions of the Barcelona summit. EU leaders pointed out that the European social model rests on sound economic growth, high standards of social security, education and social dialogue. The active state ought to provide its citizens with incentives to work, as employment remains the best defence against social exclusion<sup>25</sup>.

Table 2. The European social model: aims and instruments

Aims	Instruments
employment and protection against risks inherent to the labour market providing income to those excluded from the labour market limiting poverty and exclusion, reducing income inequality universal access to basic social services	regulatory labour market policy – labour law, collective labour agreements, employment promotion social security – pensions and benefits significant levels of redistribution policy towards providing social services

Source: Own study.

Differences in national systems notwithstanding, the European social model (ESM) rests on the premise that the member states, albeit to various degrees, strive to combine the efficiency of economic growth with social development<sup>26</sup>. It is worth pointing out that already in 1994 the White Paper on social policy<sup>27</sup> points out that the European social model rests upon the conviction that economic growth and social development are inseparable; both competitiveness and solidarity must be taken into account in building future European prosperity.

Thanks to new authority given to the EU bodies, leaders of the member states gathered in March 2000 in Lisbon for the Council summit (during the Portuguese presidency of the EU) set out measures for combating poverty and social exclusion. The summit resulted in the Lisbon Strategy, a document listing the aims and the social and economic priorities for the coming decade. These aims and priorities were primarily concerned with the cre-

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<sup>25</sup> Presidency Conclusions 03/2002, Barcelona, p. 8.

<sup>26</sup> Report of the High Level Group on the future of social policy in an enlarged European Union, 2004 p. 27.

<sup>27</sup> White paper on social policy (Com (94)333).

ation of a dynamically growing, knowledge-based economy that would provide an increase in employment and social cohesion as well as competitiveness on the global market. The strategy was to have been implemented by means of open coordination. A comprehensive strategy for the transition toward a knowledge-based economy and a knowledge-based society was needed in order to reach the aims agreed upon. This strategy involved the building of an information society, the implementing of structural reforms targeted at competitiveness and innovation, the modernising of the European social model, investing in human capital, counteracting social exclusion, and maintaining sound economic prospects and economic growth by means of adequate macroeconomic policy<sup>28</sup>.

Already in March 2005 the Council summit taking place in Brussels modified the Lisbon Strategy<sup>29</sup>. The main change amounted to a reduction in the number of strategic priorities to the following three: knowledge and innovation are to be the main engines of sustainable growth, the EU is to be investment- and work-friendly, and economic growth and employment are to take into account social cohesion<sup>30</sup>. 2005 was the year of the closing of the first phase of the Social Agenda<sup>31</sup>; the second phase, covering the years 2006–2010, was passed in February 2005<sup>32</sup>. The Social Agenda's second phase was given the motto 'A social Europe in the global economy: jobs and opportunities for all'. This motto refers to the necessity of maintaining social cohesion in conditions of increasing employment and economic growth, that is to one of the aims of the renewed Lisbon Strategy.

The most recent treaty of the European Union is the Treaty of Lisbon signed in 2007. The treaty is the first attempt in the history of the EU to guarantee, in a comprehensive way, fundamental

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<sup>28</sup> Presidency Conclusions, ES summit in Lisbon, 23-24 March 2000.

<sup>29</sup> Communication from the Commission EC(2005) 24. A new beginning for the Lisbon Strategy.

<sup>30</sup> Based on Luxembourg Presidency Conclusions, 22-23 March 2005.

<sup>31</sup> Communication from the Commission EC(2000) 379.

<sup>32</sup> Communication from the Commission EC(2005) 33.

## 2.2. The European Social Model – an Attempted Definition of the Term...

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rights and civil liberties to all citizens of the EU. It is also an attempt to simplify and organise the legal basis of the EU, as well as to democratise its institutions. The treaty, while emphasising the basic principle of subsidiarity, attempts to significantly shift the responsibility for the strengthening of democratic legitimation towards the member states and their respective institutions. The Charter of Fundamental Rights of the European Union, which was passed alongside the treaty, reaffirms the fundamental rights and civil liberties inscribed earlier in the European Convention on Human Rights, the European Social Charter and in the constitutions of the member states<sup>33</sup>.

Table 3. Comparison of Community aims concerning the European social model, as set out in the treaties

EC Treaty of 1957, art. 2	It shall be the aim of the Community, by establishing a Common Market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increased stability, an accelerated raising of the standard of living and closer relations between its Member States.
EU Treaty of 1992, art. 2	The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among the Member States.

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<sup>33</sup> *Europejski model społeczny. Doświadczenia i przyszłość* [European social model. Experiences and the future], D. Rosati [ed.], 2009, p. 80.

<p>Treaty of Amsterdam, 1997, art. 2</p>	<p>The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among the Member States.</p>
<p>Treaty of Lisbon, 2007, art. 3 (previously art. 2 of the EC Treaty)</p>	<p>The Union's aim is to promote peace, its values and the well-being of its peoples.  The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress (...).  It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child (...).  It shall promote economic, social and territorial cohesion, and solidarity among Member States (...).</p>

Source: Own study, based on the Treaties.

With the above mentioned treaty provisions in mind it must be emphasised that there is no single clearly defined European social model. As indicated earlier, each member state had a different starting point when implementing the broad assumptions of the ESM set out in the *acquis communautaire*. Different aims had to be prioritised in each case. However, it is possible to define certain manifestations of ESM functioning across the EU on the basis of certain similarities of aims (limiting income inequality, protecting against risks inherent in the labour market, and supporting pro-

fessional activity)<sup>34</sup> or through common features (bold interventionism and state fiscalism, free and compulsory education, a solid social security system; and the limiting of income inequality)<sup>35</sup>.

In terms of the – often quite striking – differences in the implementation of social policy one may distinguish four main types of European social model: Continental, Scandinavian or Nordic, Anglo-Saxon and Mediterranean<sup>36</sup>. It must be stressed that since the very conception of the European Community social security and occupational development policy both remain at the discretion of the member states. In consequence, the European social model is a kind of compromise between the various social policies specific to the particular member states. This diversity of policies is due to differences in wealth, and economic conditions, as well as political and social traditions. Mindful of these differences, the European Union supports societies on the principle of double subsidiarity. On the one hand, wherever possible, support is provided at the level deemed most effective in a given case. On the other hand, all cases of the EU engagement are supplemented by social partners and society to the highest degree possible<sup>37</sup>. One institutional example of such engagement is the establishment, through the EC Treaty, of the European Economic and Social Committee (EESC). The EESC's remit is to play an advisory role both to the Council and the European Commission<sup>38</sup>. In each successive treaty – the Single European Act (1986), the Treaty of Maastricht (1992), the Treaty of Amsterdam (1997) and the Treaty of Nice

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<sup>34</sup> *Europejski model społeczny. Doświadczenia i przyszłość* [European social model. Experiences and the future], D. Rosati [ed.], 2009, p. 26.; based on Tito Boeri 'Let Social Policy Models Compete and Europe Will Win' materials presented at a conference at the Kennedy School of Government, Harvard, 11-12 April 2002.

<sup>35</sup> *Europejski model społeczny. Doświadczenia i przyszłość* [European social model. Experiences and the future], D. Rosati [ed.], 2009, p. 80.; based on A. Giddens, *A Social Model for Europe?* 2006, [in:] A. Giddens, P. Diamond, R. Liddle *Global Europe, Social Europe*, Policy Press Cambridge.

<sup>36</sup> E. Latoszek, *Integracja Europejska – Mechanizmy i wyzwania* [European integration – mechanisms and challenges] 2007 p. 270.

<sup>37</sup> The European Commission, [http://ec.europa.eu/employment\\_social/spsi/social\\_protection\\_en.htm](http://ec.europa.eu/employment_social/spsi/social_protection_en.htm).

<sup>38</sup> Art. 4 par. 2 of the EC treaty.

(2000), the importance and role of the EESC were increased. The authority of the European Commission in the field of social policy was indicated at the very outset of the activity of the European Communities<sup>39</sup>.

The **open method of coordination** at the EU level is a good example of just this pragmatic approach. The method rests on one simple premise: although no single member state has a simple and universal solution for the balancing of social indicators, particular countries are successful in certain areas. The remaining countries can draw from this experience, learn from one another and develop their respective social models. The open method of coordination relies on pointing out collective aims and directions of development for the entire EU, as well as drawing up short- medium- and long-term schedules of implementation. Results, when possible, are compared in quantitative and qualitative terms by means of indicators and benchmarks, which allow for comparisons with the best results in the world. National action plans outline aims and the means of their realisation; community-wide targets and development directions are converted into national and regional action programmes. Periodic reviews and (at times: mutual) evaluations help countries learn from one another<sup>40</sup>. The open method of coordination is based on five main rules<sup>41</sup>:

1. Subsidiarity – balances EU-wide aims with the various particularities of implementation in the member states;
2. Convergence – each member state contributes to the EU average in a given field – in this way, EU-wide targets are met;
3. Management by objectives – progress in the meeting common targets is measured by means of quantitative or qualitative indicators; thanks to the use of aims and indicators the results

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<sup>39</sup> Art. 118 of the Treaty Establishing the European Community.

<sup>40</sup> Presidency Conclusions – Portugal, 23-14 March 2000, point 37.

<sup>41</sup> J. Ciechański: *Otwarta metoda koordynacji w Unii Europejskiej: wpływ na politykę społeczną i zatrudnienia nowych państw członkowskich* [The open method of coordination in the EU: influence on social policy and employment in the new member states], Instytut Stosunków Międzynarodowych UW 2003, p. 8.

- of actions undertaken by member states are transparent and subject to public evaluation;
4. Monitoring – periodic reporting allows for comparisons between countries, helps reveal best practices and pressures states to improve the quality and effectiveness of their actions;
  5. Comprehensiveness – forces a number of national administrative bodies to coordinate their actions with regard to a given aim; requires the involvement of the entire government, irrespective of remits existing in the various segments of government bureaucracy.

Despite these common rules, particular implementations of the open method of coordination vary: guidelines and aims can be laid out at various levels of detail (including completion deadlines and quantitatively expressed targets), the Commission and the Council may be evaluating the progress made by particular states and issuing specific recommendations, different degrees of consultation may be called for, and the nature and quality of the indicators used may vary as well. Clearly, the Scandinavian model may be a source of inspiration for many new EU member states, but one cannot expect Poland to be able to provide the sort of social security standards that – say – the Danish state has to offer to its unemployed.

The establishment of the European Social Fund (ESF) in the Treaty of Rome of 1957 was the first instance of the formalisation of European support to member states dedicated to the development of the European social model<sup>42</sup>. Eventually, the ESF came into existence in 1960 and continues to fulfil its mission of supporting social and economic development. Manifold actions are undertaken through the ESF to tackle some of the most important social issues in the member states, especially unemployment, poverty, social exclusion, discrimination and inequality in the labour market.

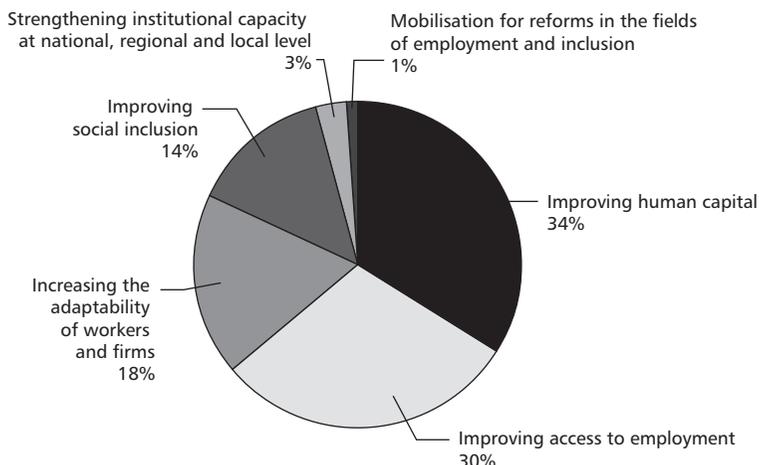
The Fund supports employment in the EU, the development of lifelong learning, participation of women and human resource de-

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<sup>42</sup> Art. 3 par. of the Treaty Establishing the European Community: 'utworzenie Europejskiego Funduszu Społecznego w celu poprawy możliwości zatrudnienia pracowników oraz przyczyniania się do podnoszenia ich poziomu życia'.

velopment. The Fund is also authorised to intervene on a structural and regional basis in endangered sectors of the economy or industry branches<sup>43</sup>. Eight percent of the previous EU budget for the years 2007–2013 was allocated to the ESF, close to 70% of which was reserved for convergence, i.e. for an increase in jobs and employment opportunities. In order to reach its aims, the ESF finances projects and programmes in six individual areas important for creating jobs and supporting workers in filling vacancies. The levels of allocation into particular sectors may vary from region to region and state to state depending on priorities, although regions that qualify for convergence support usually emphasise the improvement of human capital<sup>44</sup>. Moreover, it should be noted that the European Social Fund, with its areas and mechanisms of support, is continuously correlated with current social policy strategies.

Figure 2. EFS funds allocation, 2007–2013



Source: The European Commission statistics, [http://ec.europa.eu/employment\\_social/esf/docs/facts\\_figures\\_en.pdf](http://ec.europa.eu/employment_social/esf/docs/facts_figures_en.pdf).

<sup>43</sup> W. Anioł, *Europejska polityka społeczna. Implikacje dla Polski*, IPS UW, 2003, p. 84.

<sup>44</sup> The European Commission statistics, [http://ec.europa.eu/employment\\_social/esf/docs/facts\\_figures\\_pl.pdf](http://ec.europa.eu/employment_social/esf/docs/facts_figures_pl.pdf).

The ESF supports the policies of the member states with regard to the implementation of guidelines and recommendations passed in accordance with the European Employment Strategy and other aims for social inclusion approved by the EU. The ESF engages directly in the implementation of policies approved at the European level and elaborated by the member states. By separate consideration of the state of affairs in each member state, the ESF is able to provide distinctly European added value.

Investment in training and the promotion of human capital has a huge influence on the meeting of economic, social and employment targets. It can help make up for lost time in terms of belated reforms or development gaps, as was the case with the new member states<sup>45</sup>. Data show signs of a positive influence of cohesion policy on the labour market in 2004–2008, during subsequent years this influence may not be so apparent due to the negative impact of the international economic crisis on the labour market.

### **2.3. EU Development Strategies and the Perspective for Employment Growth**

A balanced macroeconomic policy and the free movement of capital have to be supplemented with increased labour market flexibility; this is particularly important when discussing the European social model and its durability. An ideological, political and analytical basis for the development of the EU's efforts at coordinating employment policy was provided in the White Paper on growth, competitiveness and employment elaborated in 1993 under Jacques Delors. The white paper inspired the European Council to pass five employment policy targets (Essen, December 1994) for the member states to follow<sup>46</sup>. These aims, referred to as the Essen Strategy, were later incorporated into the European Employment Strategy of 1997. The Strategy's philosophy rests on the premise

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<sup>45</sup> Communication from the Commission EC(2005) 33 - concerning the Social Agenda, chapter 1.2.

<sup>46</sup> Ibidem.

that higher rates of employment and more labour market flexibility can both be achieved without compromising the fundamental solidarity and the social rights inherent to the societies constituting the Union. Employment policy guidelines passed at the Luxembourg summit in 1997 were focused on four pillars of the European Employment Strategy<sup>47</sup>.

The first pillar deals with stimulating employability, i.e. increasing people's capability of finding work. The elimination of the so-called skills gap is crucial in this regard: it is particularly important for young people entering the labour market, as well as for the elderly, to be able to take advantage of the employment opportunities provided by a modern labour market. Actions recommended in this pillar include: limiting youth unemployment; preventing long-term unemployment; transitioning from passive (labour market instruments exemplified by unemployment benefits) to active equivalents such as (training and other forms of skill development and gaining work experience); stimulating cooperation between social partners in order to create better opportunities for lifelong learning, vocational training, and apprenticeships etc.; facilitating the transition from schooling to employment by means of a general improvement in the quality of education; and making sure that schools teach the skills called for in the labour market, including the skills needed to adapt to technological change.

On the premise that jobs are created by entrepreneurs, the second pillar is meant to strengthen entrepreneurship. A universally business-friendly climate should help promote businesses of all sizes, though self-employment and small- and medium-sized enterprises demand particular attention. The member states should facilitate the opening and running of businesses (particularly by facilitating access to capital, reducing red tape, limiting the cost of labour and making both starting a new business and transitioning from self-employment easier, for example by removing obstacles resulting from the tax or social security systems). The member states

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<sup>47</sup> Presidency conclusions, extraordinary the EC Luxembourg Jobs Summit, 20-21 November 1997.; See: J. Ciechański, *Otwarta metoda...*, p. 24.

should also promote the social economy, i.e. use opportunities to create jobs in local communities, where the market economy fails to meet all needs. Pro-employment changes should be made to tax systems (it was deemed necessary to reverse the tendency – dating back to 1980 – to increase taxes and other non-wage labour costs).

The third pillar deals with increasing adaptability, i.e. workers' and businesses' ability to adapt to evolving market requirements. This pillar is a direct response to the inevitable changes brought about by the globalisation of economic processes and the information revolution. Efforts at stabilising employment by means of the legal protection of all employment relations had to be renounced. More flexibility in work organisation had to be allowed, and more flexible means of employment as well as flexible contracts of employment had to be agreed to. However, the need for providing a balance between entrepreneurs' pursuance of flexibility, employees' job security and the possibility of finding employment was stressed. With this balance in mind, reforms in the organisation of work are called for. The social partners should agree more flexible business- or sector-wide standards of work organisation that would allow enterprises to stay competitive: longer settlement periods, cuts in overtime, part-time work, and vocational training programmes for workers; the state should, on the other hand, adjust labour law to flexible forms of employment: temporary employment, and part-time employment etc. Also, the adaptability of businesses should be increased (e.g. by creating incentives for investment in human resources, eliminating obstacles to hiring new employees and so forth).

The fourth pillar supports equal opportunities in the labour market. The aim is to eliminate discrimination and gender inequality as well as to exercise the full potential of all social groups<sup>48</sup>. Since

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<sup>48</sup> J. Ciechański, *Otwarta metoda koordynacji w Unii Europejskiej: wpływ na politykę społeczną i zatrudnienia nowych państw członkowskich* [The open method of coordination in the EU: influence on social policy and employment in the new member states], Instytut Stosunków Międzynarodowych UW 2003, pp. 26–29.

2000 the European Employment Strategy has become part of the Lisbon Strategy. Withdrawing from a model of counteracting unemployment by means of labour market policy, employment policy is bound up with macroeconomic targets: increasing the competitiveness of the economy, providing sustainable economic growth, and integrating labour market policy with broadly defined economic policy. Detailed guidelines are verified, clarified and complemented with new tasks on a yearly basis under what is called the Luxembourg process. The four pillars of the employment strategy, however, remain intact<sup>49</sup>. The renewed strategy limits the previously numerous aims to just two: achieving sustainable economic growth and durable growth in employment. At the member state level the paths leading to these aims are defined twofold. During the implementation of the strategy in Poland two documents were drafted: the National Reform Programme for 2005–2008 and the successor to it for 2008–2011. These are medium-term government plans made in order to implement the renewed Lisbon Strategy in Poland. The structural reforms included therein play an essential role in providing the foundations for sustainable growth and making maximal progress in meeting the aims of the renewed strategy. In general, although the main objectives of the Strategy were not achieved (i.e. a 70% employment rate and government spending on research and development at 3% of GDP), the effect the Lisbon Strategy has had on the EU must be judged to be positive. In 2008 the EU employment rate reached 66% (compared to 62% in 2000), before falling again due to the advancing crisis and no notable increase in R&D spending was achieved. However, to say that the Strategy as a whole ended in failure because certain targets were not met would be too much of a simplification. The renewal of the strategy in 2005 allowed for a fine-tuning of its scope and aims. The defining of four main priority areas (research and innovation, investment in human potential and labour market modernising, the unlocking of economic potential – particularly with regard to small- and medium-sized businesses, and energy and climate change) was

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<sup>49</sup> W. Anioł, *Europejska polityka społeczna. Implikacje dla Polski*, IPS UW, p. 127.

a particularly important step in this direction. Evidence for the influence of the Lisbon Strategy can be found in the fact that its four main domains are among the top political priorities in all member-states. Initiatives aimed at improving employment indicators were an important area of activity of all member states, which resulted in many member-states trying to implement the Danish model of *flexicurity*. This model foresees alleviating the negative effects of flexibility on the labour market by strengthening social protection as well as services and instruments of the labour market which in turn leads to shortening of periods of unemployment thanks to stimulating job creation, services for job seekers and social security in case of unemployment. Reforms undertaken under the Lisbon Strategy have brought tangible benefits, such as employment rate growth (18 million jobs were created before the crisis hit), a more dynamic business environment with less red tape, a wider choice for consumers and a more sustainable future (in many member states economic growth coincided with a decrease in energy consumption). Although cause and effect cannot always be indicated when it comes to the Lisbon reforms and instances of growth in GDP and employment, there is evidence to suggest that the Lisbon Strategy did indeed play an important role.

Figure 3 shows the change in levels of employment in EU member states, the USA and Japan during the implementation period of the Lisbon Strategy. The aims and mechanisms of this strategy increase the EU27's average from 62% to 66%. During the same period the level of employment in the US economy fell 4 percentage points and rose only 2% in Japan. Therefore, despite the fact that one of the goals of the strategy was not met (i.e. a 70% employment rate), its implementation did bring about added value to the European labour market. However, a more rigorous implementation on the part of the member states would certainly have produced even better results. The global economic crisis, which first manifested itself in Europe as early as 2008 – and the negative consequences of which are still with us today – brought to light the impotence of the EU as an economic and social system. However, even before the crisis the EU wasn't making enough progress

in certain areas. The average growth rate in Europe was structurally low when compared to that of our biggest economic partners, mainly because of differences in productivity. This is largely due to business structures, lower rates of investment in research, development and innovation, inadequate use of information technology, a reluctance in some European societies to implement innovation, difficulties in access to markets and a less dynamic business environment. Despite some advances, employment indicators in Europe – an average 69% for people aged 20 to 64 – are still significantly lower than in other parts of the world. Only 63% of women are employed, whereas the figure for men is 76%. For 55- to 64-year-olds, the employment rate is 46%; in the USA and Japan, this figure is 62%. Moreover, working hours are 10% shorter in Europe than in the USA or Japan.

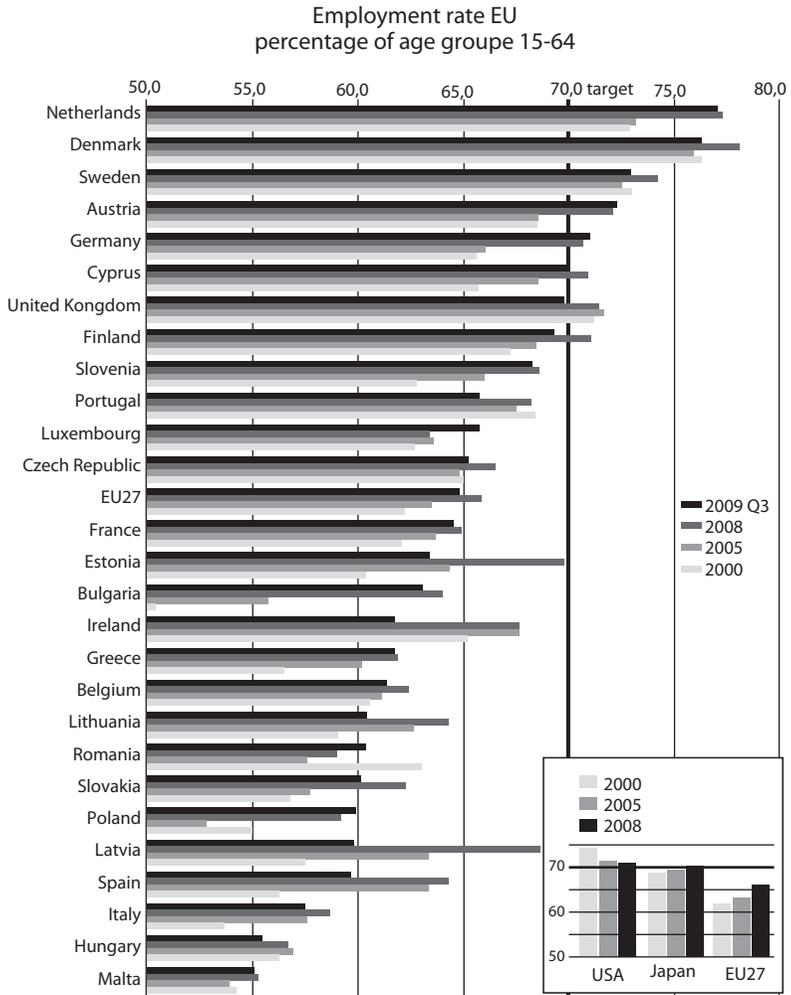
Societies age at an ever faster rate. With the gradual retirement of the baby boom generation, starting from 2013/2014, the participation rate in the EU will begin to fall. Population growth in the 60+ age group is now twice what it was before 2007, i.e. about 2 million people a year (1 million a year before 2007). A lower participation rate and an increase in the number of people in retirement will constitute an additional burden on our social care systems<sup>50</sup>. The Europe 2020 strategy is meant to provide the EU with a solution to this crisis and prepare the European economy for the challenges of the next decade. The three main priorities, which are to be realised by means of concrete action taken at both the EU and member state levels, are **smart growth** (increasing the role of knowledge, innovation, education and digital society), **sustainable growth** (a manufacturing base that is more efficient in its use of resources while increasing overall productivity), and **inclusive growth** (increasing participation, upgrading skills, combating poverty). **Smart** development means an increased role of knowledge and innovation as engines of our future growth. This implies raising the standard of education, improving scientific research,

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<sup>50</sup> Communication from the Commission EC(2010) EUROPE 22020 - a strategy for smart, sustainable, and inclusive growth, p. 14.

## 2.3. EU Development Strategies and the Perspective...

Figure 3. Changes in the employment rate in EU member states during the implementation period of the Lisbon Strategy



Source: The Lisbon Strategy Evaluation - the European Commission SEC(2010) 114, p. 8.

supporting innovation- and knowledge transfers throughout the Union, making full use of information- and communications technology as well as taking care that innovative ideas are turned into new products and services which could in turn lead to growth, job creation and solutions to social problems in Europe and the world. However, for this project to succeed, entrepreneurship, financing, and market research are all needed<sup>51</sup>. **Sustainable growth** means building a more balanced and competitive economy that makes efficient use of resources and benefits from Europe's vanguard role in the development of new processes and technologies, including environmentally friendly technologies. This requires a faster introduction of smart, the EU-wide networks based on ICT. A strengthening of the competitive advantage of European business, particularly in the production sector and with regard to SMEs is also needed, as well as better awareness of the benefits of the efficient use of resources<sup>52</sup>. **Inclusive growth** implies empowering citizens by providing high levels of employment, investing in skills, fighting poverty, modernising labour markets, training and social protection systems in order to help people anticipate and manage change. This helps to build a more cohesive society.

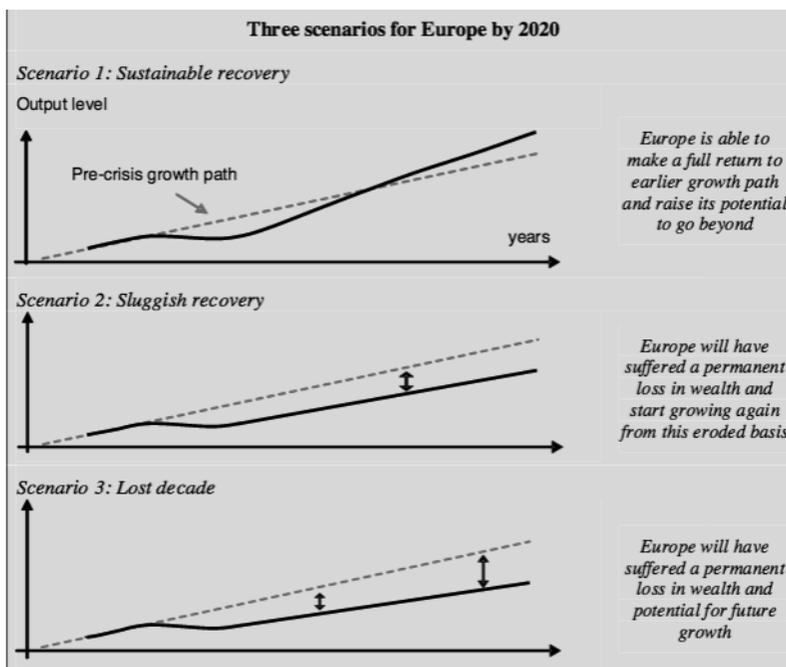
It is important that the benefits of economic growth are distributed evenly throughout the Union, including the most remote regions, in order to improve territorial cohesion. To cope with the problems of an ageing society and increased global competition, the EU must take advantage of the full potential of its workforce. In order to raise participation, strategies targeted at gender equality will be needed. This will improve social development and cohesion. This priority will demand a modernisation and a strengthening of policies in the fields of employment, education, training, and social protection systems by raising the economic activity rate and lowering structural unemployment, as well as the bearing of a greater sense of social responsibility in the business sector. In this

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<sup>51</sup> Communication from the Commission EC(2010) EUROPE 2020 - a strategy for smart, sustainable, and inclusive growth, p. 16.

<sup>52</sup> Communication from the Commission EC(2010) EUROPE 2020 - a strategy for smart, sustainable, and inclusive growth, p. 10.

Figure 4. Post-crisis scenarios for Europe



Source: Communication from the Commission EC(2010) EUROPE 2020 - a strategy for smart, sustainable, and inclusive growth, p. 7.

regard providing access to childcare facilities and care for other dependents becomes an important issue. Implementing *flexicurity* principles and enabling people to acquire new skills to adapt to new conditions and potential career shifts will be of key importance. A major effort will be needed to combat poverty and social exclusion and reduce health inequalities to ensure that everybody can benefit from growth. Equally, important will be our ability to meet the challenge of promoting a healthy and active ageing population to allow for social cohesion and higher productivity<sup>53</sup>. Progress made within these priorities will be measured in reference to

<sup>53</sup> Communication from the Commission EC(2010) EUROPE 2020 - a strategy for smart, sustainable, and inclusive growth, p. 16.

five EU headline targets, which the member states should translate into national targets, allowing for particular starting positions:

- 75% of the population aged 20–64 should be employed;
- 3% of the EU's GDP should be invested in R&D;
- The '20/20/20' climate/energy targets should be met;
- The share of early school leavers should be under 10% and at least 40% of the younger generation should have a tertiary degree;
- 20 million fewer people should be at risk of poverty.

These targets are interrelated and critical to the EU's overall success. The targets are representative of the three priorities of smart, sustainable and inclusive growth, but they are not exhaustive: a wide range of actions at national, the EU and international levels will be necessary to underpin them.

Moreover, the Europe 2020 Strategy, besides linking the realisation of its priorities with the development of innovation and sustainable economic growth, also points to the necessity of developing social dialogue. In consequence, the Commission undertakes to strengthen the capacity of social partners and make full use of the problem-solving potential of social dialogue at all levels (the EU, national/regional, sectoral and company), and to promote strengthened cooperation between labour market institutions including the public employment services of the Member States<sup>54</sup>. In this respect, the Member States are required to promote and monitor the effective implementation of social dialogue outcomes<sup>55</sup>.

Poland has aims complementary to Europe 2020, set out in the National Development Strategy 2007–2015. This strategy defines the aims and the priorities of development policy for the next few years as well as the conditions needed to secure development<sup>56</sup>. In the strategy for Priority III: Employment Growth and Improving

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<sup>54</sup> Communication from the Commission EC(2010) EUROPE 2020 - a strategy for smart, sustainable, and inclusive growth, p. 17.

<sup>55</sup> Ibidem.

<sup>56</sup> [www.mrr.gov.pl/rozwoj\\_regionalny/polityka\\_rozwoju/srk/](http://www.mrr.gov.pl/rozwoj_regionalny/polityka_rozwoju/srk/).

## 2.3. EU Development Strategies and the Perspective...

the Quality of Employment, the indicators presented in the table below were chosen.

Table 4. Indicators of objectives achievement for Priority III specified in the National Development Strategy 2007–2015<sup>57</sup>

	Indicator	EU-25	Poland		
		Indicator value in base year (2005)	Assumed indicator value		
			2010	2015	
Priority III employment growth & improving the quality of employment	employment rate (%)				
	- entire 15–64 age group	63,8	52,8	57,0	62,0
	- women aged 15–64	56,3	46,8	51,0	53,0
	- entire 55–64 age group	42,5	27,2	31,0	37,0
	- people with disabilities	-	13,1 (2004)	18,0	25,0
	unemployment rate for those aged 15–24	18,5	34,6	26,0	18,0
	percentage of the population aged 15–64 with secondary education (basic vocational training not included)	-	35,2	38,0	41,0
percentage of the population aged 15–64 with tertiary education	-	13,9	15,0	18,0	
graduates in mathematics, natural sciences and technical studies (as a percentage of all university graduates)	24,0	18,0 (2004)	20,0	25,0	
percentage of the population aged 25–64 participating in education or training	11,0	5,5	7,0	10,0	

Source: Own study, based on data from the Central Statistical Office (GUS), the Ministry of Finance, and Eurostat.

In order to promote the innovation and competitiveness of European economies, businesses should be able to hire workers whose skills, productivity and flexibility best meet their needs. However, the pace at which Europe is adapting to sudden economic changes isn't good enough, and the international crisis has weakened the

<sup>57</sup> *National Strategy for Development for the period 2007 – 2015*, p. 47.

economies of most member states, causing a rise in unemployment. Various globalisation-related processes and increasing competition constitute a major challenge. Economic problems have had a negative influence not only on labour markets, and besides unemployment as such, the quality of employment is a major issue for many Member States. The debate on the limits to labour market flexibility and the need for security, which took place in the middle of the first decade of the 21<sup>st</sup> century, resurfaces in the current context. Concerns about competitiveness may lead to an aggravation of problems to do with outsourcing and relocation, increase income inequality and widen the gap between skilled and unskilled workers. One argument for an integrated approach to the implementation of *flexicurity* is the need to meet the targets set out in the renewed Lisbon Strategy, and reiterated in Europe 2020: providing new jobs, improving the quality of employment and – at the same time – modernising European social models. These targets require strategies that simultaneously adjust labour market flexibility, the organisation of work and labour relations as well as security – including job security and social security.

## **2.4. *Flexicurity* as a European Model of Security and Flexibility in the Labour Market**

The *flexicurity* model assumes alleviation of negative effects of labour market flexibility through strengthening of social security, services and instruments of the labour market as well as through investing in employee training, all of which reduce the risk and shorten periods of unemployment. Thanks to stimulation of job creation supported by services aimed at making job seekers more active accompanied by social security measures in the event of unemployment, the risk of long-term unemployment is reduced and the negative consequences of a dual labour market are alleviated. Making security and flexibility mutually supportive is one of the principles of *flexicurity* model. Member states should invest greater effort in shaping their labour markets to favour employment, because policy in this domain is often formulated and imposed

piecemeal and without regard to the broader problems of the labour market, and very often seeks to improve either enterprise flexibility or worker security, but not both. The Commission and member states have concluded together, from experience and the findings of analyses, that when formulating and imposing policy for *flexicurity* there are four components to bear in mind. Those four are: (1) flexible but predictable employment terms—from the employee's and employer's perspectives, as well as those of citizens having and lacking permanent employment—achieved by virtue of forward-looking employment law, collective agreements and labour organisations; (2) a comprehensive lifelong learning strategy which ensures the constant preparedness to adapt and to be recruited—particularly of members of the most disadvantaged social groups, but also of all workers; (3) an effective and active policy for the labour market which assists workers in coping with rapid changes, lays the ground for a shortening of periods of unemployment and facilitates job changes; and (4) modern social insurance systems which ensure appropriate income support, encourage a return to employment and facilitate labour market mobility. At the crux here is the inclusion of a broad spectrum of regulations concerning social insurance such as unemployment benefit, pensions and healthcare which make possible reconciling working life with obligations in private and family life, such as childcare<sup>58</sup>. *Flexicurity* is a relatively new idea, which has only been given weight in public discourse and labour market action programmes for two decades<sup>59</sup>.

The *flexicurity* concept is currently extremely attractive in setting social policy, combining as it does two approaches to labour market problems—acceptance that the labour market needs to evolve towards flexibility and high regard for safeguarding social welfare provision for workers and the unemployed—and so nurturing two value systems. The fathers of the concept, T. Wilthagen

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<sup>58</sup> European Commission Communication (2007) 359, *Developing common principles of flexicurity*, p. 6.

<sup>59</sup> This idea was introduced first in the Netherlands, where employment law reforms took place in 1999 in the legislation covering flexibility and security.

and F. Tros, strove for greater harmony between labour market flexibility (in practical terms the ease of recruiting and terminating) and job and income security at the expectation level of employees and trade unions<sup>60</sup>. Though sometimes not immediately evident, meeting these employees' expectations is also in the interests of employers. A feeling of security is a significant motivating factor for employees and engenders their loyalty and engagement. At the same time, globalisation and technological progress have now caused not only employees' but also employers' needs to change. Enterprises have to develop and adapt their offering constantly, and always require the latest skill sets in their employees. Continuous restructuring of enterprises becomes inescapable, however this certainly need not signify only workforce reductions. As a threat to the effective performance of the traditional protective role of the labour law emerged, a new form of safeguard is necessary, which allows adaptation of the workforce to the changes in the labour market. The concept's progenitors indicated that *flexicurity* is based upon limits: at one end of the range increasing labour market flexibility but encroaching on employment security and serving only the interest of enterprises and job creators is exceeding a limit, and at the other, so is only yielding to the demands for greater security made by employees and their representatives<sup>61</sup>. The *flexicurity* policy is actions aiming for the implementation of a theoretical concept in real-world conditions. The *flexicurity* model is all the actions of states which wish to impart more flexibility to their labour markets while conjointly safeguarding employment security of their workers. Serving this motive and componental in the model, a state creates its national *flexicurity* policy heeding the specific domestic circumstances dictating how the policy aim is to be achieved.

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<sup>60</sup> T. Wilthagen, F. Tros, *Conceptual Issues and Political Implementation in Europe*, 'Transfer, European Review of Labour and Research' 2004, Vol. 10, No 2, pp. 166–186.

<sup>61</sup> *Ibidem*.

The methods by which individual solutions are implemented should also be an important aspect of policy considerations. In the light of limited possibilities of guaranteeing job security, the significance of what is termed external security moves to the fore. External security is the assurance of income in case of unemployment, and a functioning system of labour market services and tools through which the period of unemployment and job seeking is minimised. Continuing education becomes an alternative means of protecting the durability of the contractual relationship, both as a factor raising the fitness to compete of the worker in the labour market and also as a direct boon to the employer, meeting the employer's need to enhance the company's competitiveness and innovativeness through investment in human capital.

Unemployment has become the most significant economic, social and political problem of the modern world. From a problem typified as interim and linked to negatives in the business cycle and with the financial crisis, this phenomenon has become a structural problem. In Europe in particular the crisis in the labour market emerged very prominently in the closing decades of the twentieth century, against the backdrop of fundamental changes in the global economy. Among the reasons for persisting mass unemployment are economic factors, but also alongside them demographic, institutional, and cultural determinants. A salient influence upon the labour market situation are change processes in economic globalisation, better competitiveness, free movement of capital and the labour pool, however factors deriving from new technologies and their spread, their productivity and their competitiveness with human labour figure no less. Globalisation has markedly increased the interdependence of states, economies and societies. In the economic dimension this means the integration of markets for goods, services and capital due to new technology as well as the opening of economies and industries to cross-border exchange. The growth in power of information technology and the liberalisation of movement of capital have led to the rise of a global financial market. In the social dimension the changes have necessarily meant a dramatic deterioration in the labour mar-

ket situation, the threat of unemployment and the concomitant loss of social welfare provision which has been a characteristic of most Western European states' socio-economic systems. The rapid pace of our world's technological changes, and globalisation to no lesser extent, mean a heightened pressure to be competitive. Globalisation most often demonstrates that manufacturers from less technologically advanced countries are capable of manufacturing given products more cheaply than manufacturers in developed countries, and what is more, technological advances particularly in ICT give rise to new products which are of better quality, more up-to-date and manufactured faster and more efficiently, frequently with only a limited need for workers<sup>62</sup>. Thus, globalisation has increased the movement of capital and investment, which has caused fundamental changes in the labour market and in labour itself and in the pattern of employment. The negative consequence of these new change processes has been rapidly rising unemployment, particularly in Europe<sup>63</sup>.

A very major aspect of the effect of globalisation and new technologies on labour relations and the labour market are structural changes in industry and occupations and the appearance of new forms of production, new sectors of industry and new professions<sup>64</sup>. Jointly with the effects of these changes, variegation is taking place in the labour market affecting worker status, compensation and working conditions. This contrast is also a consequence of the growth of new services for private consumers and commerce. At one end of the variation across

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<sup>62</sup> Subsequent WTO negotiation rounds led to lowering of the tariff and non-tariff barriers on trade in goods and services to a meaningful degree, and through FDI transnational corporations now create networks of manufacturing and trade partnerships spanning national borders.; Cf. *Ibidem*.

<sup>63</sup> M. Marody, A. Giza-Poleszczuk, *Przemiany więzi społecznych. Zarys teorii zmiany społecznej* [Changes in social ties: outline of a theory of social change], Scholar, Warsaw 2004, p. 58.

<sup>64</sup> Cf. M. Castells, *End of millennium*, Wyd. Nauk. PWN, Warsaw 2009, pp. 309–316.; J. Rifkin, *The end of work: The decline of the global labor force and the dawn of the post-market era*, Dolnośląskie, Wrocław 2001.; H.P. Martin, H. Schumann, *The global trap: globalization and the assault on prosperity and democracy*, Dolnośląskie, Wrocław 1999, pp. 118–168.

the working population are numerous low-paid and precariously employed workers, and at the other end new professional elites have appeared<sup>65</sup>.

Europe has not been in the position to grow and change to its current state, or even to function, in isolation from the world beyond and the competitive economies of the USA and Asia. Demographic obstacles and the social costs of the ever more apparent economic problems have jeopardised the fulfilment of the growth plan in place up to now, and the inevitability of reforms to the economic and social structures has to become ever more apparent. This also indicates the increasingly hard to overlook dissimilarity between labour market models, as Szyłko-Szkoczny writes: 'The notable trait of the new recruitment strategy applied in highly-developed countries is the increasing use of flexible forms of employment, and in fact the majority of new positions created in the 1980s and 1990s in EU states were part-time or other flexible forms of employment like temporary work, on-call work, telework or self-employment [own translation]'<sup>66</sup>. The mechanisms of globalisation, stiff domestic and global competition and the dynamic growth of high technology have come to present a new challenge which policymakers must countenance in order to grasp how to set appropriate employment and labour market policies as well as social policies. Yet awareness of the challenge brings about a reassignment of values in these policy domains. The Western European model is internally differentiated, but as a whole is marked by corporate, centralised and collectively-negotiated contractual conditions, where the position of supra-enterprise union organisations is strong despite falling unionisation since the 1980s and where the basic mechanism for agree-

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<sup>65</sup> R. Hyman, *Związki zawodowe wobec transnarodowej integracji gospodarczej – doświadczenia europejskie*, [in:] *Gospodarowanie pracą* [Trade unionism in the face of transnational economic integration – the European experience, [in:] *Managing labour*], Wyd. Uniwersytetu Łódzkiego, Łódź 2001, pp. 232–235.

<sup>66</sup> M. Szyłko-Skoczny, *Bezrobocie jako kwestia społeczna. Studium społecznych i prawnych problemów bezrobocia w RFN* [Unemployment as a social issue. A study of the social and legal problems of unemployment in the FRG], IPISS, Warsaw 1987, pp. 8–9.

ing wages is collective negotiation<sup>67</sup>. Shared traits of the changes are distinguished and labelled, which begin with the spread of flexible forms of employment and a complete switch from the predominance of employment in the traditional sectors to major employment in more modern industry sectors. The list continues with an abrupt fall in the demand for lowly-qualified workers and growth in the demand for their highly-qualified counterparts who are capable of continuing education. Declining unionisation and a growing predisposition of trade unions and employers to cooperate also feature, as does a weightier significance to qualifications, knowledge and workplace achievement in determining remuneration and a company's productivity and competitiveness. Finally, the Author cites the arising of workforce management practices enabling investment in human capital. Low-wage countries and high-wage countries have started to compete nation with nation in a global market. Flows of capital, information and technological innovation internationally, allied with new organisation patterns of labour have become the main factors in relocation, i.e. transferring production, which in high-wage countries has unavoidably usurped their control over employment. These changes have led to many lost employment positions in Europe, and despite the raising of new investment the aggregate change in the labour market has negatively affected economic conditions and social progress. In previously labour-intensive occupations, automation and new technologies have replaced workers, but as an effect only upon the old industries of Western Europe, this initially was not a problem for the whole world. The structural changes set in motion by this phenomenon have led to huge job losses and a fierce rise in unemployment<sup>68</sup>. These processes, which

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<sup>67</sup> S. Borkowska, *Świat pracy...* [The World of Work...], op.cit.; P. Hartz, *Job Revolution. Wie wir neue Arbeitsplätze gewinnen können* [Job Revolution. How we can create new jobs], Frankfurter Allgemeine Buch, Frankfurt a. Main 2001, pp. 17–58.

<sup>68</sup> M. Castells, *End of millennium*, ed. M. Marody, Wyd. Nauk. PWN, Warsaw 2009, pp. 309–316.; Cf. J. Ryfkin, *The end of work: The decline of the global labor force and the dawn of the post-market era*, Dolnośląskie, Wrocław 2003, op.cit.

are bound up with the globalisation of the economy and the effect of new technology on the market, have not however led to the era of 'the end of work' which had been presaged. Rather, the changes in the economic structure have signified a contraction in the industrial workforce in favour of a growth in work in service industries. These industries are often completely new, and have created alternative positions of employment, positions however which demand new qualifications and new types of occupational activity.

The response of the European Community to the rising unemployment in the closing decades of the 20<sup>th</sup> century was a raft of regulations dealing with the protection of workers' rights and preventing disparities in social standards, and these regulations were mainly for workers jeopardised by industry in crisis. From the 1990s when the European labour market situation was worsening, member states focused their efforts on fighting rising unemployment as well as programmes to encourage new recruitment. On the matter of flexible employment, states took note of the 1993 White Paper on growth, competitiveness and employment. This recommended removing barriers and shedding employment arrangements which rendered the labour market inflexible and advised states to pay heed to employers' and employees' proposals concerning the weekly distribution and number of working hours. The flexibility issue was taken up again in the 1997 Green Paper 'Partnership for a new organisation of work', which underlined the impact of how work is organised in raising competitiveness and employment. The document took for its material the concept of flexibility and security but did not yet invoke the integrated *flexicurity* concept, instead dealing with the two elements separately. It needs be stressed that despite a keener oversight of social policy, and particularly labour market policy, at the Community level, the actors responsible for seeing it carried into action were still the member states, and the Union's policy activity was simply co-ordinating actions. This results from the unequal levels of economic and social progress, conflicts of national interests and

differences in social policy models, all of which hindered the reaching of a consensus agreement at European level<sup>69</sup>.

These problems got a response in the Lisbon Strategy, which concentrated only on the labour market domain, acknowledging that the social model already pursued in the EU worked counter to dynamic economic growth. Although the term *flexicurity* was not used in the Lisbon Strategy, the goals it contained and the areas it named for reform are in fact wholly embodied in the *flexicurity* concept. A series of papers were written in the course of carrying out the Lisbon Strategy. In *The European Social Agenda* of 2005 it was made clear that the main thrust should be applied to new employment and guarantees of equality of opportunity to all. The substantive aspect of actions to follow was to be modernisation of the social model prevailing in the member states and cohesion policies in the economic and social domains in equal measure. In another 2005 document, *Common Actions for Growth and Employment: The Community Lisbon Programme* the authors emphasised that realising the new labour market policy goals would need the principles of partnership to be reaffirmed and social dialogue to be widened. The first document to expressly recommend putting the *flexicurity* concept into practice was the Green Paper by the European Commission in 2006 'Green Paper on modernising labour law to meet the challenges of the 21<sup>st</sup> century'. The paper described the rise in the numbers of people employed on fixed-term contracts, working part-time, hired by temporary recruitment agencies and working as self-employed individuals. It also recorded that between 2001 and 2005 the proportion of people employed under unconventional arrangements rose from 28% to 32% in the new EU (EU-10) and from 38% to 41% in the old EU (EU-15). The Green Paper's authors showed the abrupt rise in the percentage of workers retained on unconventional employment terms and subsequent reactions from the legal community and the Commission itself voiced criticism of this state of affairs. The antithetical attitude

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<sup>69</sup> Cf. J. Męcina, *Niewykorzystane zasoby. Nowa polityka rynku pracy* [Untapped resources. A new labour market policy], Warsaw 2014, pp.120–127.

of the Commission towards flexible forms of employment met with definite opposition in industry and from professional associations, as well as certain member states' governments. They held the view that the matter of deregulating the labour market ought to remain within the competence of each member state. Legal commentators elucidated the strong points of the Green Paper as well as the weak points. However, among other ideas in the paper they laid stress on the acknowledgement of overarching regulations as an essential instrument of labour law, but called for a clear and transparent definition of *flexicurity*. One of the basic criticisms was an indication of the risk transfer phenomenon from the economic resilience of the company to that of the worker, which ill accorded with the traditional labour relations paradigm. The Commission has indeed acknowledged that instability is gradually becoming an inherent feature of the labour market, and that the citizen has to find security elsewhere. In practice this means that the worker in need should have a guarantee of being able to seek assistance from a proactive labour market policy and publicly-funded social insurance. Legal commentators also drew attention to the omission of any mention of the social costs and cost in anxiety over subsistence in the description of the transfer of economic risk. The experience of the EU-15 reveals that in the first decade of the 21<sup>st</sup> century, the largest area of new job creation was in flexible forms of employment, where in fact over 40% of new positions were filled by women and were part-time. The largest area of workforce expansion was also enterprises in the SME sector. Between 2000 and 2010 the proportion of expenditure on continuing education grew, and there was also support for the broadening of family-friendly policies and encouragement to enlarge families (including longer maternity leave, child benefits and tax incentives). There was also a similar spending rise in publicly-funded enterprises (through training funds). Resources for and delivery of a proactive labour market policy also grew, whereby that policy was a customisation of provisions for the labour market, linked with outsourcing services and collaborating with the private sector. In many EU countries we could also see reforms in the system of assistance for loss of

employment, particularly in new incentives for the unemployed to seek jobs and benefits during the period between jobs.

The second EU communication to directly refer to the *flexicurity* concept was the Commission's *Towards common principles of flexicurity* from 2007<sup>70</sup>. It presented the components of the concept, the first of which was flexible but predictable employment terms derived from forward-looking employment law, collective agreements and responsible labour organisations. The next component was a comprehensive lifelong learning strategy offering workers, and in particular the most vulnerable workers, the constant and certain capability to augment their qualifications and gain new employment. *Flexicurity* element three was an effective and active policy for the labour market which assists workers in coping with rapid changes, lays the ground for a shortening of periods of unemployment and facilitates job changes. Closing the list of *flexicurity's* constituent parts was modern social insurance systems which ensure appropriate income support, encourage a return to employment and facilitate labour market mobility. In service to this last part of *flexicurity* it is vital to draft suitable social insurance regulations, such as for unemployment benefit, pensions and healthcare, which make possible meshing working life with private and family life. This document is important in that it precisely defined *flexicurity* and detailed guidelines for implementing its strategy. The European panel of *flexicurity* experts responsible for this report also determined where the problems lay in the European labour market, relating among other issues stratification, large-scale outsider participation, regulation of labour law and a demotivating social insurance system. The EU Employment, Social Policy, Health and Consumer Affairs Council acting in 2007 presented their list of eight principles of the *flexicurity* concept:

- 1) It assists the implementation of the adopted Lisbon Strategy;
- 2) It signals the necessity of enshrining in contracts certain obligations: that of maintaining an appropriate degree of flex-

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<sup>70</sup> Cf. J. Męcina, *Niewykorzystane zasoby...* [Untapped resources...] Warsaw 2014, pp. 120-124.

- ibility, of ensuring conducive conditions for learning at every stage of life and of using effective employment policies and efficacious social insurance programmes;
- 3) It envisages a diversity of means of achieving these aims;
  - 4) It promotes flexibility in the labour market and strives to eliminate segmentation;
  - 5) It is also to be acted upon within enterprises and is to reinforce the need for remaining active after job loss and in the search for new employment;
  - 6) It is based on the principle of gender equality;
  - 7) It is to be pursued in a climate of mutual trust through dialogue involving all parties;
  - 8) And in large part it draws resources from the domestic budgets of states and requires expenditure for it to be explicitly allocated in those budgets.

In 2008 the Committee of the Regions provided its opinion on the *flexicurity* concept and gave weight to the importance of regional and local leadership in the effort of its implementation. The financial crisis and its effects, which were already visible in Europe at the end of 2008, bore negatively on the situation in the labour market. In the same year, as part of the Mission for Flexicurity initiative the European Commission called for a progress evaluation of the implementation of *flexicurity* in several EU states, namely France, Sweden, Finland, Poland, and Spain. The evaluation produced a report which enumerated the major actions undertaken by these member states towards implementation. In Poland, it listed the regulation of telework, carrying out the 'Solidarity across generations' programme for those over 50 and labour market reforms concerning the young unemployed. The French actions were the introduction of a new type of contract in the form of a fixed-term and specific-task contract for up to 36 months and guaranteed minimum income for the unemployed. Finland was noted for reform in the careers advice service and its agency in meeting the individual needs of those in employment and those seeking it. From Spain the evaluation

reported action to strengthen equality and to introduce flexible working time in order for people to dovetail professional and familial responsibilities. Lastly, language courses for immigrants were mentioned in Sweden.

In 2009 the European Commission adopted guidelines for economic and labour policies which named the labour market and fostering the intellectual capital of the citizen as the most important theatres for policy-making, with the intention of better empowering professional mobility. The Commission also made detailed recommendations, beginning with the return of efficiency to the labour market, a gain in the proactivity of the labour market policy and an improvement in the number of people in employment (with particular emphasis on at-risk groups). These recommendations continued with a redress to regional disproportionality, a build of the profile of continuing education and an augmentation of labour exchange effectiveness. With an increase in professional mobility and a decrease of labour market segmentation the Commission ended their recommendations. Also, in that year there appeared the Employment Committee's report (EMCO) 'Monitoring and analysis of *flexicurity* policies'. The report listed three indicators serving to monitor the implementation of *flexicurity*: the input indicator, permitting principles and regulations in force in certain areas to be quantified; the process indicator, regarding participation of individual groups in action programmes launched; and the effect indicator, pertaining to the four strategy components. The analysis of the indicators in EMCO's monitoring of the implementation may be tabulated by key elements and individual countries.

Many experts maintain that European Union countries have modified their social model policies or have ceased to pursue them by deregulating their economies and fostering flexibility in their labour markets through a shift to neo-liberal economics. Holders of this opinion attribute it to a response to the current difficulties besetting civilisation and the failure of the corporate social responsibility model to solve the problem of unemployment or boost

## 2.4. *Flexicurity* as a European Model of Security and Flexibility...

Table 5. Indicators in monitoring *flexicurity* implementation Union-wide

	<b>Input indicator</b>	<b>Process indicator</b>	<b>Effect indicator</b>
Flexible contractual arrangements - telework - fixed-term contracts - part-time work - temporary work	Regulation of labour law concerning unconventional forms of employment	Analysis of employment patterns and proportion of unconventional contractual arrangements in the elements of the workforce	Effect of flexibility changes on the level of employment
Co-ordination of the comprehensive strategy for comprehensive continuing education	Public expenditure and enterprise investment in training	Participation in continuing education	Effect of continuing education on employment and the calibre of the workforce
Co-ordination of an effective and proactive labour market policy	Expenditure on ALMP and proportion of spending in GNP	Efficiency and proactivity of labour market policy as determined by access and by efficiency indicators	Effect on new recruiting and activating the previously unemployed
Co-ordination of modern social insurance systems including parental leave	Expenditure on benefits and other welfare provisions specifically for the loss of a job (social and family provisions)	Degree of security and activation of the unemployed and the effect on employment of starting a family	Demographic problems, powerlessness in occupational life and untapped labour resources

Source: Own study.

the competitiveness of their economies<sup>71</sup>. The key feature of these changes is the utilisation in certain countries of social dialogue mechanisms to reform the economy and society and to impart

<sup>71</sup> Cf. J. Męcina, *Wpływ dialogu społecznego...* [The impact of social dialogue...] op. cit.

change to the areas of labour relations, the labour market and remuneration<sup>72</sup>. Remodelling the labour market and effecting change in the labour relations model have posed a new challenge which particularly in Europe has been met only with the greatest difficulty. Through negotiation and consultations between employers and trade unions many states have mitigated the social and economic effects of the incorporation of new technology and the contraction of specific industries. Only by bearing the financial brunt of early retirement programmes, high redundancy settlements and other social welfare provision have many European countries carried out a fundamental economic restructuring and hosted the technological revolution. They have also highly prioritised shaping labour law to fit the new realities, although its base precepts have remained unchanged<sup>73</sup>.

The other technological revolution, which arrived at the end of the 20<sup>th</sup> century and came with the dramatic rise of information and communication technology, wrought powerful change on employment patterns and the nature of employment itself. The large-scale move to digital technology exerted influence on the nature of change in labour legislation and change to the rules of many parts of previously heterogeneous employment contracts<sup>74</sup>. The key changes, which are still today a matter of interest to experts, policy-makers and employers and trade unions as social partners, and which also have come to be the European fulcrum of debates and analyses, can be stated as these<sup>75</sup>:

- decentralising production and delocalising are now less fraught and as a result private enterprise is becoming a more strategic concept than a tangible. Those who make decisions

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<sup>72</sup> R. Hyman, *Związki zawodowe wobec transnarodowej...* [Trade unionism in the face of trans national...] Wyd. Uniwersytetu Łódzkiego, Łódź 2001, pp. 239–242.

<sup>73</sup> EC, *Transformation of labour and future of labour law in Europe*, final report, Brussels 1998.

<sup>74</sup> Cf. A. Bronstein, *International and comparative...*, pp. 30–57; W. Morawski, *Globalizacja i praca. Kontekstowa analiza świata pracy*, [in:] *Przyszłość pracy...* [The Future of Work...], pp. 15–32.

<sup>75</sup> Cf. J. Męcina, *Wpływ dialogu...* [The impact of social dialogue...], op. cit.

about the size of the workforce, working conditions and wages are no longer legally the workers' employers and the new phenomenon is arising where the employer depends economically on decisions made by the global or international investor;

- in the situation where the number of workers is increasing, it is completion of tasks or obtaining of results which provides the foundation for the employment contract rather than the agreed hours in the working week. New schemes for the pattern of employment and working hours are appearing which may be seasonally variable or subject to the dictates of the economic cycle. Examples are flexible working time, working time accounts and on-call work;
- in parallel, new solutions are being found to help people dovetail occupational duties with familial responsibilities, education, or voluntary and community activities;
- the significance of completing training and augmenting professional qualifications is rising. For specific positions and sometimes for specific professions they are now a prerequisite;
- in Europe in particular, already grappling with the problem of an ageing population and eroding stability because demographic change is overloading the pension system, the issue of creating conditions for extending working life is becoming a challenge.
- new occupational diseases and risks are emerging and intensifying, such as stress, alienation in the work place and burnout, which may be linked to the use of ICT;
- the crisis of the end of the first decade of the 21<sup>st</sup> century has revealed the instability of European socio-economic systems and the threat to the competitiveness of European economies, with the indicators of faltering in growth and rising unemployment.

The march of globalisation has faced the European Union with the necessity of remaking the social models prevailing in Europe. Reference to the *flexicurity* concept was already in the Delors white paper, which concerned economic growth, boosts to competitive-

ness, and employment stimulation, as it also was in the European Employment Strategy. The results delivered by the concept's implementation in Denmark and the Netherlands, pioneering countries in labour market reform, inspired reforms to be set on course in all EU member states. Propounding the *flexicurity* model ties into the new EU approach to social policy based on the assumption that only compatibility between economic and social policies offers member states stable development. The assumption reposes in the new *flexicurity* concept's purpose of improving the flexibility and competitiveness of European economies while also guaranteeing workers an appropriate level of social security accompanied by assistance in swift search for new employment<sup>76</sup>. It must nevertheless be realised that for the ideal of employment and its efficiency and security to carry so far, with the attendant need for reform to employment, labour market, and social policy, there would have not to be the nevertheless inevitable collision with legal and political reality as well as our sense of society. Implementing *flexicurity* must respect a country's specific domestic circumstances, a truth borne out by the fact that different forms were given to the *flexicurity* model in the countries to take up the concept first. Denmark and the Netherlands were those countries, and they do demonstrate differences, despite their geographical and cultural proximity. T. Wilthagen and F. Tros are the originators of the concept as implemented in the Netherlands. Their perspective on flexibility constitutes:

- 1) external flexibility, pertaining to the manner of recruiting and terminating employees;
- 2) internal flexibility, that is to say the possibility of varying the number of workers in the enterprise easily;
- 3) operative flexibility, lying in the workers' capacity to be reconfigured as changes in the enterprise require and concerning the manner of implementing changes;

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<sup>76</sup> Cf. W. Anioł, *Globalizacja...* [Globalisation...], op. cit.; Out-of-sequence footnote „1' (first instance) here: D. Lang, *Can the Danish model of 'flexicurity' be a matrix for the reform of European labour markets?*, Cahiers du GRES (Groupe-ment de Recherches Economiques et Sociales) (2002-2009), 2006-18.

- 4) and remunerative flexibility, which is pegging labour costs to economic conditions and relating them to productivity.

A company should attain such adeptness at flexibility that it enables that company to respond to changing conditions well enough to maintain and improve its competitiveness and productivity. Moving in turn from flexibility to their concept of security, Wilthagen and Tros distinguished: in-post security, signifying the time a worker remains in one position; employment security, as the time a worker has continuous employment; income security, the extent to which a worker's income is assured after job loss; and lifestyle security, which is how a worker may avoid conflicts of occupational duties and familial responsibilities. The Danish model of *flexicurity*, hailed as the most effective in Europe, has delivered results many labour market analysts regard as exceptional. This is demonstrated by numerous analyses and studies on employment policy, which unfailingly elevate Denmark as a role model. The proof of Danish success is above all the pronounced fall in unemployment from 9.6% in 1993 to 4.3% in 2001, against a steady employment indicator of 75%. Denmark in addition achieved its employment policy aims without a rise in inflation and with a positive balance of trade every year, notwithstanding that it is a country where public spending represents more than 56% of GDP. The motifs of the Danish *flexicurity* model are low guarantees of unbroken employment and high labour flexibility. Extensive welfare provision and wide access to activation programmes for the unemployed can be found there. In their policy, the Danes departed significantly from the Scandinavian model where there are high guarantees of unbroken employment. As a result, the average period spent job seeking fell. However, the availability of welfare benefits is a factor which grants ease to an employer who has to decide to reduce the workforce but also still has to adhere to principles of social partnership. Numerous labour market programmes stimulate the unemployed to be proactive in job seeking, and participation in them does not preclude receiving benefits, nevertheless the amount of benefit is dependent on the length of the period in unemployment

and reduces in proportion to it, and this motivates the unemployed to seek jobs. The Danish model has been put to a severe test in recent years, when as a result of the economic crisis unemployment rose in this country as well.

The essence of the Danish labour market is the freedom to recruit employees and terminate employment, which derives from the exceptionally low regulation of the market. In the world flexibility rankings Denmark takes 3<sup>rd</sup> place behind the USA and Singapore. The high flexibility of Danish labour market is principally observed in its low redundancy settlements, long employee probationary periods, short notice periods, high worker mobility rate and low average length of continuous employment (8.3 years). In addition, the Danish labour market is regulated almost exclusively by collective trade union agreements and industry federations. This is possible because of the highly unionised workforce. The next significant feature of this labour market is a generous social welfare system, which is the principal persuader for trade unions to agree to such highly flexible employment conditions. The principle of the Danish social welfare system is unemployment insurance supported financially by the government. In case of unemployment, the former employee is entitled to benefit equivalent to 90% of the most recent earnings. Benefits paid out to employees are reduced over time. To keep their entitlement to unemployment benefits, beneficiaries take part in full-time active labour market programmes. Besides this commitment, the Danish government has another: to 25% of the Danish population, who are excluded from the work force and receive social benefits. Another important pillar of the Danish model is an effective active labour market policy. Denmark occupies a high position in the world rankings for domestic budget commitment to labour market policies (4.5% of GDP). The main purpose of the expenditure is to finance training programmes for people who are unemployed or at risk of unemployment. As a result, for the first group job seeking periods shorten, and for the second the risk of job loss lessens<sup>1</sup>. Other countries such as the Netherlands, as noted, but also Austria, Finland, Sweden, Spain, France, and Ireland are attempting to build models which unify

flexibility and security, with varying degrees of success. In fact the Danish model presents an archetype and its effectiveness urges thorough analysis of its system and comparison with the system which Poland sustains.

*Flexicurity* can be described as an integrated strategy for the labour market of simultaneously increasing its flexibility and security. It is based on flexible employment, an effective labour market policy, continuing education programmes, and social insurance in case of unemployment. The concept of a flexible labour market and a protective welfare system is based on needs attending the transitions which succeed one another fluidly in working life: the conclusion of the education stage and start of working life, job changes, return to work after a period of unemployment or absence from the workforce and retirement. It may not be reduced simply to expanding the possibilities of enterprises in recruiting and terminating employees, nor does it mean a total departure from permanent employment contracts. *Flexicurity* affords chances of changing employment, gaining promotion and exhaustively nurturing individual skills and talents. Flexibility also means flexible employment patterns, which make it possible to meet new demands quickly and efficiently, to master new skills and to balance work and private life. In this last regard, flexible employment patterns and flexible working time play a large part.

It must not fail to be noticed that in terms of employment security, the *flexicurity* model by nature turns on replacing job security with employment security. Job security means holding the same post with the same employer, which accords with the broader concept of the social policy known as the welfare state. Employment security as per the *flexicurity* concept is to be understood as the protection of people rather than posts and is associated with the workfare state concept, which translates to the state in support of work<sup>77</sup>. If the *flexicurity* concept is adopted, it is therefore

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<sup>77</sup> T. Wilthagen, F. Tros, H. van Lieshout, *Towards 'Flexicurity?'; balancing flexibility and security in EU member states*, paper prepared for the 13<sup>th</sup> World Congress of the International Industrial Relations Association (IIRA), Tilburg University, 'Flexicurity Research Paper' 2003, No 3, p. 4. (second instance) here: D. Lang,

important to appreciate that it will also affect the whole of what is most broadly termed state social policy. The concept of *flexicurity*, therefore, outlines the direction for state social policy and the policy touching the shop floor, but also for other entities such as trade unions and other representative bodies, and employers as well. This concept makes resort to specific legal and economic instruments and relates to the important areas in the purview of social policy such as employment and labour market policy, the social security system, labour law, education to university age and continuing education. The importance of the balance in the *flexicurity* model, as well as the national and commercial dimensions to its implementation deserve emphasis, while at the same time the role of social dialogue in planning, structuring and ushering it in may not be overlooked. Security is not just a matter of ensuring people keep their current jobs but it is also about equipping people with such skills to enable professional development and to help them find new jobs. Important here are adequate unemployment benefits to help manage a transitional period. Security is also about providing qualification opportunities to all employees, especially the low-skilled and older people. Through the *flexicurity* model both companies and employees benefit from flexibility and security conjointly. Workers have, for example, better employment patterns<sup>78</sup>, and the opportunities for promotion which raised qualifications and investments in training grant them. The elevation of worker skills has a payback for entrepreneurs and helps the employees adjust to and accept changes. J. Leschke points out that the idea of *flexicurity* should not be understood merely as a compromise between flexibility and security or a clash of opposite tendencies. It should rather be seen as coexistence of these two elements. Designating it compromise is an excessive simplification of these two elements' relationship. An advance in flexibility

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*Can the Danish model of 'flexicurity' be a matrix for the reform of European labour markets?*, Cahiers du GRES (Groupement de Recherches Economiques et Sociales) (2002–2009), 2006-18.

<sup>78</sup> OECD (2006), 'Live longer, work longer', Communication from the European Commission (2007) 359 Towards common principles of flexicurity, p. 5.

and a retrogression in employee security are not the same, likewise neither do employee gains in the area of security have to entrain loss of flexibility<sup>79</sup>. Also, studies by M. Jepsen from the European Trade Union Institute in Brussels show that the adoption of the *flexicurity* concept corresponds to a situation known in game theory as win – win, when both sides benefit, holding true when the process of formation and implementation of *flexicurity* policy is predicated on social dialogue. Certainly workers in countries with the highest level of flexibility hand-in-hand with employment security (Denmark and the Netherlands) may lose their jobs quickly, however their governments, which constantly invest in the work force and public policy, prepare them to take on new tasks. This in effect represents a measurable boost to their chances in the labour market and the national capability to use labour resources most efficiently<sup>80</sup>.

Simple employment indicators show clearly that in most areas Poland diverges from neighbouring standards of flexibility and security. Its high proportion of employment on fixed-term contracts, while in its favour seen against other EU countries, is not balanced by a high proportion of part-time employment. Employment security indicators for participation in continuing education or active labour market policy spend are over twice as poor as the EU averages. These data serve to define clearly the deficits in public policy, that policy which would embark on implementation of the *flexicurity* concept in Poland. It might tenuously be stated that these deficits put distance between Poland and certain established aspects of the Europe 2020 strategy. The strategy mandates improving employment indicators and without the country introducing

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<sup>79</sup> J. Leschke, G. Schmid, D. Griga, *On the Marriage of Flexibility and Security: Lessons from the Hartz reforms in Germany*, Discussion Paper SP 2006–108 Abstract, Wissenschaftszentrum Berlin für Sozialforschung, p. 9.

<sup>80</sup> *Flexicurity jako część europejskiego modelu gospodarczego i społecznego – korzyści płynące z połączenia prawa pracy i polityki społecznej przy elastycznym kształtowaniu rynku pracy w Polsce* [Flexicurity, part of the European economic and social model. Advantages for Poland deriving from employment law, social policy, and a labour market modelled on flexibility] Monitor Prawa Pracy [Employment Law Watch] 2007, No 5, p. 3.

reforms it will be difficult to achieve this. The table below presents a summary of Europe 2020 strategy targets, both Union-wide and for Poland.

Table 6. Europe 2020 strategy targets

Europe 2020 strategy targets for the Union	Targets for Poland
Employment rate for age group 20–64 of 75%	Employment rate for age group 20–64 of 71%
Reducing the education and training dropout rate to 10%	Reducing the education and training dropout rate to 4.5%
Increasing the proportion of people with a degree to 40%	Increasing the proportion of people with a degree to 45%
Reducing the number of people at risk of poverty by 20 million	Reducing the number of people living below the poverty line by 1.5–2 million

Source: Own study, based on the Europe strategy, Polish National Reform Programme.

The ambitious plan Poland is embarked on to expand employment is only achievable through taking action not in discrete plans but with integration, in such areas as employment, labour market policy, education to university age and continuing education. The economic slowdown and the deterioration of the labour market in recent years has caused the achievement of targets in these indicators to outdistance Poland further. Assuming that the state of the Polish economy, the scale of investment and adroitness at job creation will determine the level of employment, then recording high indicators here will depend to a large extent on the possibility of using the latent workforce. In this regard the crucial levers are an effective labour market policy, quality improvement in the state education system and greater ubiquity of continuing education. Undoubtedly the Polish model of *flexicurity* has to be put to the service of employment growth. In how it capitalises on the active labour market policy's potential the model should therefore focus on selected groups such as young people, the 50+ age group and stay-at-home mothers as well as on eking the most effect out of Polish labour market policy instruments.

## **2.5. The Youth Guarantees as an EU Joint Initiative and Response to the Effects of the Labour Market Crisis**

Another major challenge for the European Union are the effects of the international financial crisis, which have harmed the younger generation of Europeans the most and brought about that among them in some countries the unemployment rate reaches 50%. Youth unemployment is a test for the EU but at the same time an opportunity for a joint European coordinated action initiative to improve the outlook for young people in the labour market. As part of the package of measures proposed in the Communication of 18 April 2012 'Towards a job-rich recovery', the European Commission urged the member states, social partners and other stakeholders towards integrated actions in the employment domain. The Commission vindicated this need pointing to the dramatic crisis-impelled situation in many EU member states' labour markets. The employment crisis in the Union, and youth unemployment in particular, threatens the future of the younger generation and has entailed a particularly grave situation in the southern countries – Greece, Spain, Portugal, and Italy. The Commission drew attention to the considerable potential for employment in the green economy, health and social care, and the ICT sector and in this regard it has put forward a plan of action for each of the three areas. Following 'Towards a job-rich recovery', in its Communication of 10 October 2012 'A stronger European industry for growth and economic recovery' the Commission also emphasised six priority lines of action holding the promise of innovation for business, which ease the transition to a low-carbon and resource-efficient economy. In employment package measures the Commission stressed the important part to be played, in aid no less to the young than to older people, by stimulating entrepreneurship, wider support and microfinancing for new businesses as well as creating programs that transform unemployment benefits into start-up grants. In addition, this package of measures proposed subsidising salaries to increase net new employment and

decreasing the tax wedge (mainly employers' contributions to social security) in a targeted way in order to stimulate employment. It also suggested a balanced reform of employment protection regulations which will allow young people to have access to good quality jobs. High youth unemployment is a problem for many EU countries and in the south nearly half of young people have no jobs. In 2011 across all EU states, 7.5 million people aged 15–24 were not in employment, education or training. This has a huge annual economic impact equating to 150 billion euros. The parlous state of the labour market for young Europeans and attendant economic, social and political problems set the conditions for the European Commission initiative and member states' drafting of joint action plans to improve how the young fare in endeavours to find employment. In December 2012 the EU created the Youth Employment Package, and took the initiative to establish Youth Guarantees integral to it<sup>81</sup>. The EU member states were directed to make a guarantee to people under 25. The details were that within four months of having left formal education or becoming unemployed, a good quality offer of employment, continued education, an apprenticeship or a traineeship is to be offered. The eligible are those who are out of work or are not studying nor undergoing training<sup>82</sup> and an offer must be tailored to the individual needs and circumstances of the recipient.

The recommendation to establish Youth Guarantees (2013 C 120/01) adopted on 22 April 2013 by the European Council obliges all the States to implement them. At the Summit of the European Council on 7–8 February 2013 the European Commission augmented the recommendation on Youth Guarantees with a decision to implement a Youth Employment Initiative (YEI) in regions where unemployment among people aged 15–24 exceeded 25%. Among these countries was Poland, which was allocated 550 million euros to implement the YEI. In June 2013 the European Commission for-

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<sup>81</sup> European Commission communication: Proposal for a Council Recommendation on Establishing a Youth Guarantee (COM(2012) 729). COM(2013) 447 final.

<sup>82</sup> Irrespective of whether they register as unemployed with their employment service or do not.

warded to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions the proposal communication 'Working together for Europe's young people. A call to action on youth unemployment'. The communication calls upon the European institutions, member states, social partners and civil society across the Community to work urgently in partnership on youth employment in areas identified by the Commission. The European countries embarked upon developing their domestic iterations of the Youth Guarantee, and the European Commission rendered all states assistance in development and implementation of these plans as rapidly as was practicable. It also facilitated best practice exchange between the governments of individual states<sup>83</sup>. Noteworthy is a mutual learning programme which is a part of the European Employment Strategy. 'Youth Guarantees' may present an opportunity to tackle the European youth unemployment problem in a coordinated and cohesive way, but it is critical for this that when the guarantees translate into policy their potential is exploited to the full, which does not only depend on the funding committed to the programme's roll-out but also on the political will of those rolling it out. President of the European Parliament Martin Schulz affirmed during the December 13 meeting of the Council of Europe that 'the crisis cannot steal away a dignified future from Europe's youth. The Youth Guarantee is extremely important, and must not remain a mere paper record of commitment [...] [own translation]'<sup>84</sup>. It is possible to state that the Polish situation is relatively positive when

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<sup>83</sup> The Finnish system is an example of a comprehensive Youth Guarantee system. A 2011 Eurofound survey discovered that 83.5% of young jobseekers in that country received an offer within three months of registering with the employment service. This system has made it possible to prepare prompt and personalised plans for young people, which has contributed to lowering unemployment. <http://ec.europa.eu/social/main.jsp?catId=1079&langId=en> [accessed: 7.07.2014].

<sup>84</sup> <http://www.europarl.europa.eu/news/pl/news-room/content/20130108STO05234/html/Gwarancja-dla-m%C5%82odzie%C5%BCy-szansa-na-lepsze-jutro-dla-m%C5%82odych-Europejczyk%C3%B3w> (translator's note: dead link 12.08.15, likewise .../news/en/news-room...).

contrasted with the other EU-28 countries, examining the major labour market indicators. That which looks at employment of people aged 15–64 is rising and shows a cumulative change of 0.8% since 2008, while the same change for the whole Community was -1.6% in 2013. Poland’s employment indicator is among those of the six member states which have shown the greatest rise. It is currently 60.0% in Poland while it is 64.1% in the EU-28 (see Table 7). This difference results in large measure from the low quota of women over 59 in work in Poland.

Table 7. Employment statistics for people aged 15–64 in Poland and the EU-28 (%)

	2002	2003	2004	2005	2006	2007	2008	2009	2020	2011	2013
Poland	51.7	51.4	51.4	52.8	54.5	57.0	59.2	59.3	59.3	59.7	60.0
EU-28	62.3	62.6	62.7	63.4	64.3	65.3	65.7	64.5	64.0	64.1	64.1
Difference	-10.6	-11.2	-11.3	-10.6	-9.8	-8.3	-6.5	-5.2	-4.7	-4.4	-4.1

Source: Department of Economic Analysis and Prognosis, Polish Ministry of Family, Labour, and Social Policy, with data taken from Eurostat.

The indicators for employment of people in late middle age (55–64) and for young people (15–24) show greater disparity with the EU-28 averages, at 9.5 and 8.1% respectively in 2013. Interestingly, out of all young Union citizens only the Germans have recorded a token cumulative rise in the employment indicator, of 0.2% since 2008. Set to this statistical background, Poland constantly features above the average for the whole EU-28. This is mostly attributable to the economic slowdown in the years 2008–2010 and 2012–2013, when it was truly the young who had multifaceted difficulties in getting a career start, and when they also lost jobs more easily than older people with greater experience<sup>85</sup>.

The negative phenomenon of rising unemployment should be treated simply as one among similar tendencies seen across the labour market of the entire European Union. Differences of time

<sup>85</sup> According to data from the Department of Economic Analysis and Prognosis, Polish Ministry of Family, Labour, and Social Policy.

## 2.5. The Youth Guarantees as an EU Joint Initiative and Response...

Table 8. Employment statistics for people aged 15–24 and 55–64 in Poland and the EU-28 (%)

Age group		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
15-24	Poland	22.0	21.2	21.1	22.5	24.0	25.8	27.3	26.8	26.4	24.9	24.7	24.2
	EU-28	36.6	35.9	35.6	35.9	36.5	37.2	37.3	34.9	33.9	33.5	32.7	32.3
	Difference	-14.6	-14.7	-14.5	-13.4	-12.5	-11.4	-10.0	-8.1	-7.5	-8.6	-8.0	-8.1
55-64	Poland	26.6	27.1	26.1	27.2	28.1	29.7	31.6	32.3	34.1	36.9	38.7	40.6
	EU-28	38.1	39.8	40.4	42.2	43.4	44.5	45.5	45.9	46.3	47.3	48.8	50.1
	Difference	-11.5	-12.7	-14.3	-15.0	-15.3	-14.8	-13.9	-13.6	-12.2	-10.4	-10.1	-9.5

Source: Department of Economic Analysis and Prognosis, Polish Ministry of Family, Labour, and Social Policy, with data taken from Eurostat.

frame for the occurrence of more pronounced rise in unemployment are nevertheless notable between Poland and the Union as a whole. Unemployment began growing later in Poland than in the majority of European countries, and the pace of its growth was also slower. From 2012 Poland's unemployment has been below the EU-28 average, which is a fact not to overlook. No differently in Poland than in the majority of European countries however, the biggest labour market problem is high unemployment among people under 25. The steady rise of this rate from 17.3% in 2008 to 27.3% in 2013 is a cause for concern. The climb in the number of unemployed is an obvious consequence of the economic slow-down, meaning that the desired upturn in employment should be achieved first of all by building the economy's capacity back up, for higher production and consequently higher GDP. As the statistics show, in Poland just as in other European Union countries, the labour market is pronouncedly more difficult for young people than people from older age groups. This emerges in the inconsiderable occupational activity, proportionately low in-employment constituent, and high unemployment of the young. According to Eurostat data, the harmonised figure for unemployment among the young was 27.4% in Poland in 2013, and contrasted with a two-and-half times lower figure for the Polish population as a whole. Youth un-

employment in Poland as in the EU fell 0.3% on the 2012 figure, but still remained higher than the EU average of 23.4%<sup>86</sup>.

The EU initiative on behalf of young people bears witness to the growing role of co-ordination for actions on employment and serves to test the maturity of European institutional structures and the communal responsibility of member states. The initiative's success not only allows the EU to counter the negative effects of the economic crisis faster, but also paves the way for achieving the aims of the Europe 2020 strategy effectively and improving competitiveness. It nurtures social cohesion among the EU countries as well, in particular such countries as Poland which are continuously making good the developmental deficits of the past. As the country tries to catch up with the more developed EU economies Poland has the same task as the majority of new Community members have after the round of accessions: the task of making up considerable distance measured not only in GDP per capita and economic efficiency and productivity, but also in the size of its unemployed population, the quality of its jobs, the indices for its poverty and the level of its wages. Poland must find space in its national development strategy for social dialogue, for debate about Poland's assimilation of the European social model and ultimately about a Polish policy of *flexicurity* and job quality. Only in this way will Poland guarantee for itself the right conditions for better competitiveness and greater innovation-driven entrepreneurship, which are indispensable for rapid economic development and fuller employment. Only following this path will Poland achieve quality improvement in working life, demonstrable in better stability of employment and more assistance when jobs are lost, and in more human working conditions and raised earnings. An array of challenges outlined so may only be taken up effectively through agreements and compromises reached in tripartite dialogue, where the responsibilities of the state, employers and employees will be reflected in courses of action committed to in that dialogue.

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<sup>86</sup> In 2013 higher youth unemployment affected countries such as Greece, Spain, Croatia, Cyprus, Italy, Portugal, Slovakia, and Bulgaria.

# Labour Market and Labour Relations in Poland – Socio-Economic Transformation and Ten Years of European Integration

The systemic transformation and then Poland's integration with the European Union have substantially altered both the labour market and labour relations in Poland. In the beginning of the 1990s, Poland commenced the process of building new order in employment policy and labour system. For the foundation of the new labour system, the social variant of market economy, combining acceptance of market principles of economic liberalism with the need for realising such values as a democratic state ruled by law, economic freedom, principle of subsidiarity and solidarity, and social dialogue, was adopted<sup>1</sup>. In the new labour system we see a limited direct interference of the state into the labour market. Labour relations were altered to become to a lesser degree subject to interference of the state as the primary employer, while the role of social partners in shaping them was simultaneously increasing. Not only did individual's personal responsibility in the scope of em-

<sup>1</sup> Cf. M. Szyłko-Skoczny, *Polityka społeczna wobec bezrobocia w Trzeciej Rzeczypospolitej*, ISP UW, Warsaw 2004, p. 19.; T. Skoczny, *Społeczna gospodarka rynkowa. Jak to robią Niemcy*, Fundacja im. F. Eberta, Warsaw 1992, pp. 25–32.; *Soziale marktwirtschaft. Bilanz und Perspektive*, Bundeszentrale für politische Bildung, Bonn 1998.

ployment and social security increase, but the negotiating model of solving social problems began to develop; next to democratisation and decentralisation of the law-making processes, new social dialogue mechanisms were being elaborated, and new human resources management instruments were being developed<sup>2</sup>.

Adaptive processes were extremely difficult, whereas between the years 1989-2014 the labour market and model of labour relations underwent an enormous revolution. Changes on the labour market impacted changes in employment: the employee's position on the labour market weakened, while substantial swathes of society were affected by unemployment. Security of employment was decreasing - the hitherto widespread practice of concluding employment contracts for indefinite period of time increasingly more often was being replaced with fixed term contracts, and the use of new forms of flexible employment, such as seasonal work, temporary work, replacement employment, or telework, was also on the rise. Last but not least, work without an employment contract on the basis of civil law agreements and self-employment was gaining in popularity next to the phenomenon of non-registered employment<sup>3</sup>.

The labour market saw an increase in the significance of the role of private employers, the number of large economic entities was on the decrease, the economy saw the rise of micro- and small- and-medium-sized enterprises. The form of employee representation also underwent a change, next to the decreasing - especially in small companies and in the private sector - presence of trade union representations, worker councils and other forms of repre-

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<sup>2</sup> M. Szyłko-Skoczny, *Polityka społeczna wobec...*; S. Golinowska, *O przedmiocie polityki społecznej. Dlaczego, dla kogo i kto?*, [in:] *O roztropną politykę społeczną*, PTPS, Katowice 2002, pp. 87–96; Cf. *Spółczesność polskie w latach 1989–1994. Zagadnienia polityki społecznej*, A. Rajkiewicz [ed.], Fundacja im. F. Eberta, Warsaw 1996; M. Ziółkowski, *Tendencje zmian w podstawowych sferach życia społecznego*, [in:] *Pierwsza dekada niepodległości. Próba socjologicznej syntezy*, E. WnukLipiński [ed.], M. Ziółkowski, ISP PAN, Warsaw 2001, pp. 67–89.

<sup>3</sup> Cf. *Przyczyny pracy nierejestrowanej w Polsce*, M. Bednarski [ed.] et al., MPiPS, Warsaw 2008.

sentation emerged, nevertheless, the share of trade union members among employees reduced considerably. A significant part of workers was deprived of any form of representation of interests. Some companies saw a development of different ways of communicating between the employer and employees, most often related to the modern forms of HR management.

In the analysed period, a number of negative labour market and labour relations phenomena can be pointed out, ranging from high unemployment, deteriorating quality of labour to a loss of social security by a large part of employees. Attempts to solve these problems were made by subsequent governments, and social dialogue attempted to react to the above mentioned negative phenomena. It was not always possible, however, to reach agreement and to undertake desirable actions. Considerable attention was focused on improving employment conditions as well as occupational safety and health. Among other reasons, it was also a consequence of ratification by Poland of a number of important ILO Conventions, in particular of the ILO Convention No 151 of 1978 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service and the ILO Convention No 160 of 1985 concerning Labour Statistics which were ratified in 1994<sup>4</sup>; the ILO Convention No 176 of 1995 concerning Safety and Health in Mines – ratified in 2000; the ILO Convention No 178 of 1996 concerning the Inspection of Seafarers' Working and Living Conditions – ratified in 2001; and the ILO No 182 of 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour – ratified in 2001<sup>5</sup>. Subsequently, in 2004 Poland ratified the ILO No 148 of 1977 concerning the Protection of Workers against Occupational Hazards in the Working Environment Due to Air Pollution, Noise and Vibration and the ILO No 159 concerning Vocational Rehabilitation and Employment of Disabled Persons. This was followed in 2005 by ratification of the ILO No 170 concerning Safety in the

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<sup>4</sup> Respectively: Journal of Laws 94.22.78 and 94.60.246.

<sup>5</sup> Respectively: Journal of Laws 00.60.699, 01.125.1365, 01.125.1364.

use of Chemicals at Work<sup>6</sup>. It should be underlined that Poland took many steps in order to intensify its cooperation within the ILO as it organised the ILO's Regional Conference on active labour market policy in Warsaw in 1995. This led to ratification of numerous Conventions as well as to active cooperation of governments and social partners in the framework of the ILO. Trade unions included ratification of further ILO conventions in the agenda of the Tripartite Committee and relevant topical bodies of the Committee reviewed labour legislation from the point of view of achieving progress in the ratification process.

A positive and important trend of changes was connected to the process of Poland's integration with the European Union. The EU exerts more than substantial influence on Polish labour market and labour relations in Poland - directly and indirectly - through the process of harmonisation of law and coordination system, recommendations and programmes, as well as structural funds. The integration with the European Union has changed Polish labour law and strengthened the role of social dialogue and its mechanisms in the area of labour relations<sup>7</sup>.

### 3.1. Labour Market and Unemployment

The building of market economy signified a departure from the employment policy paradigm from the period of the People's Republic of Poland, claiming full employment and at least formal guarantee of the right to work for each citizen. Along with the change of the political system, unemployment entered the stage - a phenomenon posing danger to social security of Poles, while its mass character resulted in the weakening of workers' position in labour relations. In the socialist economy, it was difficult to speak of the labour market based on the law of demand-and-supply; it was estimated the at the initial stage of the transformation over-

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<sup>6</sup> Respectively: Journal of Laws 04.29.255, 04.9.68, 05.9.62.

<sup>7</sup> Cf. *Rynek pracy wobec integracji z Unią Europejską*, S. Borkowska [ed.], IPISS, Warsaw 2002, pp. 323–333.; W. Anioł, *Europejska polityka społeczna*, IPS UW, Warsaw 2006.

### 3.1. Labour Market and Unemployment

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employment reached 20–30% of the total of employed population<sup>8</sup>. The streamlining of economy forced a rejection of the full employment principle, which resulted in the transforming of the labour market of permanent demand balance into one of permanent supply imbalance<sup>9</sup>. Still, at the end of 1989 in Poland there were 254 thousand vacancies and only 10 thousand job-seekers, while merely a year later, the number of unemployed exceeded 1.2 million with merely 54.1 thousand job offers.

The change of the political system, including activation of free-market mechanisms in economy, triggered changes on the scale that neither the authorities nor the society were prepared for. Restructuring of enterprises and deteriorating competitiveness, a loss of previous markets, a decrease in production, new technologies, mass unemployment - all these factors converged to transform the character of the labour market both in the social and institutional dimension<sup>10</sup>. The process of transformation in Poland coincided with the period of economic recession, called a transformational recession<sup>11</sup>. It came as a result of insolvency of numerous enterprises caused by increased costs of production, rises in energy and fuel prices, devaluation of PLN, decreased demand for their products, loss of markets, and accumulation of tax liabilities. Investment activities suffered a strong reduction, next to decapitalisation of national wealth<sup>12</sup>. A rescue was supposed to come in the form of a stabilisa-

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<sup>8</sup> M. Góra, *Rynek pracy w Polsce*, „Studia i Analizy” No 19, CASE, Warsaw 1994, p. 3.

<sup>9</sup> W. Jarmołowicz, B. Woźniak, *Bezrobocie nierównowagi a polityka państwa wobec rynku*, [in:] *Funkcjonowanie gospodarki rynkowej w Polsce. Aspekty makro i mikroekonomiczne*, W. Jarmołowicz [ed.], Wyd. AE w Poznaniu, Poznań 2005, p. 26.

<sup>10</sup> Cf. *Narodowa strategia wzrostu zatrudnienia i rozwoju zasobów ludzkich w latach 2000–2006*, Warsaw 1999, p. 9.; G.W. Kołodko, *Wędrujący świat*, Warsaw 2008, pp. 216–220; *Bezrobocie regionalne w Polsce w okresie transformacji*, E. Kwiatkowski [ed.], Omega-Praxis, Łódź 1995.

<sup>11</sup> J. Kaliński, *Ocena wyników transformacji: Polska na tle krajów w regionie*, [in:] *Transformacja systemowa w Polsce*, K. Żukrowska [ed.], Of. Wyd. SGH, Warsaw 2010, p. 561.

<sup>12</sup> Z. Sadowski, *Spoleczne aspekty systemu rynkowego w Polsce*, [in:] *Spoleczna gospodarka rynkowa. Idee i możliwości praktycznego wykorzystania w Polsce*, E. Mączyńska, P. Pysz [eds.], Warsaw 2003, p. 130 et seq.

tion programme, known also as the Balcerowicz's plan and based on market freedom in shaping prices, which was being implemented since the beginning of 1990<sup>13</sup>. The plan afforded relatively little attention to the labour market. It was treated as one of institutions of market economy, while its creation was to constitute a step on the way to a watershed change of the economic system<sup>14</sup>.

During the period 1990 - 1993 Poland had the fastest growing unemployment rate in Europe, for the first two years the number of unemployed grew by approx. 1 million per year, which meant that 1993 the number of unemployed reached almost 3 million<sup>15</sup>. At the end of 1991 the unemployment reached 2.2 million, while its level exceeded the frictional unemployment limit<sup>16</sup>. One of the main reasons for this state of affairs was a deteriorating economic condition of enterprises or their outright bankruptcy, which resulted in mass lay-offs. In cases of localities with only one larger and several smaller workplaces, the collapse of the larger of them resulted not only in an increase in unemployment on the local labour market, but also problems in the remaining enterprises. Already in the first years of the transformation several non-code statutes, closely related to the process of transformation and shaping the situation on the labour market, were adopted. The Act of 1989 on the detailed rules for terminating employment relationships with workers for reasons attributable to the workplace<sup>17</sup> aimed to make

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<sup>13</sup> Cf. K. Laski, *The Stabilization Plan of Poland*, „Wirtschaftspolitische Blätter” 1990, No 5, pp. 444–458.

<sup>14</sup> E. Kryńska, *Zmiany w obszarze zatrudnienia i przeciwdziałania bezrobociu*, [in:] *Reformy społeczne. Bilans dekady*, M. Rymśza [ed.], ISP, Warsaw 2004, p. 13.

<sup>15</sup> J. Gardawski, *Dynamika i charakter bezrobocia w Polsce*, Polskie Centrum Monitorowania Stosunków Przemysłowych, ISP, Warsaw 2005, p. 99.

<sup>16</sup> Frictional unemployment - unavoidable in market economy, which according to M. Kabaj should not exceed the size of 400–600 thousand.; Cf. M. Kabaj, *Elementy przeciwdziałania bezrobociu*, „Polityka Społeczna” 1992, No 1, p. 2.; M. Szyłko-Skoczny, *Bezrobocie na lokalnych rynkach pracy*, UW, F. Ebert Stiftung, Warsaw 1992.

<sup>17</sup> Journal of Laws 1990, No 4, item 19.; Currently after amendments mass redundancies are regulated by the Act of 2003 on the detailed rules for terminating employment relationships with workers for reasons not attributable to the workers (Journal of Laws 2003, No 90, item 844).

it possible for employers to lay off workers superfluous from the point of view of the enterprise, simultaneously awarding additional benefits and other guarantees to people affected by redundancy.

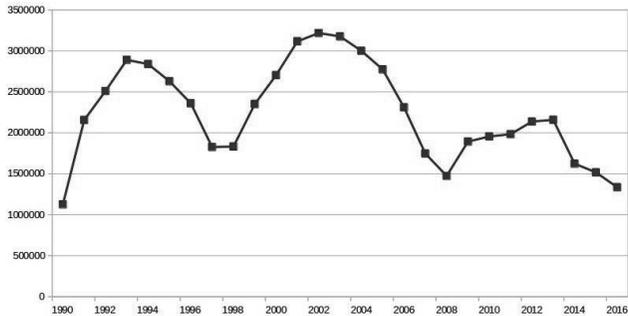
The institution of mass redundancies made its appearance, intended to serve interests of employers forced to flexibly adjust the number of workers to actual needs and reduce unreasonable employment, while simultaneously protecting employees' basic social interest. Mass lay-offs were present during the entire period of transformation, but in particular in the first years, i.e. 1990–1993, they constituted a substantial cause for the growth of unemployment in Poland.

Collective redundancies had a significantly stronger impact on the labour market in the first half of the 1990s than in the later years, despite the fact that deregulation of the labour market<sup>18</sup> in 2002 provided entrepreneurs with broader lay-off possibilities, including mass redundancies. Restructuring processes combined with significant lay-offs of workforce had occurred prior to the introduction of changes to the Labour Code in 2002. Since 2005 the rate of redundancies due to the causes attributable to the employing institution did not exceed 4% in the total number of unemployed and displayed a decreasing tendency; it increased only in 2011, to reach 5.3% in 2013. The year 2014 saw a substantial drop in the scale of collective lay-offs and collective lay-off reports. The Ministry of Labour and Social Policy's mass redundancy monitoring shows that in 2014 employers reported 41.9 thousand people for redundancy, i.e. 21.6 thousand people (34.0%) fewer than in 2013. In turn, in 2014, employers laid off 17.8 thousand people (compared to 35.5 thousand a year before). Therefore, the level of

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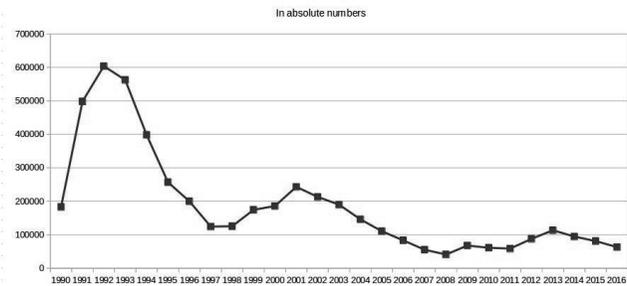
<sup>18</sup> By the amendment to the Labour Code and the Act on the detailed rules for terminating employment relationships with workers for reasons attributable to the employing institution (Act of 26 July 2002), fundamental changes in the mass redundancies system were introduced. The said amendment partially reduced employee rights and guarantees, among others limiting the application of provisions on mass redundancies to companies employing the personnel of more than 20, while in the case of large enterprises it additionally lowered quantitative thresholds.

Figure 1. Total registered unemployed (1990-2016)



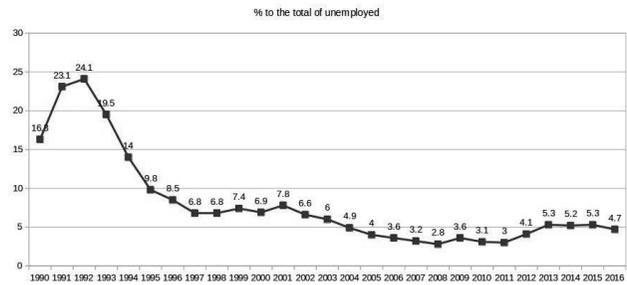
Source: Central Statistical Office (GUS) data.

Figure 2. Redundancies due reasons attributable to the employing institution (1990-2016)



Source: Central Statistical Office (GUS) data.

Figure 3. Redundancies due reasons attributable to the employing institution (1990-2016)



Source: Central Statistical Office (GUS) data.

### 3.1. Labour Market and Unemployment

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lay-offs was 49.7% (i.e. 17.6 thousand) lower than a year before. Collective redundancies constituted 42.6% of reported mass lay-offs during this period.

In the first years of the transformation, also the provisions of the labour-related legislation were conducive to a rapid increase in the number of registered unemployed people, since they awarded the status of an unemployed person to all registering in Job Centres, regardless of the fact whether they had been employed and obtained remuneration previously<sup>19</sup>. The government attempted to relieve the difficult situation by facilitating early retirement or disability pensions<sup>20</sup>.

Despite the assumptions adopted already in the first half of the 1990s, concerning a departure from the passive policy in exchange for the active labour market policy, combating long-term unemployment and accompanying pathologies, and creation of new jobs, protective measures, in particular such as benefits and pre-retirement benefits, remained the basic instrument of the labour market. Funds from the Labour Fund were first and foremost directed to passive forms of assistance for the unemployed, i.e. benefits, in relation to which employment, due to low labour absorption and overemployment in the state-owned sector, increased slowly. All this led to stabilisation of the unemployment structure with its detrimental characteristics, e.g. a large percentage of long-term unemployed, increased share of people with low qualifications, high unemployment among the young and the elderly. This situation restricted effectiveness of interventions on local labour markets, which consolidated high regional diversification of unem-

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<sup>19</sup> The Act on Employment of 29 December 1989 (Journal of Laws of 1989, No 75, item 446) was very advantageous for the unemployed, mainly due to freely granted and relatively high benefits. It awarded benefits to anyone, regardless of the fact whether a given person worked as much as a single day in life.

<sup>20</sup> It was a conscious policy of the state, which however resulted in the fact that in the mid-1990s the number of professionally passive people in working age and receiving a variety of social benefits exceeded 3.5 million.; *Ile nas kosztują dodatkowe emerytury*, Forum Obywatelskiego Rozwoju, Towarzystwo Ekonomistów Polskich, Warsaw 2008, p. 7.; Cf. also: M. Góra, *Wpływ systemu zabezpieczenia społecznego na rynek pracy*, „Ekonomista” 2003, No 1.

ployment and high risk of unemployment among certain groups<sup>21</sup>. There is also another problem of the Polish labour market, namely the scale of grey economy which in certain periods was estimated at a level as high as 20%. Poland was faced with the challenge to protect the interests of the employees of the informal economy and it used the experience and programmes of the ILO, while performing studies of the causes and the scale of the domestic grey market (informal employment)<sup>22</sup>.

Since 1999, a deep plunge in employment could be seen with a two-fold increase of unemployment from 10% to more than 20% in 2002, which meant an increase in the number of unemployed by approx. 1.5 million people. The reduction in employment affected both the public and private sectors. The causes of this phenomenon were numerous: starting from demographic factors related to the entry on the market of people born during the second population boom after the WW II, to the slowing down of the economic growth and restructuring in certain sectors of economy, particularly in heavy industry and mining, which resulted in collective lay-offs. Internal causes combined with a decreased external demand due to the economic slow-down in Germany and the so-called Russian crisis, which also triggered reduction of employment in Poland.

If in the first years of transformation we mostly observed transformational unemployment, then the end of the 1990s saw an appearance of the so-called structural unemployment, being a result of a structural mismatch between labour supply and demand<sup>23</sup>. The structural mismatch was deepened by later migration processes, low inter-regional mobility and inadequacy of educational trends and contents in comparison with the needs of the labour market.

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<sup>21</sup> Cf. M. Kabaj, *Ekonomia tworzenia i likwidacji miejsc pracy. Dezaktywacja Polski*, IPISS, Warsaw 2005.

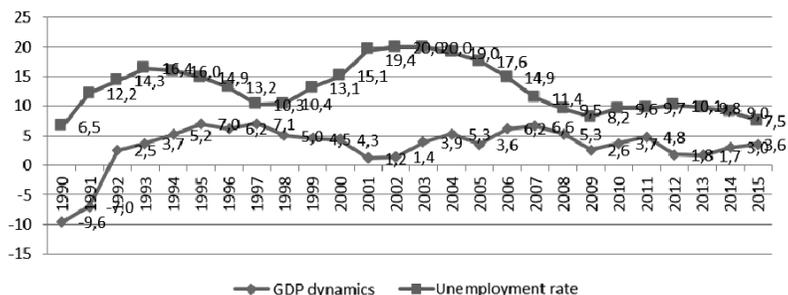
<sup>22</sup> More [in:] World Employment Report 2001: 'Life at work in the information economy', ILO Geneva 2001.

<sup>23</sup> In Poland, structural unemployment appeared along with restructuring of basic sectors of industry, such as mining or metallurgy, but also as a result of liquidation of state-owned agricultural farms, and sometimes the problem of structural mismatch resulted from differences in directions of economic development as well as qualifications and competences of employees, including graduates.

### 3.1. Labour Market and Unemployment

After a significant weakening of economic growth dynamics in the years 2001–2002, since 2003 the economic situation took a turn for the better and this situation continued until the outbreak of the international financial crisis at the end of 2008. Until the end of 2004, the level of unemployment decreased by 5.5%, at the end of 2005 by 7.6%, while at the end of 2006 the decrease in unemployment reached 16.7% in relation to the previous year, and the improving situation on the labour market could be observed until the end of 2008. It was due to a good economic situation, Poland's accession to the EU, and opening of a part of the labour markets for workers from Poland. The passing of the Act on Promotion of Employment and Labour Market Institutions was also a momentous event<sup>24</sup>. The act contained certain institutions and solutions functioning on the European labour market whereas activities of labour market institutions and instruments were directed at promoting employment, not only at mitigating effects of unemployment by a system of benefits.

Figure 4. Unemployment rate in Poland and changes in the GDP in the years 1990-2015 (%)



Source: Own study, based on the data from the Central Statistical Office (GUS).

The effects of the financial crisis caused unemployment to increase again. In December 2009, the unemployment rate grew to 11.9%. The economic collapse in the world resulted in the slow-

<sup>24</sup> Act of 20 April 2004 on Promotion of Employment and Labour Market Institutions, Journal of Laws of 2004, No 99, item 1001, as amended.

ing down of the GDP dynamics also in Poland in the aftermath of the failure of global financial markets, investors' uncertainty, higher loan costs, high prices of oil and other goods, but also deteriorating economic situation of Poland's main trading partners<sup>25</sup>. Polish economy avoided a recession, yet effects of the slowing down did not remain without influence on the situation on the labour market, while at the end of 2013 unemployment reached the level of 13.4%. However, already in 2014, Polish economy returned on the path of a 3% growth whereas unemployment fell by almost 2% to the level of 11.4% with the perspective of further improvement in the upcoming years<sup>26</sup>. It is fitting to emphasise that in Poland two unemployment rate indicators are in use: the so-called registered unemployment rate based on the number of unemployed registered in job centres and the BAEL indicator - population's economic activity survey, where the unemployment rate is established on the grounds of a respondent survey, which eliminates from the number of unemployed people engaging in casual work and people not seeking employment at a given moment. The BAEL unemployment rate is most often 2 – 3 percentage points lower than the registered unemployment.

It is fitting to emphasise that for the purposes of this analysis we use the registered unemployment rate. Presenting EUROSTAT data in comparative analyses, the unemployment rate based on the BAEL methodology is taken into account.

Unemployment has become an important social issue of twenty-five years of transformations. The shape of the labour market and its functioning was strongly influenced not only by the systemic changes and modernisation of economy, but demographic processes and globalisation as well<sup>27</sup>. The attitude to human la-

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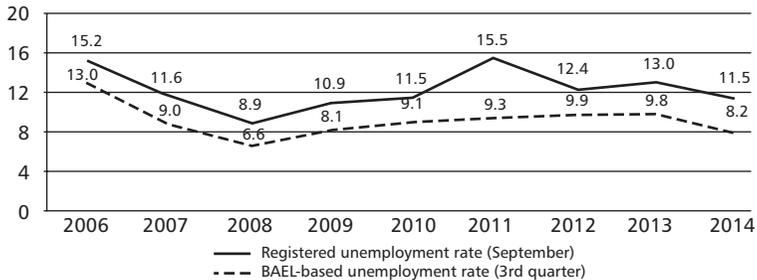
<sup>25</sup> Cf. J. Męcina, *Kryzys międzynarodowy w Polsce a dialog społeczny na poziomie zakładu pracy. Perspektywy dla polskiego rynku pracy*, „Polityka Społeczna” 2010, No 8.

<sup>26</sup> At the end of August 2015, registered unemployment in Poland dropped below 10%.

<sup>27</sup> Cf. *Spółeczeństwo polskie w latach 1989–1994: zagadnienia polityki społecznej. Zbiór opracowań*, A. Rajkiewicz [ed.], Fundacja F. Eberta, IPS UW, MPiPS, Warsaw 1996, pp. 14–22.

### 3.1. Labour Market and Unemployment

Figure 5. Registered unemployment rate and BAEL-based unemployment in the years 2006-2014



Source: Economic activity of the population of Poland in the years 2006-2014, Central Statistical Office [GUS], Warsaw 2007-2015.

bour has also shifted. The Constitution of the Republic of Poland adopted in 1997 contains such provisions: 'Everyone shall have the freedom to choose and to pursue his occupation and to choose his place of work. Exceptions shall be specified by statute (...). Public authorities shall pursue policies aiming at full, productive employment by implementing programmes to combat unemployment, including the organization of and support for occupational advice and training, as well as public works and economic intervention'<sup>28</sup>. Thus, certain aspects of the state's responsibility for managing labour resources were indicated. The Constitution confirmed that the state does not bear responsibility for full use of the human labour's potential, and even responsibility for ensuring sustenance of citizens remaining out of work not through fault of their own. It only emphasised that citizens have the right to social insurance if it is established by the government under appropriate statutes<sup>29</sup>. It is also fitting to emphasise that the constitution places an emphasis on conducting an active labour market policy, which in the period

<sup>28</sup> The Constitution of the Republic of Poland of 2nd April 1997, Journal of Laws 1997, No 78, item 483, as amended.

<sup>29</sup> *Rynek pracy w Polsce na progu XXI wieku. Aspekty makroekonomiczne i regionalne*, R.C. Horodeński, C. Sadowska-Snarska [ed.], IPiSS, Białystok-Warsaw 2003, p. 116.

of such dynamic economic and social changes is becoming a condition for levelling structural mismatches. The labour market policy is only a supplementation of companies' investments in human resources and private foresight of citizens applying increasingly more importance to their own education and raising their qualifications. The EU structural funds have become an important complementation and reinforcement of investments into human capital in the economy. Over the entire period being the subject of this analysis, a certain role in creating professional activity was played by an active labour market policy of creating subsidised jobs while since 2005 also thanks to increased funds for engaging in an economic activity and financing job creation at entrepreneurs' companies. Years 2008–2009 saw an increased role of subsidised jobs.

An analysis of the labour market requires one to take a closer look at an unemployment structure and determine groups most exposed to the risk of marginalisation and exclusion from the labour market. In order to supply a full picture of Polish unemployment, it is necessary to present its structure with a particular emphasis on division of the unemployed according to periods of unemployment. As already mentioned above, Polish unemployment is characterised by a high percentage of long-term unemployed, remaining out of work for more than 12 months. In the period of economic growth, the level of long-term unemployment decreases significantly more slowly than among other groups of unemployed. This is connected with the fact that long-term unemployed are people of older age, with poor education, without appropriate professional training, limited spatial and professional mobility, and frequently further limited by poor health. Simultaneously, a tendency is observed where along with the prolonged periods of remaining out of work, chances of finding employment decrease, due to devaluation of previously acquired skills<sup>30</sup>. The group of those most affected by unemployment undoubtedly includes people without professional know-how adequate to comply

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<sup>30</sup> Cf. W. Kozek, *Bezrobocie jako zjawisko społeczne*, [in:] *Wymiary życia społecznego. Polska na przełomie XX i XXI wieku*, M. Marody [ed.], Wyd. Nauk. Scholar, Warsaw 2007, pp. 154–157.

with requirements posed by contemporary economy<sup>31</sup>. As a result of the economic crisis, statistics became disquieting at the end of 2013: the number of unemployed without secondary education was 1,194.2 thousand (55.4% of the total number of unemployed), which is a number more than 411 times higher than in 2009. The number of unemployed people without any professional qualifications also increased to reach 645.2 thousand (they constituted 29.9% of the total number of unemployed) and the number of unemployed without professional experience to 526.6 thousand (24.4% of the total number of unemployed). Also, the average period of unemployment increased from 9.4 months in 2009 to 12.2 months in 2012 while the long-term unemployed constituted 53.7% of the total number of unemployed.

A characteristic feature distinguishing Poland against the background of other EU states is substantial regional differences in levels of unemployment, which are due to significant disproportions in terms of economic development and social infrastructure. Developmental disproportions, structural transformations transpiring in economy, and the percentage of former state-owned agricultural farms workers are generative factors for the map of unemployment<sup>32</sup>. Data concerning the areas of creation of new jobs and data on diversified level of unemployment in specific regions clearly point to a solidifying deficit of labour resources and the scale of mismatch of labour supply and demand for employees. The structural mismatch of labour supply and demand constitutes one of the most important causes of unemployment in the entire contemporary world, not just in Poland. The mismatch itself is, in turn, a result of the lack of compatibility between directions in education and the demand for work observed on the labour market. This pertains both to post-middle schools (secondary) and higher education. In the former of these two cases, the problem of reacting to changes on the labour market is complicated insofar as

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<sup>31</sup> E. Kryńska, *Przedsiębiorstwa społeczne na rynku pracy w Polsce*, [in:] *Człowiek w pracy i w polityce społecznej*, J. Szambelańczyk, M. Żukowski [ed.], Wyd. UE w Poznaniu, Poznań 2010, p. 91.

<sup>32</sup> P. Błędowski, *Bezrobocie...*, p. 357.

secondary education institutions include both vocational schools and schools of general education which focus on their main goal, i.e. preparing graduates to continue education in institutions of higher education, but not preparing them for a direct entry onto the labour market. A professional situation of school and university graduates is a consequence of the lack of appropriate preparation of graduates and equipping them in the most sought-after skills, but also an outcome of the general situation on the regional and local job markets. The lack of jobs for graduates is connected not only to their insufficient professional preparation, but also to the general situation on the labour market. Distinguishing between these factors and determining their impact on the professional situation of graduates constitutes an important, but at the same time difficult task of social policy entities, above all else in terms of educational and employment policy<sup>33</sup>.

Presently, Polish unemployment is of a structural nature, resulting from the mismatch between the professional and qualification structure and employers' needs. This mismatch is deepening in connection with migratory processes, low inter-regional mobility, and low effectiveness of vocational and continuing education systems. The structural nature of unemployment, especially long-term unemployment of people with the lowest qualifications, will be the most important obstacle in reducing this phenomenon. This is why it will be necessary to ensure effectiveness of activities engaged in by public employment services, while costs of such activities must be substantially higher than those incurred to-date<sup>34</sup>.

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<sup>33</sup> For example, IT services and high technology industry in the upcoming years will create almost 36% of the total of new jobs, whereas the share of IT specialists and engineers in the general structure of graduates entering the labour market in previous years amounted to less than 10%. Even greater problems related to a mismatch between educational structure and economy needs can be seen in the healthcare sector which in the nearest years will create approx. 1/4 of new jobs, whereas the share of medical studies graduates in the structure is less than 4%. These data are disquieting insofar that they forecast an increase of the structural mismatch, clearly visible already today and to be felt even more strongly on Polish labour market.

<sup>34</sup> Cf. *Polski rynek pracy – niedopasowania strukturalne*, E. Kryńska [ed.], IPiSS, Warsaw 2004.

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Table 1. The biggest areas of new job creation

Sectors	Employment increment 2001–2025 (thousands)	% of the entire employment increment
IT services	700	28.1
Healthcare	620	24.9
Catering and bars	345	13.9
Management consulting	220	8.4
High technology industries	200	7.7
Science and R+D	170	6.8
Hotels	160	6.4
Adult education	150	6.0
Advertising and marketing	125	5.0

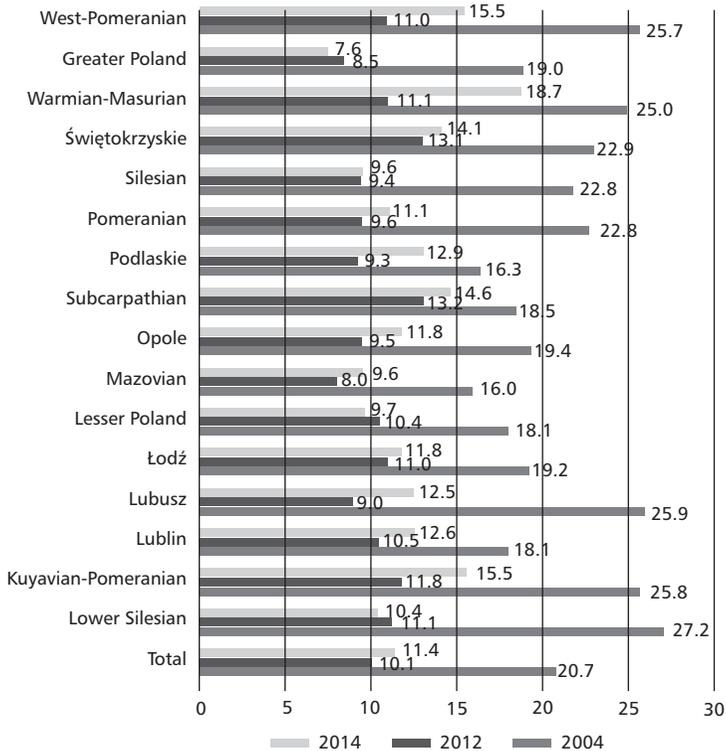
Source: A. Karpiński, *Labour market, evolution of demand for qualifications*, Warsaw 2006.

After integration with the European Union, Polish labour market has changed its predominantly internal character to that of an open market, an ever-increasing group of employees was able to choose between being active on the domestic market and pursuing legal or illegal employment (usually temporary) on the European market where, especially Polish specialists and professionals were offered better-paid work<sup>35</sup>. According to various estimates, in recent years this form of activity abroad has become a choice of between 1.3 - 2 million of Polish workers, of which number a substantial part had been previously classified as unemployed. A characteristic feature of migratory processes after the year 2004, next to the increase in their intensity, is a shift in labour migration of Poles<sup>36</sup>.

<sup>35</sup> Cf. W. Jagiełło, S. Węsierska, *Migracje pracowników – szanse czy zagrożenia*, Raport KPMG, Warsaw 2008.

<sup>36</sup> A. Fihel, P. Kaczmarczyk, *Współczesne migracje z Polski – skala, struktura oraz próba interpretacji*, [in:] *Współczesne procesy migracyjne w Polsce a aktywność organizacji pozarządowych w obszarach powiązanych z rynkiem pracy*, P. Kaczmarczyk, J. Tyrowicz (eds.), Raport FISE, Warsaw 2008, pp. 25-46.

Figure 6. The rate of unemployment by voivodeships (provinces) in 2004 and 2012



Source: The 2004-2014 Economic Activity of Population of Poland data, the Central Statistical Office (GUS).

The change in the nature of Polish labour market substantially aggravates the problem of the structural mismatch between labour supply and demand for it, negatively impacting the ability to satisfy domestic needs, while increasing the pressure on wage increase. A visible improvement of the situation on Polish labour market and decrease in unemployment on one hand, while on the other an increase in wage pressure and increasingly more sharply felt deficits of workers in certain sectors served to improve position of the employee. In turn, a low employment rate, groups facing

risks on the Polish labour market, and strong regional diversification of Polish unemployment are problems on the solving of which chances for regaining a relative balance on Polish labour market depend.

Economic growth is undoubtedly conducive to decreasing the unemployment level and bears effects in the form of effective allocation of labour resources. Yet in Poland, despite a relatively satisfactory tempo of economic growth in the recent years, labour market problems remain unsolved to a large degree, which seems to indicate that Polish labour market is more strongly influenced by factors other than the tempo of economic development. The literature of the subject points to institutional and structural factors generating the level of unemployment.

A characteristic feature of the period of transformations in Poland was a decrease in professional activity of the population<sup>37</sup>. As data obtained in subsequent censuses demonstrate, the decrease in the employment to population ratio had been observed already in the years preceding the transformation. Nevertheless, it was nothing else but the transformation, and to be more precise - solutions in the scope of social security which in the 1990s were to mitigate effects of mass unemployment related therewith, that became a cause for leaving the labour market. This decrease in professional activity was also supported by later solutions related to the programme of early retirement, benefits, and pre-retirement benefits. Relatively high professional activity of women was inhibited by decreasing protection of their labour, limiting child-care subsidies and other forms of supporting professional activity of women. This was further aggravated by 'constant' factors, such

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<sup>37</sup> Professionally active people (employed and unemployed) represent real labour resources. In turn, professionally passive people are those who had no work or were not unemployed, but neither did they seek employment or had a break in employment longer than 3 months.; R.C. Horodeński, *Pracujący w gospodarce narodowej w Polsce. Refleksje ze studiów nad powiązaniem pracujących z dochodem narodowym*, [in:] *Gospodarowanie zasobami pracy na początku XXI wieku. Aspekty makroekonomiczne i regionalne*, R.C. Horodeński, C. Sadowska-Snarska [eds.], IPISS, Wyższa Szkoła Ekonomiczna w Białymstoku, Białystok-Warsaw 2009, p. 57.

as periodic maternity-related professional inactivity, realisation of traditional roles attributed to women, a lower limit for acquisition of retirement rights. Increased competition on the labour market, plus the fact that women found it difficult to meet employers' growing demands, particularly those related to working time, mobility, and availability, resulted in their higher exposure to the risk of redundancy than men. At the same time, an increase in professional aspirations of women, claiming that professional work is a nobilitating factor providing the sense of social acceptance, was observed<sup>38</sup>. Particularly in the first years of the transformation the number of women losing jobs due to causes attributable to their employing institution, mainly as a result of restructuring, was significantly higher when compared with the number of men, although women were characterised by a more advantageous distribution of characteristics, e.g. education, than men. Simultaneously, when compared with unemployed men unemployed women had a smaller chance of finding employment<sup>39</sup>.

It is fitting to emphasise that in all age groups the employment to population ratio among men was higher than among women, whereby the highest difference was observed in the oldest age group (more than 22 percentage points) which was first and foremost caused by earlier retirement age for women. The decrease in employment was most influenced by such factors as taking advantage of possibilities to obtain retirement rights by people before the retirement age, principles of acquisition of retirement rights, increased educational needs of young people, and a state of professional passiveness of unemployed people discouraged from actively seeking work. The employment to population ratio in the 25-54 age group in 2012 was in Poland only slightly lower than in the EU15 and EU27 states, whereas significant changes occurred in the remaining age groups. Professional activity in Poland not only in

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<sup>38</sup> J. Męcina, *Jak wspierać łączenie obowiązków rodzinnych z zawodowymi*, IPS UW, Warsaw 2009, pp. 15–24.

<sup>39</sup> U. Sztanderska, J. Liwiński, *Kobiety na rynku pracy w Polsce w latach dziewięćdziesiątych*, [in:] *Spoleczne aspekty transformacji systemowej w Polsce*, M. Bednarkiewicz [ed.], WNE UW, Wyd. Key Text, Warsaw 1999, p. 124.

### 3.1. Labour Market and Unemployment

Table 2. Professional activity by sex and age

		Poland													EU15	EU27	PL	EU15	EU27	
Sex	Age	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2012	2014	2014	2014	2014	
Women	15-24	31.9	32.0	32.2	34.8	36.4	34.1	32.2	32.0	31.8	30.7	29.3	29.6	29.4	28.4	43.1	39.6	28,7	42,0	38,8
	25-54	75.4	75.6	76.1	76.5	76.2	75.8	75.8	76.0	76.4	75.4	75.6	76.3	77.5	79.1	79.1	78.9	79,6	79,5	79,4
	55-64	27.6	25.6	26.2	23.6	22.2	20.9	22.0	21.4	21.5	20.3	20.6	21.6	23.2	31.3	47.4	44.8	35,2	51,2	48,4
Men	15-24	41.7	40.5	40.1	40.9	43.1	41.6	40.5	39.7	39.5	37.5	36.5	36.5	38.1	38.5	48.1	45.5	38,8	46,3	44,4
	25-54	89.8	89.6	88.9	88.3	87.7	87.2	87.1	87.8	88.7	88.2	87.9	88.8	89.4	90.0	92.2	91.7	90,5	91,6	91,5
	55-64	45.5	44.1	44.3	40.4	39.6	38.7	39.7	39.1	40.9	42.6	44.7	46.8	47.5	53.5	62.9	61.2	57,2	65,5	63,9
Total	15-24	36.7	36.2	36.1	37.8	39.7	37.8	36.4	35.9	35.7	34.2	33.0	33.1	33.8	33.6	45.6	42.6	33,9	44,2	41,7
	25-54	82.6	82.6	82.5	82.4	81.9	81.5	81.4	81.9	82.5	81.7	81.7	82.5	83.4	84.6	85.6	85.3	85,1	85,6	85,5
	55-64	35.8	34.1	34.5	31.3	30.2	29.1	30.1	29.6	30.5	30.7	31.8	33.3	34.5	41.8	55.0	52.8	45,6	58,2	55,9

Source: The 1998-2014 Yearbook of Labour Statistics, the Central Statistical Office (GUS).

the retirement age, but also in the pre-retirement age is definitely lower than in majority of the EU states. However, if we consider the last period, i.e. the years 2007-2012, then it turns out that we are capable of speaking of an increasing economic activity in the 45-59/64 age group. As the data presented in Table 2 demonstrate, in the 45-54 age group it increased by more than 6%, and in the 55-59/64 age group by more than 10%. The improvement in the indicator value was more visible among women rather than men, according to P. Strzelecki and I.E. Kotowska<sup>40</sup>, the positive change in the employment to population ratio amongst women

<sup>40</sup> *Diagnoza społeczna 2011. Warunki i jakość życia Polaków*, J. Czapiński, T. Panek [eds.], „Contemporary Economics” Vol. 5, Issue 3, September 2011. pp. 136-139.

is caused by several factors: an improved situation on the labour market, and thus increasing chances of finding work employment, limiting access to disability pensions<sup>41</sup>, reduced possibilities of earlier retirement. Limiting retirement benefits constituted the most significant factor preventing an outflow from the labour market. As demonstrated by international studies and analyses, including those conducted under the auspices of the ILO, differences of employment to population ratio can be augmented by poor education, low qualifications, low productivity<sup>42</sup>. A shift in the employment policy model in Poland replacing shortening of professional activity by activation programmes led to improved employment to population ratios also in the 50+ age groups. The level of education in these age groups - higher than in the pre-retirement age in the 1990s - is not without significance in this case. A higher level of education and better economic situation increase chances of finding employment.

Equally, strong fluctuations of the employment to population ratio were observed in the youngest group. Its value between the first and the last year decreased by 2.3% among women and by more than 5% among men. In turn, if we compare professional activity of men and women in the 25-54 age group, then it turns out that the tempo of changes was similar, yet at the end of the period subject to analysis, the employment to population ratio among women was almost 1% higher at the beginning, while in the case of men it was 1% lower. In the 55-64 age group, the smallest fluctuations in the indicator were observed. It is fitting to emphasise that in all age groups the employment to population ratio among men was higher than among women, whereby the greatest difference was observed in the oldest age group (more than 25%), which was due to the fact that women enter the retirement age when they are 60 whereas men enter the retirement age when they are 65.

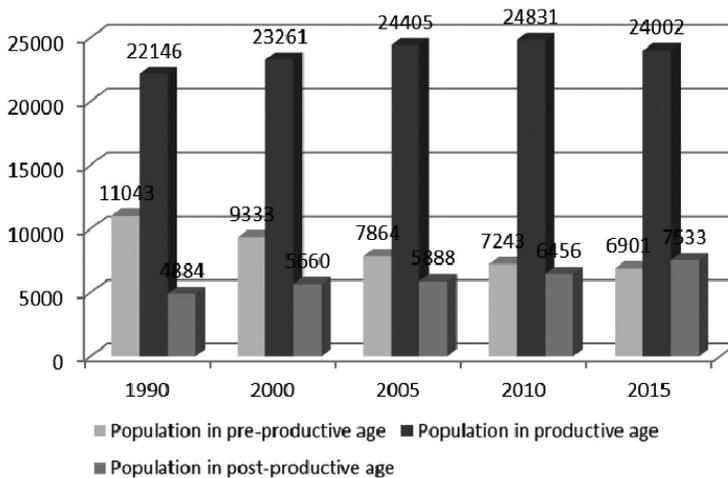
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<sup>41</sup> Stricter case-law and changes in provisions related to the health condition control of disability benefit beneficiaries.

<sup>42</sup> Anker, Richard (1998), *Gender and Jobs: Sex segregation of occupations in the world*, Geneva, ILO.

### 3.1. Labour Market and Unemployment

Figure 7. Population by age groups (in thousands)



Source: Own study, based on the 1990-2015 data from the Central Statistical Office (GUS).

In the years 2007-2009 the working age population was increasing, although the tempo of this growth weakened with each year. Since 2010, the working age population in Poland has begun to shrink. Admittedly, in 2010 the recorded drop was only approx. 10 thousand, but in 2011 it was decidedly higher and reached more than 90 thousand. The downward trend in terms of working age population will continue in the upcoming years: demographic forecasts prepared by AWG up to 2060 predict a constant decrease of the working age population, even after taking into consideration the raising of the retirement age.

The drop in employment was most influenced by such factors as: taking advantage of the possibility of obtaining retirement rights by people before that age, increased educational aspirations of young people, and professional passiveness of unemployed people discouraged from actively seeking employment. The fear of unemployment resulted in a substantial deactivation of so far professionally active people. As the FOR calculations have demonstrated, in the mid-1990s more than 3.5 million people took advantage of

diverse social benefits which made remaining professionally passive possible<sup>43</sup>.

Among women, for whom the statutory retirement age is 60 years, only every fourth one is employed. In comparison, in the EU-27 the employment indicator for people over 50 in 2010 was 46.3%, that means that at the same time in Poland it was two times lower<sup>44</sup>. In 2010, eight EU member states reached older people employment indicator exceeding 50% (the highest value was recorded in Sweden - 70%). Admittedly, a systematic increase of this indicator in Poland is observed, however when compared with other EU countries, we are still lagging behind in terms of employment of older persons.

Table 3. Indicators characterising the labour market in Poland in the years 2007-2012

Specification		2006	2007	2008	2009	2010	2011	2012
Professional activity indicator of people at the age of 15+ by sex	total	53.9	53.7	54.2	54.9	55.8	55.6	56.0
	men	62.1	61.9	62.7	63.4	64.1	63.9	64.2
	women	46.3	46.3	46.6	47.3	48.2	48.1	48.5
Employment to population ratio of working age people by sex	total	68.6	69.1	69.9	70.9	71.9	50.0	72.6
	men	73.7	74.4	75.3	76.0	76.4	57.5	76.6
	women	63.2	63.5	64.4	65.6	67.1	43.2	68.2
Employment to population ratio of people at the age of 15-64 by sex	total	53.4	57.0	59.2	59.3	59.3	58.9	50.1
	men	59.5	63.6	66.3	66.1	65.6	65.0	57.7
	women	47.4	50.6	52.4	52.8	53.0	52.8	43.2

<sup>43</sup> *Ile nas kosztują dodatkowe emerytury*, Forum Obywatelskiego Rozwoju, Towarzystwo Ekonomistów Polskich, Warsaw 2008, p. 7.

<sup>44</sup> [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Employment\\_statistics/pl](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Employment_statistics/pl)

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Employment to population ratio of working age people by sex	total	57.4	62.3	64.9	65.0	64.9	64.4	64.8
	men	62.1	67.6	70.4	70.0	69.2	68.5	68.7
	women	52.4	56.8	59.1	59.7	60.3	60.1	60.5
Employment to population ratio of people at the age of 20-64 by sex	total	-	62.7	65.0	64.9	64.6	64.1	64.2
	men	-	70.2	73.0	72.6	71.6	71.0	71.1
	women	-	55.5	57.3	57.6	57.7	57.4	57.4
Employment to population ratio of people at the age of 55-64 by sex	total	-	29.7	31.6	32.3	34.0	35.5	36.9
	men	-	41.4	44.0	44.3	45.3	46.3	47.3
	women	-	19.4	20.7	21.9	24.2	26.1	27.7
Employment to population ratio of people at the age of 16-64	total	-	18.3	19.6	20.0	20.5	21.3	22.5a

<sup>a</sup> of working age.

Source: The Economic Activity of Population of Poland data, the Central Statistical Office (GUS).

From the labour market point of view, professionally passive people constitute an important group. According to the BAEL research methodology, a professionally passive person is a working age person, from 15 years of age upwards, which at the moment of being surveyed was not employed and was not prepared to take up employment within two weeks. In the years 2003-2009 the number of professionally passive people in Poland increased by more than 170 thousand, while almost half of them were of working age. This population is very diverse, generally, it can be said that they are the youngest people, for whom the main cause of passiveness is education and raising qualifications, and the old-

est for whom the main cause of passiveness is retirement, but also disease and/or disability. It is comprised of people who:

- 1) Have not yet entered the labour market, e.g. school goers, students,
- 2) Temporarily quit professional activity due to family obligations (maternity, care for family members),
- 3) Definitively ended their professional career (e.g. old age pensioners),
- 4) For a variety of reasons have never been professionally active.

Table 4. Professionally passive people by causes of passiveness in the years 2007-2014 ( thousand)

Professionally passive people by causes	2007	2008	2009	2010	2011	2012	2013	2014
Total	14 533	14 362	14 181	14 014	14103	14027	13582	13459
Retirement	5 724	5 980	6 276	6 376	6356	6402	6453	6545
Including education, complementary ed	3 480	3 366	3 223	3 103	3168	3020	2786	2642
Including illness, disability	2 545	2 383	2 154	2 061	2055	2016	1904	1876
Including family and housekeeping duties i	1 551	1 588	1 561	1 543	1554	1620	1543	1557

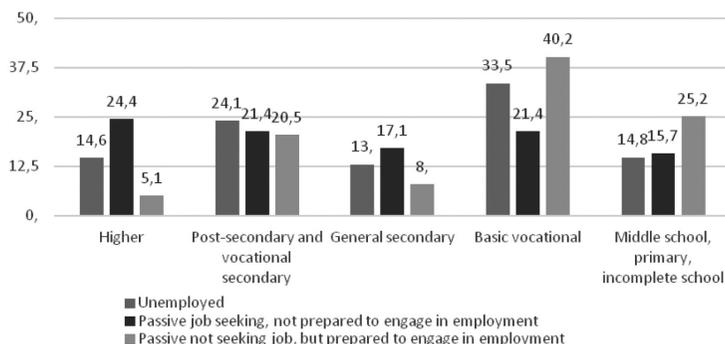
Source: The 2007-2012 Economic Activity of Population of Poland data, the Central Statistical Office (GUS).

The data on causes of professional passiveness according to the BAEL are presented in Table 4.

As statistical data demonstrate, the reasons for lack of professional activity are strictly determined by age, phase of the life cycle, and sex. The inter-sex gap in professional activity and employment was higher in the case of people in the 25-34 age group, and therefore during the family forming period. For this reason, due to their maternal and care-related duties women of this age decide to quit professional activity. They also stand a smaller chance of engaging in employment, this is particularly true for pregnant women or

### 3.1. Labour Market and Unemployment

Figure 8. Professionally passive people by education in 2012

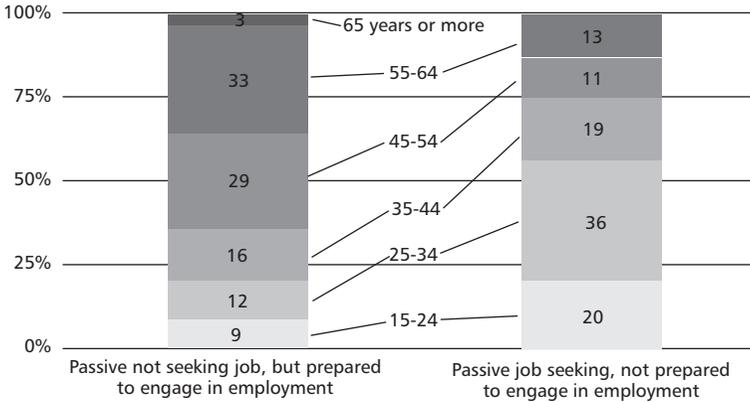


Source: Own study, based on the Central Statistical Office (GUS).

women having children below the age of three years. One of the barriers in engaging in employment by young mothers is the shortage of offers adjusted to their needs, i.e. offers allowing one to reconcile professional duties and family life. In turn, the inter-sex gap was lower for the 35-44 years age group, i.e. the age interval the demographers label as family development age. It was mainly a result of decreased burden connected with family duties and running the house and women's return to the labour market.

The influence of family duties on making a decision to permanently or temporarily disengage from professional activity in Poland is higher than in other EU countries. It is one of the most frequently indicated reasons of professional inactivity among women. In turn, in comparison with other EU states, older age women become professionally inactive earlier, which is manifest in, among others, rapid outflow of women from the labour market. Among barriers for professional activity in this age group, it is fitting to include the health condition or providing care to grandchildren or parents with diminishing motor abilities. People declaring passiveness due to illness or disability are difficult to activate, whereas the phenomenon of resigning on professional activity due to providing care to family could be reduced, by gradually decreasing the

Figure 9. Professionally passive people in 2012 by age (%)



Source: Own study, based on the Central Statistical Office (GUS).

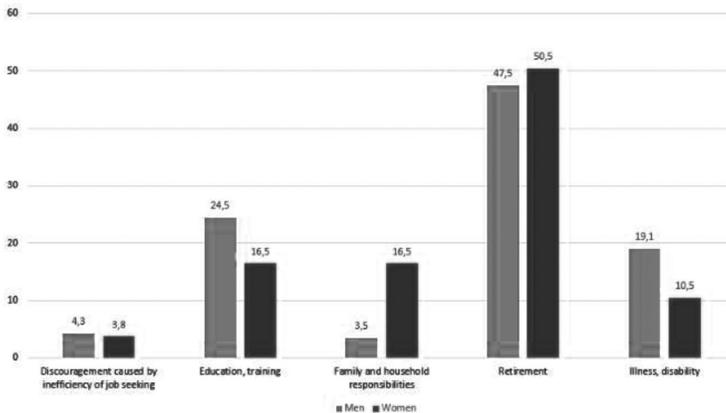
working hours or introducing new flexible forms of organisation and working time.

The data from BAEL were confirmed in the National Census (NSP) 2011, which demonstrated an even higher number of professionally passive people than BAEL estimates. According to the BAEL survey in 2011 there were 14,103 thousand professionally passive people, whereas according to the NSP - 14,462 thousand, i.e. 358 thousand more. According to the NSP, the most frequent causes of professional passiveness include retirement (44.8%), education and raising qualifications (19.8%), and disability or illness (12.1%). However, an analysis by age reveals that for 97.3% of people in pre-working age the causes of passiveness are education and raising qualifications. These causes were also indicated by people in mobile working age (43.8%), while in the case of non-mobile age - only 0.1% of indications. This group was dominated by indications pointing to retirement (33.4%) as well as one's own health condition and disability (30.4% of indications).

Almost 4% of professionally active people in working age (mobile and non-mobile) indicated causes of passiveness which

### 3.1. Labour Market and Unemployment

Figure 10. Causes of professional passiveness by sex in 2014



Source: The 2014 Economic Activity of Population of Poland data, the Central Statistical Office (GUS).

may suggest their willingness to return to the labour market, i.e. a conviction about difficulties in finding suitable work, exhausting all possibilities of finding employment, awaiting return to work after a break. 87.7% of people in post-working age as a cause of their passiveness indicated retirement while 6.4% their own health condition and disability. Professionally passive people also constitute a population that is strongly diversified in terms of education.

Although almost a half of professionally passive people are in the so-called working age, every tenth of them is a holder of a diploma of higher education, while at least a half of this population has at least secondary education. This group constitutes a serious unused potential of labour resources. As the data obtained in the national census indicate, almost 60% of professionally passive are city residents (the remaining number inhabits countryside). These proportions are similar to the proportions pertaining to the total of Poland's population in 2011 where urban population constituted 60.8% of the total population.

### **3.2. Structural Changes of Economy in Relation to Labour Relations**

Processes of globalisation and digitalisation of economy and social life result in traditional industrial economy characteristic of the 20th century being supplanted by knowledge-based economy. For this reason in the 21st century investing in the human being and human capital has become extremely important. Development based on knowledge and innovation constitutes one of the three key priorities of the *Europe 2020 Strategy*. In post-industrial economy socio-economic development is dependent on structural changes which are propelled by the use of new IT and telecommunication technologies. Structural changes which transpire in economy are a multi-thread phenomenon, if only due to the fact that we are dealing with various economic macrostructures, i.e.: ownership structure, economy's production structure, education and qualifications structure, used technologies structure. Characterising structural changes in economy by recording and measuring a single indicator, e.g. ownership structure, participation in generating the GDP, participation in employment, etc., is impossible.

Privatisation of enterprises, as well as [establishment] of new private ones has significantly impacted Poland's economic structure. One of the significant problems of transformation was a maladjustment of a substantial part of the productive potential to new needs. In many branches of economy, which vibrantly developed in the central planning economy system, serious difficulties emerged. Numerous coal mines, steelworks, metallurgy, chemical, and arms industry enterprises faced bankruptcy which in turn impacted other sectors of economy, including transport - railways and maritime shipping. Individual sectors of economy underwent structural changes - industry in particular experienced strong modernising and restructuring processes. The structure of economy underwent a change, entailing changes in the employment structure.

### 3.2. Structural Changes of Economy in Relation to Labour Relations

Table 5. Employed in Poland and EU by degree of modernity of areas of activity

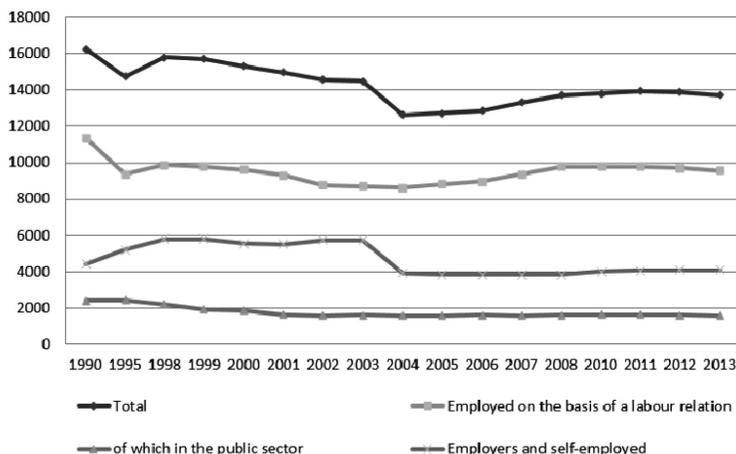
Areas of activities	Percentage of employed			
	Poland		European Union	
	2004	2013	EU24 - 2003	EU 28 2013
High technology industries	0.6	0.8	1.2	1.10
Medium-high technology industries	4.6	4.2	5.4	4.50
Medium-low technology industries	4.8	5.6	4.3	4.20
Low technology industries	11.5	8.5	6.8	5.70
High-tech services	2.5	2.1	3.2	2.80
Other knowledge-based services	16.9	22.2	27.5	27.40
Other services	31.4	26.3	31.7	31.10
Other areas	27.7	30.3	19.9	23.20

Source: Eurostat data.

The number of employed in 2008 was still substantially lower than in 1990. Nevertheless, its systematic growth since 2004 was a positive phenomenon. The number of people employed under employment relationship has also been on the increase since that year. Additional comment is required in the case of the drop in the number of employers and self-employed people recorded in the years 2003–2004. We can consider it a positive phenomenon since it was caused mainly by a decrease in the number of people working on individual farms in agriculture. It attests to the acceleration in the generational exchange of people conducting agricultural farms caused by introducing structural pensions in connection with Poland's accession to the EU.

A part of economic entities underwent restructuring which consisted in change of ownership, but also in change of forms of conducting economic activity. A certain number of enterprises was liquidated. At the same time new, mainly small and medium-sized, enterprises formed with production structure better adjusted to

Figure 11. Employment in the years 1990-2013 (in thousands)



Source: The Central Statistical Office (GUS).

actual demand. Changes in the ownership structure caused mass redeployment of labourers in keeping with the ownership structure. Undoubtedly, employee redeployment was most strongly impacted by ownership changes: out of 8,453 of state-owned enterprises existing on 31st December 1990, by 31st December 2008 they covered 5,909 enterprises<sup>45</sup>. Bankruptcy or restructuring of large state-owned enterprises released a substantial surplus of workforce. Admittedly, private entrepreneurship, still in its nascent phase, was incapable of absorbing it, nevertheless, proportions between people employed in the public and private sectors were definitely reversed. Employment in private sector increased also due to foreign investments. Insofar as in 1990, employed in the public sector still constituted almost 55% of the total, then already in 1992 the number of people employed in the private sector equalled the number of those employed in the public sector, whereas in 2008 it was three times higher. In 1990, the share of

<sup>45</sup> [http://prywatyzacja.msp.gov.pl/porta1/pr/21/Ocena\\_przebiegu\\_prywatyzacji.html](http://prywatyzacja.msp.gov.pl/porta1/pr/21/Ocena_przebiegu_prywatyzacji.html).

### 3.2. Structural Changes of Economy in Relation to Labour Relations

the public sector in generating GDP was lower, in 1994 it exceeded 50%, whereas in 2004, the private sector participated in generating 75% of the GDP. The private sector began to play the biggest role in retail, in construction, and agriculture, but also, although not to the same extent, in industry and transport.

Table 6. Employed by ownership sectors in Poland in the years 1990–2015 (%)

Sector	1990	1995	1999	2000	2002	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Public	54.9	37.3	27.7	26.3	30.5	28.4	27.5	26.3	25.8	26.2	25.3	24.2	24.5	23.7	21,4	20,9
Private	45.1	62.8	72.3	73.7	69.5	71.6	72.5	73.7	74.2	73.8	74.7	75.8	75.5	76.3	78,5	79,1

Source: *The Statistical Yearbook of the Republic of Poland*, Warsaw, 1998, p. 127; 2001, p. 135; 2007, p. 239; 2009, p. 235.

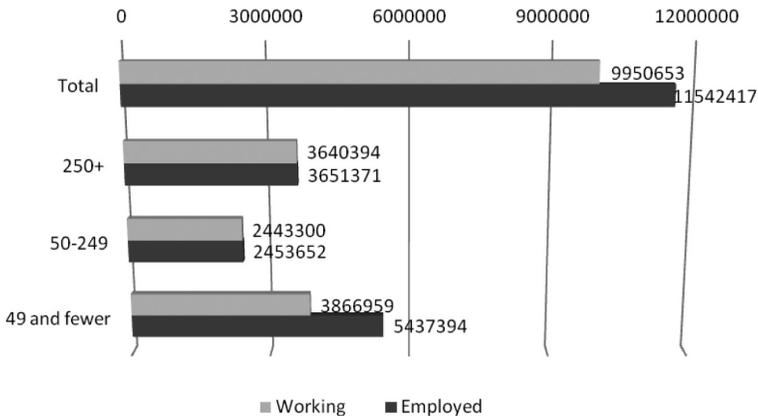
A significant increase in the number of employed in private enterprises, which in 2005 employed more than 9 million people (9,230.3 thousand, including 3,877.9 thousand women), whereas in 2013 more than 10 million people (10,869.3 thousand, including 4,708.0 thousand women), generated a certain imbalance of employment in terms of sexes: in 2013 women in the private sector constituted only 42%, while in the public sector 60%.

Attention is also due to changes in the structure of economy in terms of its sectors. In the 1990s and in the 2000s, an increase in the significance of services and a decrease in employment in agriculture and industry could be observed, whereas significance of industrial production in the employment structure in Poland is still higher than in majority of the EU-15 countries. In 2003, an improvement in the global situation, an economic revival, and a close perspective of Poland's accession to the EU reversed negative economic tendencies. Investments experienced a revival caused, among others, by an influx of direct foreign investment, particularly visible in tele-technical and automotive industries. Growing exports and increased consumption demand stimulated by population's increasing loans also contributed to development of economy. Despite growing employment in industry, Poland experienced changes which resulted in the decreasing number of people employed in

large, mainly industrial enterprises. Among active enterprises, the majority were micro-enterprises, in 2013 they constituted 99% of all enterprises operating in Poland.

As provided in the Report on the Condition of Small and Medium-Sized Enterprise Sector in Poland in 2011-2012<sup>46</sup> the number of people working in enterprises in Poland reached the level of 9 million, of which 6.3 million of people (i.e. more than 70%) worked in the SME sector. A significantly lower number, 6.6 million were employed, and 40% of this number were employed in big companies, the remaining number found employment in the SMSE sector <sup>47</sup>. In subsequent years (2012 -2015) the number of working persons grew to reach 14 million and the share of those working in the SME sector increased.

Figure 12. Working and employed in national economy by enterprise size



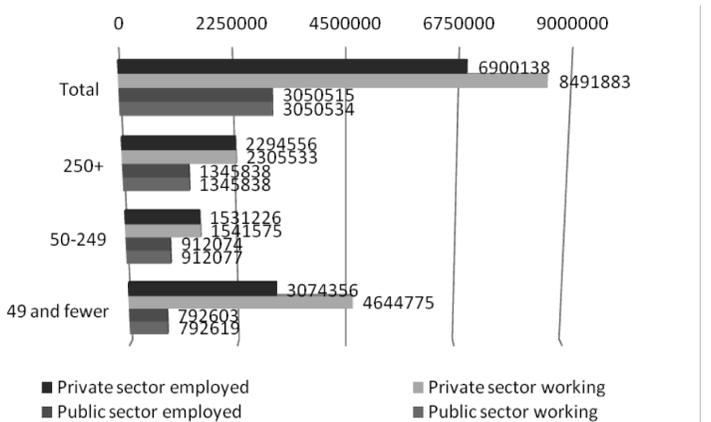
Source: Employed in National Economy in 2013, the Central Statistical Office (GUS).

<sup>46</sup> Polish Agency for Enterprise Development, Warsaw 2013.

<sup>47</sup> The difference between the number of people working and the number of people employed results from the distinction between those, who are employed (based on an employment contract) and those working, as this term also includes people working based on non-standard forms of employment and self-employed.

### 3.2. Structural Changes of Economy in Relation to Labour Relations

Figure 13. Working and Employed in National Economy by Unit Size and Ownership Sector



Source: Working in National Economy in 2013, the Central Statistical Office (GUS).

However, if we divide companies according to the ownership structure, then it turns out that people employed in micro and small companies dominate in the private sector, whereas those employed in public companies are mostly concentrated in the largest enterprises. Changes in the enterprise structure according to their size, but also an increase in the number of private enterprises had a substantial impact on labour relations, and thus also on social dialogue. Insofar as in large public enterprises traditionally at least one trade union was active, yet most often their number was much higher, then the newly established enterprises frequently lack any employee representation whatsoever. Small and micro enterprises were dominated by individual relations on the employer - employee line.

Results of research by professor J. Gardawski and his team demonstrate that scale of employment and presence of trade union organizations not only impacted labour relations but trade union presence actually improved the quality of labour relations. In those enterprises, where trade unions were present rights of employees

were better respected<sup>48</sup>. In this context it merits to underline that the implementation of the ILO's concept of decent work turned out to be difficult even for Polish labour relations. The concept of decent work, promoted by the ILO in its many documents was presented in the ILO Report in 1999. Decent work was described as the main objective for ILO member states and in order to achieve it, it is necessary to promote values such as: equal opportunities irrespective of gender, productive work and conditions that guarantee equality, security and human dignity<sup>49</sup>. The concept of decent work was based on a number of international standards as well as on documents promoting universal rights, in particular: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), the Right to Organise and Collective Bargaining Convention, 1949 (No 98), the Abolition of Forced Labour Convention, 1957 (No 105), the Minimum Age Convention, 1973 (No 138), the Declaration of Fundamental Principles and Rights, 1998. The Decent Work Agenda was based on four fundamental objectives set forth by the ILO:

- Achieving full employment – (at the time) documents indicated that at least one billion people remained unemployed or underemployed<sup>50</sup>;
- Workers rights – the ILO believes that workers rights cannot be limited under any circumstances, not even in order to create additional employment<sup>51</sup>;
- Social security – protection for all employees, even those working in the informal sector;
- Social dialogue – the ILO believes in dialogue being a better way to resolve conflicts compared to conflict.

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<sup>48</sup> J. Gardawski, *Pracujący Polacy a kryzys fordyzmu*, Scholar, Warsaw 2009.

<sup>49</sup> ILO 1999, Decent work. Report of the Director-General to the 87th Session of the International Labour Conference, ILO Geneva 1999.

<sup>50</sup> Somavia, *The ILO Decent Work Agenda as the aspirations of people: The insertion of values and ethics in the global economy*, [in:] *Philosophical and spiritual perspectives on decent work*, Dominique Peccoud [ed.], Geneva, ILO.

<sup>51</sup> Somavia, *The ILO Decent Work Agenda as the aspirations of people: The insertion of values and ethics in the global economy*, [in:] *Philosophical and spiritual perspectives on decent work*, Dominique Peccoud [ed.], Geneva, ILO.

In 2008 the Tripartite Meeting of Experts worked out five initial principles to be used to measure progress in achieving the objective of decent work for all in individual countries. The main values is the support given to countries in evaluating progress and not just setting a list of indicators to be used for different purposes. If possible, national statistics should be provided in a format and according to methodology that make it possible to compare work quality. Creation of an aggregated index used to put together a ranking list of countries is of little value for the purpose of policy analysis as often it does not provide additional context and requires a restrictive approach to comparing countries. Indicators expressed in numbers are not able to cover the broad qualitative nature of decent work. Some indicators (such as employment or wages) are easily measurable in statistical terms, whereas some other (such as the condition of social dialogue or representation of interests) are not that easy to measure. Once the concept of decent work is more widely present in international documents on development, the need for a more comprehensive description of the situation will become even more needed<sup>52</sup>. After considering the above principles the Meeting of Experts put forward a certain form of an international model consisting of eleven quantitative and qualitative indicators to be used in order to measure the level of decent work in a given country<sup>53</sup>.

### **3.3. Influence of Post-Accession Emigration on Polish Labour Market**

Next to the systemic transformation, development and functioning of Polish economy was significantly impacted by the already mentioned integrative processes<sup>54</sup>. Emigration of Poles,

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<sup>52</sup> ILO, 2008, Measurement of decent work. Discussion paper for the Tripartite Meeting of Experts on the Measurement of Decent Work, ILO Geneva 2008.

<sup>53</sup> ILO, 2008, Chairperson's report. Tripartite Meeting of Experts on the Measurement of decent Work, ILO Geneva 2008.

<sup>54</sup> Cf. J. Auleytner, *Polityka społeczna czyli ujarzmienie chaosu socjalnego*, Wyd. WSP TWP, Warsaw 2002.; the author indicates that already since the WW II a trend to present social problems in the European and global scale has been

starting from 2004, that is Poland's accession to the EU, has taken on a substantial size, although determining its actual dimension is extremely difficult. Admittedly, the central statistical office provides estimates of people temporarily residing abroad, yet these numbers do not reflect the full picture of emigration from Poland, since keeping statistics on emigration is rather difficult under conditions of free movement of persons. The available data present immigration resources of Poles in other countries in a given year, while not migration streams, and they do not include seasonal migrations. The research on which estimates are based does not fully reflect the scale of this phenomenon, but only serves to indicate trends and structure of emigration. On the basis of available data, it must be found that the opening of certain labour markets for Polish workers not only caused a rapid increase in the number of people leaving Poland in search of employment (mainly in the working age), but also altered directions of emigration.

The National Census carried out in 2002 showed that 786 thousand Poles remained abroad, with more than 626 thousand for a period of 12 months at least. The countries most often chosen by Poles as destination were: Germany (294 thousand), the USA (158 thousand), Italy (39 thousand), Canada (29 thousand), the UK (24 thousand), and France (almost 21 thousand). Along with Poland's accession to the EU, three labour markets opened - in the United Kingdom, Ireland, and Sweden<sup>55</sup>. This resulted in these countries' becoming main destination for emigrating Poles. In 2006 the group of countries opening their labour markets to Poles expanded to include Spain, Portugal, Finland, Greece, and Italy, while in 2007 also Holland and Luxembourg. Already in 2007, the Central Statistical Office presented first estimates related to the size and directions of emigration of Poles (excluding seasonal

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gradually developing. See also: W. Anioł, *Europejska polityka społeczna. Implicacje dla Polski*, IPS UW, Aspra-Jr, Warsaw 2003.

<sup>55</sup> Polish citizens were able to engage in employment without the need to apply for a work permit from local employment services.

emigration)<sup>56</sup>. Looking at these data from perspective of time, today it is possible to state that in the years 2004–2007 we experienced the biggest wave of emigration. According to them, in 2006 the number of Poles to have emigrated amounted to 1,950 thousand, of which approx. 1,610 thousand in the European countries, whereas in the subsequent year these numbers increased to 2,270 thousand and 1,925 thousand respectively. Already in 2007, the number of Polish emigrants in EU member states was twice higher than at the moment of Poland's accession to the community. Poles as their final destinations most often chose: the United Kingdom (in 2007 - approx. 690 thousand Poles), Germany (in 2007 approx. 490 thousand Poles), and Ireland<sup>57</sup> (in 2007 approx. 200 thousand Poles). The opening of the Dutch labour market for Poles on 1st May 2007 in a very short time resulted in this country's 4th rank among states with the highest number of Polish citizens (98 thousand). According to the Central Statistical Office's estimates, a half of Poles abroad stayed there longer than 12 months. During the first years of Poland's presence in the European Union, majority of Poles remained abroad in connection with their employment, however they were in time joined by family members, spouses and children relying on them for sustenance.

The year 2008 showed a small decrease in the number of emigrants from Poland (2,210 thousand people compared to 2,270 thousand in the previous year). The reasons for this phenomenon are usually sought in the global economic crisis which influenced Poles' interest in seeking work abroad. This trend was also observed in the following year (1,870 thousand), when a simultaneous increase in the number of re-emigrants was recorded. The scale of re-emigration is difficult to determine due to the lack of reliable evidencing registers and lack of a homogeneous research technique, however labelling re-emigration of that period as mass

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<sup>56</sup> In majority of the EU states a stay shorter than three months is subject to simplified formal and legal procedures or are not registered at all.

<sup>57</sup> This country recorded a 100-fold increase in the number of immigrants in comparison with the year 2002.

returns would be a gross exaggeration<sup>58</sup>. Despite the observed decrease, the number of emigrants from Poland was significantly higher than in the initial period of Poland's membership in the EU. It was confirmed by results of the National Census carried out in 2011. It demonstrated that 2,017.5 thousand Poles remained abroad, whereas at least 1,564.6 thousand for the period of at least 12 months. In comparison with the previous census of 2002, the number of Poles remaining abroad was almost 2.5 times higher.

Table 7. Number of emigrants from Poland registered in the National Census by sex and length of the period of stay abroad

	Total	Stay between 3 - 12 months	Stay exceeding 12 months and more
Total	2,017,501	452,921	1,564,580
Men	986,680	229,808	756,873
Women	1,030,820	223,113	807,707

Source: Foreign migrations of the population. National Census of Population and Housing 2011, Warsaw 2013.

According to a definition used in the UN statistics, an emigrant is a person who has spent at least one year in the country that is not their country of birth<sup>59</sup>. According to this definition, a ranking of countries of the world with the highest number of emigrants from Poland was created. The table presents 10 countries with the highest number of Polish emigrants, next to the unemployment rate in this countries over the period of several years, assuming that majority of people deciding to leave their home country, in choosing their destination takes into account the situation on the chosen country's labour market. The quoted data attest to the fact that in general the unemployment rate in countries most often

<sup>58</sup> Part of re-emigrants declared to emigrate again if the economic situation improves.

<sup>59</sup> The United Nations, Department of Economic and Social Affairs, Population Division, <http://www.un.org/en/development/desa/population/migration/data/empirical2/index.shtml>.

### 3.3. Influence of Post-Accession Emigration on Polish Labour Market

chosen by Poles as their destination was and continues to be on a lower level than in Poland, the only exceptions here being Ireland and Italy.

Table 8. Number of emigrants from Poland in 2013 and unemployment rates in specific countries in the years 2004-2013

	Number of im- migrants from Poland in 2013	2004	2005	2007	2010	2011	2012	2013
Germany	520,326	11.0	11.2	8.6	7.1	5.9	5.5	5.3
UK	661,482	4.6	4.8	5.2	7.8	8.0	7.9	7.5
USA	498,087	5.5	5.1	4.6	9.6	8.9	8.1	7.4
Canada	195,712	7.2	6.8	6.0	8.0	7.5	7.2	7.1
Italy	128,158	8.7	7.7	6.1	8.4	8.4	10.7	12.2
Ireland	124,566	4.4	4.4	4.6	13.9	14.4	14.7	13.1
France	106,408	9.9	8.9	8.0	9.3	9.3	9.9	9.9
Holland	80,639	4.3	4.7	3.6	4.5	4.4	5.3	6.7
Sweden	76,848	5.5	7.8	6.1	8.6	7.5	8.0	8.1
Norway	76,184	4.5	4.4	2.5	3.5	3.2	3.1	3.4
Poland	–	19.0	17.7	9.6	9.6	9.7	10.1	10.3

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

Foreign migrations of the population are strongly connected to processes on local labour markets. Shortage of work or an uncertain situation on the labour market may be a factor motivating one to seek employment abroad, although as indicated by recent research, the key motivation to look for work abroad is not shortage of work at home, but the value of remuneration obtained abroad which 3 – 4 times exceeds earnings possible to obtain in one's home country<sup>60</sup>. This is why it is difficult to agree with the statement that those who emigrate are only unemployed people or those uncertain of their situation on the labour market. Also,

<sup>60</sup> M. Duszczuk, *Raport Migracje zarobkowe Polaków*, Warsaw 2014.

people having work emigrate, resigning from their employment in Poland in search for better working and living conditions in countries more developed economically. In the effect of Poland's accession to the EU, and thus opening of European labour markets, Poles mobility has increased. Advocates of open labour markets indicated that it influenced a decrease in the size of unemployment in Poland. However, it is difficult to state it unequivocally, since mass emigration coincided with the economic revival which positively impacted the situation on the labour market, but at the same time entrepreneurs began to signal increasing problems with finding employees with specific qualifications. In turn, a decreased unemployment rate positively impacted employees' bargaining position, and in the conditions of fast economic growth it led to additional pressure on raising wages. Temporary migration also provided Poles with an opportunity of becoming acquainted with the principles of functioning of a developed market economy<sup>61</sup>. Partially relieving the labour market from labour resources surplus was connected with the transfer into the country of incomes by Poles working abroad. According to the data from OECD, in 2012 Polish emigrants transferred into the country more than EUR 5.4 billion, including more than EUR 3.2 billion from the EU countries themselves.

Among negative effects of mass migrations from Poland it is definitely necessary to include the forming of a supply gap on Polish labour market. These deficits entailed a raise in wages, this way decreasing competitiveness of enterprises; this gap is particularly visible in the area of qualified labourers and construction workers. The phenomenon of drainage of highly-qualified workers (the so-called 'brain drain') caused serious financial losses (outlays on education) and negatively impacted the labour market. This phenomenon is particularly visible in the case of migration of medical specialists, for whom there is a constant high demand in developed countries. In countries to which they emigrate, these specialists may count not

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<sup>61</sup> T. Budnikowski, *Bezrobocie wyzwaniem współczesności*, „Prace Instytutu Zachodniego” No 83, Instytut Zachodni, Poznań 2009, p. 251.

only on a substantially higher remuneration than in Poland, but also on the so-called faster path, that is simplified immigration procedures. Migrations of medical specialists result in a deficit of specific specialists on the level of local or regional health care units. Emigration of well-educated employees, professionals (not only healthcare experts) resulted in the deficit in their supply on the Polish labour market. Both the ageing of society and foreign migrations, as well as the economic revival have a significant influence on the labour market. As demonstrated by the research conducted in 2007 on a representative sample of 104 Polish companies employing personnel of more than 250, more than half of the respondents were affected by the shortage of work force, first and foremost IT specialists, finance experts, and logistics specialists<sup>62</sup>. Vacancies waited not only for people with higher education diplomas, but also machinery operators, construction workers, electricians, or metalworkers. A deficit of people with technical education has become visible, which may perpetuate structural problems of the Polish labour market. Also, the quality of education and maladjustment of the structure and education programmes to the labour market needs were a problem. Changes on the labour market in Poland were not only of quantitative but also of qualitative nature.

### **3.4. Costs of Labour and Wages and Labour Relations**

One of the most significant problems appearing in negotiations conducted in the frames of social dialogue is the issue of wages. The level of wages is decided not only by laws of the market, but also by numerous other factors, e.g. value of minimum wage, costs of labour, i.e. taxes, healthcare and social insurance contributions, contributions for a labour fund and guaranteed social benefits fund, deductions for the National Fund for the Rehabilitation of Disabled [PFRON] or company social welfare fund.

The minimum wage level is negotiated in the frames of the Tripartite Commission and it impacts the shaping of the level and

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<sup>62</sup> Ibidem, p. 255.

relation of wages, but also their structure. The law in force in Poland assumes that the minimum wage is determined annually, while one of the evaluation criteria is the relation of a minimum wage to an average wage. The minimum wage is also connected with numerous benefits paid to employees and entitled beneficiaries. As analyses of international comparisons in the OECD countries and BAEL surveys (the Central Statistical Office) have demonstrated 'a high minimum wage may be a barrier for employing on the official labour market of people with low qualifications, whose productivity is lower than minimum wage, while the supply of their work is higher than demand for it'<sup>63</sup>. Many experts suggest that an adequate road aimed at increasing wages of people with low qualifications should be parallel activities intended at improving qualifications and level of labour resources human capital<sup>64</sup>.

During the recent decade, despite the crisis on financial markets, the perfect majority of EU states recorded a real increase in labour productivity per single employed person. The highest nominal increase between 2004 and 2013 was recorded in the countries characterised by low development level in 2004, i.e. Romania (139%), Latvia (139%), and Lithuania (109%). Poland belongs to these countries of the EU which are characterised by a relatively high tempo of increase in productivity, although lower than that of the growth leaders. In the post-accession period, a constant increase of the GDP and increase in wages and labour productivity can be observed in Poland. In the years 2004–2013, Poland recorded a substantial increase in gross average remuneration throughout entire economy. In nominal values, substantial increases in average wage of 59.4% (in national economy) and 57.4% (in the enterprises sector) were recorded. Thus, the relative difference between both categories of wages in the entire national economy and in the enterprise sector diminished minimally.

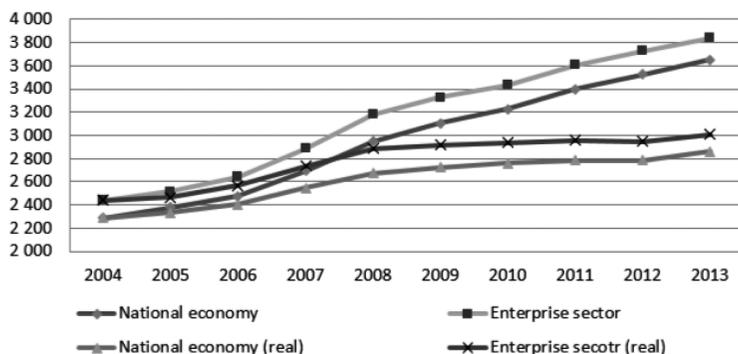
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<sup>63</sup> A. Ruzik, *Minimalne wynagrodzenie – analiza wpływu na zatrudnienie w Polsce*, „Polityka Społeczna” 2007, No 1, p. 9.

<sup>64</sup> *Ibidem*.

### 3.4. Costs of Labour and Wages and Labour Relations

Figure 14. Average monthly remuneration in the years 2004-2013 (PLN)



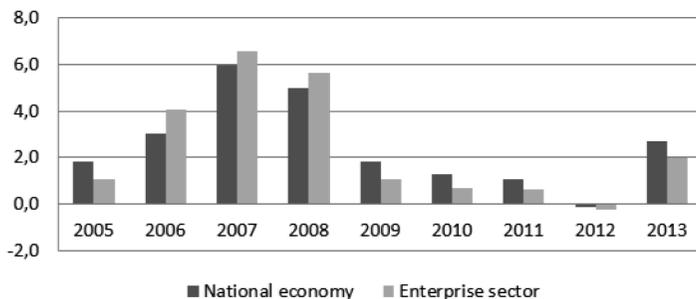
Source: Own study, based on the data from the Central Statistical Office (GUS).

For the purpose of realigning the level of wages in Poland, normally the Consumer Price Index (CPI) is used, whereas in international comparisons within the European Union the Harmonised Index of Consumer Prices (HICP) is employed. Differences in results obtained in terms of CPI and HICP inflation are not high in Polish conditions, although it is fitting to emphasise that the accumulated HICP increase during the period covered by the analysis was by 0.8 percentage point higher than in the case of the CPI, therefore wages, with taking the HICP into account, increased in a minimally lower degree to PLN 2,842.93 (national economy) and PLN 2,988.69 (enterprise sector).

The highest increase in wages can be seen in the years 2006 – 2008, since 2009 a decrease related to the international crisis can be observed, and the increase resumes in 2013. The year 2012 was exceptional in this respect - it was the only year when the wages really decreased, whereas the decrease was greater in the enterprise sector where it amounted to 0.26 percentage point.

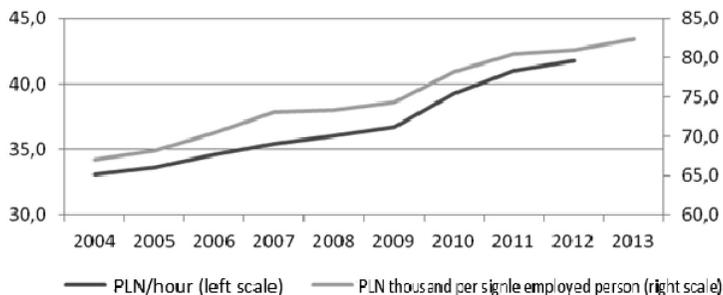
In the analysed period, the growth in the GDP was accompanied also by the growth in labour-productivity counted both per hour of work and per employee. The increase of both productivity

Figure 15. Real increase of gross average remuneration in national economy and enterprise sector in the years 2004-2013 (percentage points)



Source: Own study, based on the data from the Central Statistical Office (GUS).

Figure 16. Labour-productivity per employed and per working hour in constant prices in the years 2004-2013 (PLN)



Source: Own study, based on the data from the Central Statistical Office (GUS) and Eurostat.

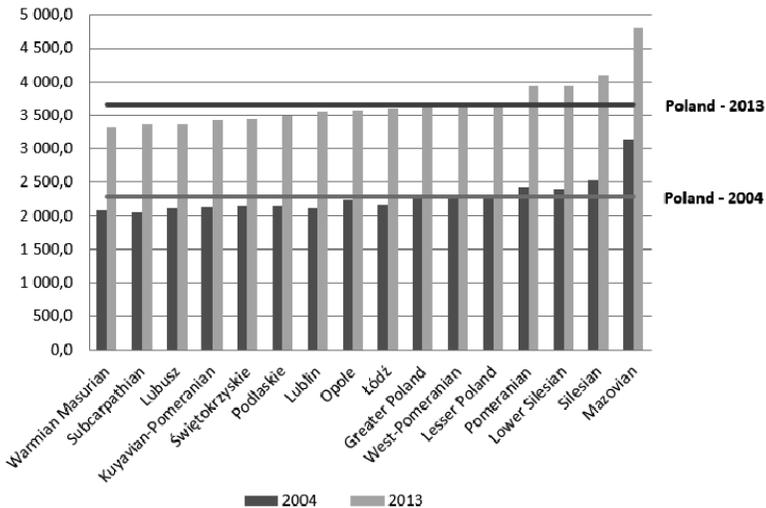
parameters was recorded. Labour-productivity per single employee in real terms increased from PLN 67.0 thousand (in 2004) to PLN 80.9 thousand in 2012 and PLN 82.3 thousand in 2013, whereas labour-productivity per hour increased from PLN 33.1 (in 2004) to PLN 41.8 in 2012<sup>65</sup>. A slightly higher tempo of growth

<sup>65</sup> The latest statistical data cover the year 2012.

of labour-productivity per working hour (26.3 percentage point) from that recorded for an employee (20.8 percentage point) is related to the better use of material labour resources. Moreover, it is fitting to emphasise that in the analysed period a 13% increase in employment was recorded. Despite an approximate increase in labour-productivity in the years 2004–2012, it is possible to distinguish two periods substantially differentiating the tempo of increase in productivity. In all the years both productivity parameters improved, yet in the years 2005–2007 productivity per employee was increasing faster, whereas in the years it was labour-productivity per hour. The first period observed a significant annual increase in employment (2.3% – 4.4%) and the economic growth was to a large degree of an extensive nature. The years 2008–2012, along with the slowing down of the growth of employment and its drop in 2010 and 2013, resulted in an intensive increase, with a slower tempo of growth in labour-productivity per employee. In recapitulation, it is fitting to emphasise that in the analysed period no significant relationship between the growth of wages and growth in the labour-productivity was observed. All the analysed categories had a similar tempo of growth (20.8%–26.3%). The tempo of growth of labour-productivity per hour was higher than that of the increase in wages. In turn, the tempo of growth of labour-productivity per single employee was lower than the tempo of growth of wages. Despite the fact that generally speaking in the analysed period a partial substantiation for the growth in wages resulting from increasing labour-productivity was jointly stated, then disaggregating the growths, no substantiation for the growth in wages in individual years was found. A more noticeable relationship was the ‘making-up-for’ increase in productivity in the years 2010–2012 following the earlier substantial growths of remuneration in the years 2007–2008. It is even possible to substantiate the statement that significant growths in wages were compensated only after several years, after the economic crisis, thus providing the grounds for a generally neutral assessment of the period subject to analysis in terms of the productivity-remuneration relationship.

Polish labour market, similarly as majority of European markets, is characterised by a substantial regional diversification. The average wage in a given area is a function of the unemployment level - the lower the unemployment, the weaker pressure on wage increase. The years 2004–2013 observed a substantial diversification of wages in individual voivodeships (provinces). Throughout the entire analysed period, the highest remuneration was obtained by those employed in the Mazovian voivodeship. In 2004, it was PLN 3,143 on average (137.3% of the national average), whereas in 2013 it was PLN 4,812 (131.8% of the national average). Clearly higher remuneration in comparison with the national average (second rank after the Mazovian voivodeship) was obtained by those employed in the Silesian voivodeship, PLN 2,525 (110.3 average) and PLN 4,096 (112.2% average) respectively. A somewhat lower, nevertheless high level of wages was recorded in Lower Silesian and Pomeranian voivodeships.

Figure 17. Average monthly remuneration in national economy in years 2004 and 2013, by voivodeship (PLN)



Source: Own study, based on the data from the Central Statistical Office (GUS).

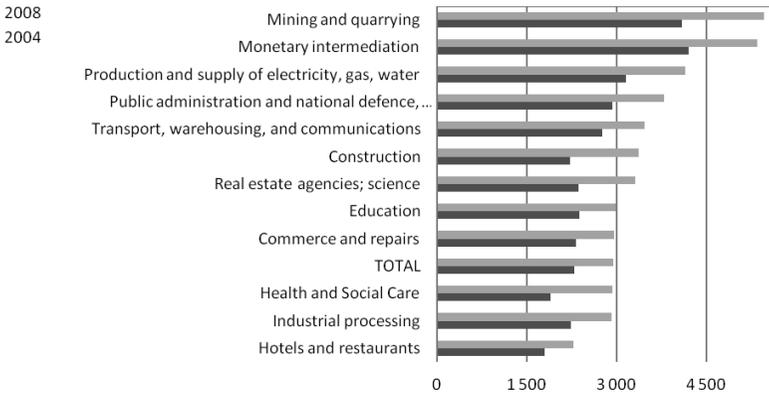
Wages in the remaining voivodeships significantly differed from wages in those mentioned above. The lowest level of average wages both in 2004 and in 2013 was recorded in Subcarpathian and Warmian-Masurian voivodeships. The afore-mentioned diversification of wages in specific voivodeships has been observed in Poland since the very beginning of systemic transformations. Recent years have not substantially altered the situation on local labour markets. It is still possible to distinguish voivodeships with a higher level of wages (clustered around metropolitan development centres) and those with a lower level of remuneration (less urbanised areas). This is because usually a greater demand for labour occurs in areas characterised by lower unemployment indicators (development centres, suburbs, cities), whereas lower demand for labour concurs with higher unemployment indicators (agricultural and agricultural-industrial areas). Nevertheless, it is worth emphasising that significant differences existing hitherto between voivodeships have diminished. Therefore, it can be seen that regional diversification is flattening, although the tempo in which it is taking place is very slow.

The level and diversification of wages may be analysed with taking into account the basic variables, among which the most important include a section of economy according to the Classification of Business Activities in Poland<sup>66</sup>. In 2004, the highest gross remuneration was disbursed in such sections as: Monetary intermediation and Mining and Quarrying. Whereas the lowest was recorded in sections: Hotels and Restaurants and Healthcare and Social Care. Significant changes occurred after four years.

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<sup>66</sup> In performing an analysis of remuneration with taking the Classification of Business Activities into consideration, it is necessary to keep in mind non-continuity of data presented with the use of the Classification of Business Activities. Upon replacing Classification of Business Activities 2004 with the new Classification of Business Activities 2007 developed on the grounds of the Statistical Classification of Economic Activities in the European Community – NACE Rev. 2. detailed presentation of public statistics data in a manner homogenous with European statistical standards became possible. However, application of the changed classification resulted in impossibility of conducting simple analysis for all sections.

Figure 18. Nominal monthly remuneration in sections according to PKD 2004 in the years 2004-2008 (in PLN)



Source: Own study, based on the data from the Central Statistical Office (GUS).

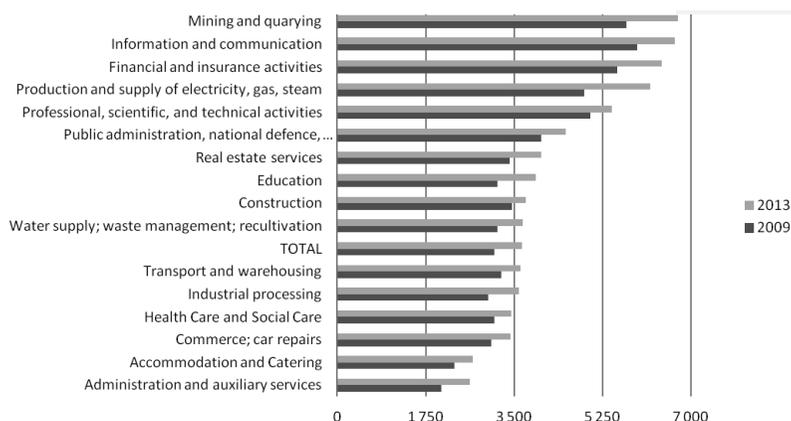
As earlier indicated, the first years of Poland's membership in the European Union were connected with a significant growth of wages. The highest growths were recorded in such sections as Healthcare and Social Care (55.1%, in real terms 40.2%) and Construction (50.9%, in real terms 36.4%). In both cases the growths were connected to economic and social changes related to the entry in the EU. The highest level of wages was recorded in the following sections<sup>67</sup>: Mining and Quarrying, Information and Communications, and Financial and Insurance Activities. The lowest level of remuneration was recorded in the case of service-related sections: Administration and Auxiliary Services, Accommodation and Catering, as well as Commerce and Car Repairs.

The highest growth in wages in the years 2009-2013 was recorded in the sections: Administration and Auxiliary Services (26.9% nominal, 13.9% real), production and supply of electricity, gas, steam, and hot water (26.7% nominal, 13.7% real), and Education (23.7% nominal, 11.0% real). A new phenomenon observable in

<sup>67</sup> Section headings in Classification of Business Activities 2007 are different than those in Classification of Business Activities 2004.

### 3.4. Costs of Labour and Wages and Labour Relations

Figure 19. Nominal remuneration in sections according to PKD 2007 in the years 2009-2013 (in PLN)



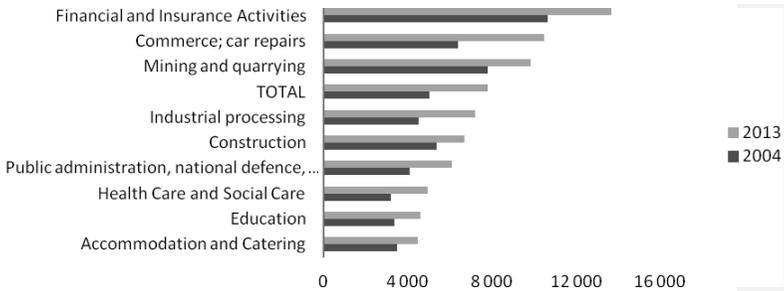
Source: Own study, based on the data from the Central Statistical Office (GUS).

four sections came as a lowering of real wages in the years 2009 - 2013. This situation pertains to such sections as: Construction (-3.4% real decrease, 7.6% nominal increase), Professional, Scientific, and Technical Activity (-2.5% real decrease, 8.7% nominal increase), Healthcare and Social Care (-0.6% real decrease, 10.8% nominal increase) and Transport and Warehousing (-0.2% real decrease, 11.3% nominal increase). This process was adaptive in its nature, adapting to the decreased demand for services rendered especially in Construction, Transport, and Warehousing.

In the years 2004-2013 from among the sections, the highest monthly labour-productivity characterised employees of such sections as: Monetary and Insurance Activities (PLN 10,626 in 2004 and PLN 13,660 in 2013). A significant increase in labour-productivity was recorded in one of the biggest sections – Commerce and Car repairs (64.2% nominal, 281% real) and thanks to that labour-productivity of workers employed in this section currently exceeds the labour-productivity of employees in the Mining and Quarrying section. Similarly as in 2004, the lowest labour productivity characterises employees of such sections as Education (PLN 3, 348 in

2004 and PLN in 4,595 in 2013) and Accommodation and Catering (PLN 3,468 in 2004 and PLN 4,441 in 2013). Analysing changes in productivity among sections, it is necessary to emphasise that in the analysed period three sections: Construction, Mining and Quarrying, and Hotels and Restaurants recorded a real decrease in labour-productivity (from 3.0% to 0.1% respectively).

Figure 20. Average monthly labour-productivity per person employed in PKD sections in the years 2004-2013 (in PLN)



Source: Own study, based on the data from the Central Statistical Office (GUS), and Eurostat.

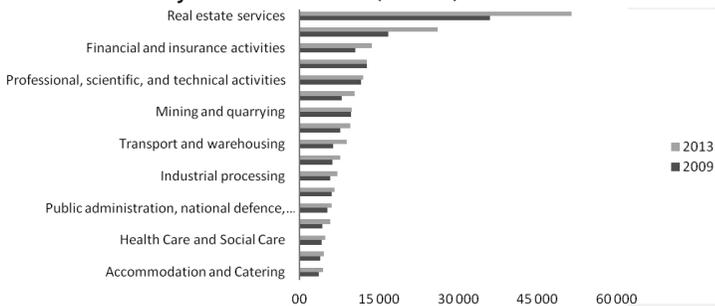
Decidedly the highest level of productivity occurs in the section smallest in terms of the number of employed (138.7 thousand) - Real Estate Services (PLN 35,984 in 2009 and PLN 51,358 in 2013).

The lowest productivity characterises traditional sections of services and convenience activities such as: Accommodation and Catering, Education, Healthcare and Social Care, which confirms the research conducted on highly-developed markets where high labour-productivity is observed in the modern areas of economy (e.g. information and communication, professional, and scientific activities), whereas lower than those mentioned earlier also in traditional sub-classes of industrial processing.

Polish economy continues to be highly diversified in terms of wages and labour-productivity across the Classification of Business Activities sections. It is possible to distinguish types of economic activity characterised by high labour-productivity and high wages which follow. From among those, it is worth distinguishing new areas of

### 3.5. Flexible Forms of Employment and Labour Relations

Figure 21. Average monthly labour-productivity per person employed in PKD sections in the years 2009-2013 (in PLN)



Source: Own study, based on the data from the Central Statistical Office (GUS), and Eurostat.

economy, first and foremost services quickly gaining in significance: Real Estate Market Services, Financial and Insurance Activities, and Information and Communications. Sections of traditional economy characterised by high productivity and adequate wages are, first and foremost: Production and Supply of Electricity, Gas, Steam, and Hot Water as well as Mining and Quarrying, although it is difficult not to notice the fact that high wages in the last of the sections are only in a small degree substantiated by labour-productivity.

Persisting significant diversification also results in the occurrence of sections characterised by low productivity, which frequently leads to maintaining a relatively low level of wages in certain service-related sections, such as: Accommodation and Catering, Education, Healthcare and Social Care. It is worth emphasising that in the frames of Classification of Business Activities sections one may observe a greater connection between productivity and wages than an analogical connection in the spatial distribution of voivodeships.

### 3.5. Flexible Forms of Employment and Labour Relations

The situation on the labour market and new characteristics of labour relations in Europe was influenced by economic and social processes leading, among others, to deregulation of labour mar-

ket, but also to the strengthening of investments in human capital and increased labour-productivity<sup>68</sup>. Peter Drucker defined them as a process of moving from an industrial society to post-industrial or post-capitalist society, where knowledge and effective use of information are becoming the main factor in increasing productivity. Thus, they constitute the most important resource in the process of generating wealth, the main source of competitive advantages and international competitiveness of a country<sup>69</sup>.

High costs of labour, but also searching for methods of reducing unemployment and supporting the labour market has become the basis of a search for new forms of employment. Performing work based on principles other than an employment contract for indefinite period of time and full-time belongs to non-standard forms of employment<sup>70</sup>. The research demonstrates that standard forms of employment are most desirable among employees, due to the nature of the legal relationship, durability, and protection. However, the situation on the labour market and needs of employers, as well as preferences of many employees related, for example, to combining employment and education or maternity, have this result that the need for non-standard forms of employment exists also on their part<sup>71</sup>. The most frequently used new forms of employment include: fixed-term employment contracts, part-time work, employment in the frames of flexitime systems, leasing of employees, but also temporary work, civil law contracts, and self-employment<sup>72</sup>. These forms also include work subject to specific working time and organisation regulations, such as task-based

<sup>68</sup> Cf. Z. Wiśniewski, *Deregulacja rynku pracy w krajach Unii Europejskiej*, [in:] *Deregulacja polskiego rynku pracy*, K.W. Frieske [ed.], IPISS, Warsaw 2003, pp. 56–61.; A. Poczowski, *Strategiczne aspekty rozwoju zasobów ludzkich*, [in:] *Przyszłość pracy w XXI wieku*, S. Borkowska [ed.], IPISS, GUS, Warsaw 2004, pp. 191–196.

<sup>69</sup> P.F. Drucker, *Spółczesność pokapitalistyczna*, Wyd. Nauk. PWN, Warsaw 1999, pp. 22–60.

<sup>70</sup> Cf. A. Chobot, *Nowe formy zatrudnienia. Kierunki rozwoju i nowelizacji*, Wyd. Prawnicze PWN, Warsaw 1997.

<sup>71</sup> Cf. *Elastyczne formy zatrudnienia i organizacji pracy a popyt na pracę w Polsce*, E. Kryńska [ed.], IPISS, Warsaw 2003.

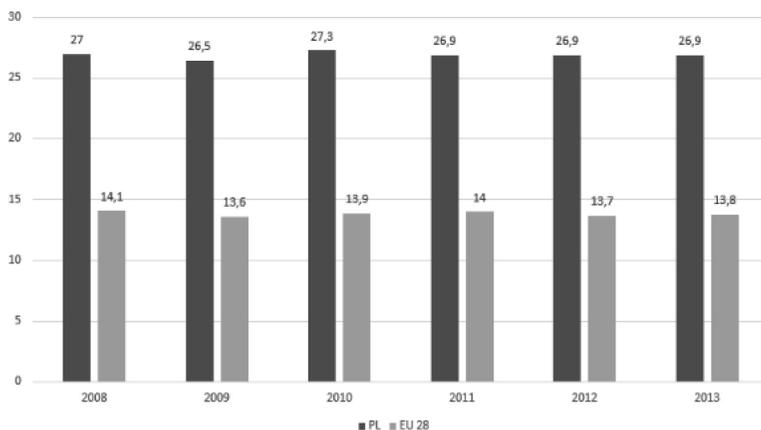
<sup>72</sup> Cf. A. Chobot, *Nowe formy zatrudnienia...*, op.cit.

### 3.5. Flexible Forms of Employment and Labour Relations

work system, telework, replacement work, and weekend employment.

Fixed-term employment contracts, i.e. engaging into fixed time labour relations make it possible for employers to flexibly adjust the level of employment to the needs connected with the enterprise's operation. Employment is based on provisions of the Labour Code, thanks to which employees enjoy the same guaranteed rights as those employed for indefinite period of time, e.g. the right to equal treatment in employment, the right of association in trade unions, the right to holiday and maternity leave, full scope of social insurance. The difference is related mainly to protection of durability of the labour relationship which is significantly limited. The percentage of those employed under fixed-term contracts in Poland is more than twice as high as in other EU member states.

Figure 22. Share of employees with contracts for specific time among all employed, Poland - EU (in %)



Source: The 2008-2014 Eurostat data.

The increase in the number of fixed-term contracts observed in Poland, exceeded the increase in such contracts in other countries of the European Union. They significantly grew in popularity - if

in Poland in the 1990s the percentage of such contracts featured among the lowest in the European countries and it did not exceed 5%, then in 2008 only Spain recorded a higher number of them<sup>73</sup>. In 2011, per 7,884.4 thousand full-time employees, 1,622.1 thousand were employed under fixed-term contracts.

Another non-typical form of employment, significant in terms of the size of this phenomenon, is self-employment - a single person economic activity. Three groups of people decide to engage in this form of employment:

- those wishing to create a company from scratch, develop it, and this way generate income and obtain professional satisfaction;
- those wishing to treat their activity as a free profession, be a freelancer providing services to many commissioners, taking advantage of the freedom offered by independent organisation of work;
- those who in connection with anticipated economic benefit or persuaded by an employer engage in or continue their professional career operating in the frames of non-agricultural economic activity.

Development of self-employment was an effect of introduction of tax solutions advantageous for people conducting economic activity - in 2004 a 19% flat tax was introduced. Self-employment in Poland is higher than in other countries of the European Union, despite a certain downward tendency, observed since 2002. The growing scale of application of this form of employment may result, among others, from the fact that a part of employers persuade their employees to enter self-employment in order to lower extra-wage costs of labour. This entails depriving these employees of the rights that hired workforce is entitled to. Yet, the scale of the self-employment phenomenon consisting in adopting a formal status of an entrepreneur by a hitherto hired labourer is difficult to determine.

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<sup>73</sup> In Spain, excessive percentage of fixed-term contracts resulted in adoption of countermeasures: employers who decide to replace fixed-term contracts with contracts for indefinite time receive tax relief from the state.

Part-time employment is a solution that is not so frequent in Poland. The share of part-time employment contracts in the EU did not exceed 18% in 2008. This solution enjoyed particular popularity among women, every third of them engaged in this form of employment, whereas in Poland not more than 8% of all employed worked shorter, while among women only every tenth one.

As the statistical data demonstrate, Polish labour market is dominated by traditional forms of employment such as employment contracts for indefinite time, however, it is possible to observe an increase in atypical forms of employment such as contracts for specific time, civil-law contracts, or self-employment. It is possible to expect that in time the role of such forms as part-time work or telework, the popularity of which is still rather limited, will increase. The share of flexible forms of employment is still small. The economy is still dominated by contracts for unspecified and specified time, while such forms of employment as part-time work, task-based working system, seasonal work, temporary work or work at weekends merely mark their presence and affect a few employees<sup>74</sup>. This means that Polish companies to a limited degree take advantage of possibilities of flexible employment.

Flexible forms of employment may improve the situation on the labour market, as attested by experience of the 'old' EU states, where they constituted an alternative to unemployment<sup>75</sup>. This is why a discussion on flexible forms of employment should not pertain to the question whether to implement them, but how to implement them so that they are advantageous for both parties to the labour relation. Much speaks in favour of a thesis that dominating economic trends, such as development of new IT technologies and intensive global division of labour, with shrinking human capital resources will require from labour market players a higher adaptation capacity than needed today. Such a development of the situation on the labour market in majority of the EU countries

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<sup>74</sup> G. Grotkowska, M. Socha, U. Sztanderska, *Poland*, [in:] *Flexicurity a relevant approach In Central and Eastern Europe*, S. Cazes, A. Nesporova [eds.], ILO, Geneva 2007, p. 181 et seq.

<sup>75</sup> Cf. *Elastyczne formy zatrudnienia...*, op.cit.

stirs little doubts. In the highly developed economies, the world of labour ceases to be dominated by traditional large industrial plants. In turn, we are witnessing an expansion of services, organised along market economy principles and provided mostly by small and medium-sized enterprises<sup>76</sup>. Unlike in the shrinking industrial sector, in the increasingly more important services sector, possibilities of inter-enterprise flexibility are limited by specificity of products (inability to store, seasonality) and smaller number of plants (e.g. smaller possibilities of sale). This forces a flexibilisation of institutional frames, in order to facilitate development of the services sector, which in developed economies is already the dominant employer.

To satisfy the growing need for freedom of action in terms of HR policy on one hand, and to avoid extremely negative social effects on the other, in theory two ways of shaping new labour relations are possible. The first method may pertain to direction in which modernisation of labour law norms is planned in terms of employment security guarantees leading to reduced security for employees. The second approach would ensure security of employment, while offering more freedom in shaping flexibility of wages and working time, e.g. by means of open clauses in collective labour agreements and agreements concluded at the workplace level and by extending parties' autonomy in the shaping of the content of the labour relations. The first concept of increasing flexibility assumes that the current level of employment security would be questioned *de iure* and the principles of protecting the permanent nature of employment relationship would be restricted. Greater freedom in termination of labour relations, i.e. 'more market on the labour market' seems possible if - as in the case of Denmark or Holland – acceptable trade-offs in the *flexicurity* model would be allowed; if employees are required to consent to lower stability of employment, then their social security must not suffer, i.e. an efficient social security system must be in place next to active labour

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<sup>76</sup> *The Evolving World of Work in the Enlarged EU. Progress and Vulnerability*, F. Eyraud, D. VaughanWhitehead [eds.], ILO, p. 41 e seq.

market policies.<sup>77</sup> The second concept is based on maintaining the current level of protection for employment relation but it requires for employees to consent in return to more flexible working hours and to an adequate differentiation of wages, while mechanisms of social dialogue form a certain guarantee as in the end they determine the conditions and principles for the wages and working time flexibility.

Analyses comparing situations in various countries suggest that employment security is *de iure* positively correlated with employees' mobility. However, for the involved parties - i.e. employers and employees alike - a fluctuation on a micro- or macroeconomic level that is connected both with costs, e.g. of seeking an employee and training him or her to work, and profits, e.g. new ideas of new employees and their better allocation, which is conducive to increasing the company's competitiveness<sup>78</sup>. In turn, flexibility as regards working hours and wages may have a negative impact on reconciling family and professional life while impacting positively on employment stability and professional development.

In face of changes on the labour market, labour law revisions should better consider interests of outsiders - people not pursuing paid employment and marginal groups, pushed out of the labour market or experiencing difficulties in entering it. Higher mobility of employment resulting from a labour law reform would not only open more possibilities for outsiders to engage in work, but it would also alter the direction in social expectations - from being oriented on maintaining the existing employment to being interested in new types of employment, which would be conducive to structural changes which are so indispensable for Poland in the face of challenges posed by present times. The times when success of employment policy was measured by decreasing unemployment rate are over, now the objective is to stimulate growth of employ-

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<sup>77</sup> Compare: Mimeo, Decent work in a moder welfare state: The case of Denmark. ILO Geneva, 2008.

<sup>78</sup> *Wandel der Erwerbsarbeit: Arbeitssituation, Informatisierung, berufliche Mobilitaet und Weiterbildung*, D. Werner, R. Jansen, K. Parmentier [eds.], „BeitrAB“, No 231, pp. 39-45.

ment. The labour market problems necessary to be addressed are: structural unemployment, low employment to population ratio in general, but especially among women, people 50+, and people with disabilities. One of the methods for handling the stimulation of growth in employment is flexibility in labour relations. The debate on flexibility of labour relations may not be reduced to a narrow discussion on non-typical forms of employment on one hand or stabilisation in labour relations on the other. It would be fitting to review and assess labour relations and regulations in force, both in the area of labour relations law, working time, and manner of shaping company sources of labour law, as well as the context of the functioning of the labour market and labour market policy, and the social insurance system. Only a holistic view on the system of labour relations will provide a perspective for compromising in this area by means of social dialogue.

The issue of extensive use of fixed-term contracts or employment without a contract, as well as civil law contracts and self-employment in Poland constitutes a subject of criticism coming from trade unions demanding from employers and government broader protection of traditional employment in the form of contracts for unspecified time. Employers' organisations on the other hand draw attention to significant limitations of Polish law in the scope of flexible management of working time and demand increased flexibility in working time management. The significance of social dialogue in development of flexible forms of employment beneficial for the employer, but with preservation of certain guarantees and protection for employees constitutes the best method for de-regulating labour law on the national level, but also on a workplace level. Positive models may be sought if only by the *flexicurity* concept, which by way of social dialogue is to combine flexibility of employment with employees' social security<sup>79</sup>.

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<sup>79</sup> Cf. J. Męcina, *Wyzwania polskiego rynku pracy*, [in:] *Polacy pracujący...*, p. 334–342.

### 3.6. Development of Law and Labour Relations

Changing political, social, and economic conditions required adjusting the law to new reality. Also, the law regulating labour relations required changes. Whereas not only the shape of the labour law is of importance, but also its observance. Observance of the labour law falls in the category of employer's most significant obligations, while for employees it is a *sine qua non* condition for a minimum of satisfaction from performed work. On one hand, labour law is this area of law which is exposed to critical opinions from parties to the labour relations - entrepreneurs and employees, whereas on the other hand, it is a very significant element for the shaping of the sense of rule of law, social justice, social security, but also assessment of conditions of conducting economic activity by employers. Each change of the *status quo* signifies a disturbance of certain balance which forms against the background of legal solutions in force and factual assessment of the situation by an employer and employee, and usually it weakens the position of one of the parties, while reinforcing the other.

Changes to the labour law, sectoral and industry-specific changes, labour market characteristics, relations along the line employer - employees, as well as the condition of social dialogue and its impact on labour relations are important issues accompanying the systemic transformation. A risk of high unemployment influenced attitudes of both employers and employees. It signified increased efforts on the part of employees aimed at stabilising employment. In the case of elderly people (50+), it frequently boiled down to taking advantage of all possibilities of obtaining the right to social insurance benefits, which were easy to obtain in connection with restructuring of enterprises, and conditions for acquisition of rights to earlier retirement.

The labour law has undergone far-reaching changes during the entire process of transformation and integration with the EU. In 1989 a complex and long-lasting process of departure from full-time, centrally managed by order-and-distribution methods towards market economy commenced in Poland. The choice of evo-

lutionary way in many spheres of economic and social life signified a slow shift in regulations hitherto in force or supplementing them in order to adjust them to the conditions of a new socio-economic system. Changes in the labour law system during the last 25 years constitute an example of 'revolution through evolution'. On one hand a number of new and important labour law institutions has been introduced, including mass lay-offs, organisational and legal transformations of enterprises, or the Guaranteed Employment Benefit Fund, while on the other hand, regulations 'tested' in the previous system have been kept. Although many provisions required no changes, e.g.: majority of labour relation law elements, principles of material liability of employees, labour protection and claims from the labour relationship, still the majority of institutions of labour law had to be subjected to critical assessment of their adequacy in new economic and social conditions and their compliance with the European law.

Characteristic is the fact that within this period the labour law has undergone tens of changes and amendments, but has not lived to see a thorough reform, although such postulates were formulated, and even an attempt at preparing an in-depth reform was embarked on<sup>80</sup>. Frequent changes of the labour law, sometimes very detailed, extremely negatively impacted the sense of stabilisation of labour relations and rights of parties - both employees and employers. In turn, its low flexibility and over-regulation rendered it maladjusted to the needs of modern market economy. These changes, sometimes performed even several times per year, in the greatest extent affect small companies without specialist HR departments which also may seldom count on permanent legal services. Instability of law affects employees, too. Difficulties in application of provisions are confirmed by studies into the SMSE sector, as well as statistics of the National Labour Inspection (PIP)<sup>81</sup>,

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<sup>80</sup> T. Zieliński, *Problemy części ogólnej prawa pracy*, [in:] *Prawo pracy RP w obliczu przemian*, M. MatejTyrowicz, T. Zieliński [eds.], Wydawnictwo C.H. Beck, Warsaw 2006, p. 8.

<sup>81</sup> Cf. *Sprawozdanie Głównego Inspektora Pracy z działalności Polskiej Inspekcji Pracy za lata 2005–2008*, PIP, [www.pip.gov.pl](http://www.pip.gov.pl).

and the number of given advice, but also applications and orders. Finally, lack of cohesion of changing provisions of law is further confirmed by an analysis of case-law of the Supreme Court, indicating entirely different consequences of regulations, different from assumptions, different from conclusions possible to draw from substantiation of the changes. The Constitutional Tribunal also examined the constitutional nature of changes on numerous occasions.

A characteristic phenomenon accompanying changes in the labour law is the growing activity of social partners, who increasingly more often directly engage not only in the process of providing opinions, but also agreeing on directions of changes. In connection with Polish membership in the European Union, this activity will continue to grow<sup>82</sup>. In the times of the People's Republic of Poland, the role of social partners in shaping norms of labour law was negligible for obvious reasons. In Western Europe, labour law was to a large degree regulated by collective agreements concluded by free trade unions and employers or their organisations. Changes in Polish labour law transpiring along with the process of transformation during the first years were of strictly governmental and specialist origin, while trade unions or economic groups' attempts at influencing the legislative process led to chaos and difficulties in precisely determining directions of changes. Numerous postulates for changes have been formulated for years, frequently drastically differing in terms of objectives and motives, but formulated with equal intensity by both trade unions and entrepreneurs. These postulates usually have opposite vectors, but what is even worse, both trends use arguments rooted in labour market practices, yet originating from two opposite points of view. Both parties are convinced about priority of their rights, while treating the other party's arguments more like an attack against - respectively - economic freedoms or employee rights, rather than search for a compromise in the process of reforming labour law.

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<sup>82</sup> J. Męcina, *Dialog społeczny a integracja z Unią Europejską*, IPS UW, Warsaw 2005, pp. 38–42.

Parties' attitudes are justified by an extremely dynamic situation on the labour market and high intensity of changes and never realised announcements of a thorough reform of this area. Conducting a full analysis of changes to-date and recapitulating them is difficult. In terms of input conditions, it is necessary to highlight lack of stabilisation and sense of imbalance in labour relations signalled by both parties - the trade unions and employers. This process overlapped with so-far unheard-of structural changes in economy, in particular privatisation and emergence of the SME sector, which has already become an employer for more than a half of all employed. Differences in size of enterprises, ownership sector, and level of unionising influence the characteristics of labour relations.

In Poland, changes in the labour law were connected to an increasingly stronger influence of the European labour law system. Attempts at supplying a recapitulation of these changes may be seen both in the literature of the subject, government's activities, assessments and postulates formulated by trade unions, employers' organisations, experts, and public opinion. It is worth taking a critical look at dynamics of labour law development through the prism of new conditions of operation, but also advantageous and disadvantageous phenomena observed in labour relations on the grounds of daily application of these regulations. The analysis is focused on several planes, i.e. it pertains to the changes in the labour law resulting from the new nature of labour relations in market economy and labour market requirements, harmonisation of Polish labour law with the European law, and finally, from the new role of social dialogue in exercising an influence on labour law regulations.

Transformations of the economic structure were ongoing in parallel. On one hand they consisted in privatisation of state-owned enterprises by Polish and foreign capital, on the other - in direct domestic and foreign investments and impetuous increase in the number or newly created small and medium-sized enterprises, especially micro-enterprises, and self-employment. It is possible to put forth a thesis that insofar as all entities are subject to identical labour law standards (the only exception is exclusions for companies employing fewer than 20 employees in the scope of shap-

ing of company labour law sources and application of provisions on mass redundancies), then the scope of application of working standards differs from one sector to another. Working conditions and observance of labour law provisions are assessed to be the best in the public sector as well as in large and medium-sized private and foreign companies. In turn, observance of the labour law raises the most reservations in the sector of small and micro-enterprises. It is also this sector that most frequently indicates burdens stemming from provisions of labour law and extra-wage costs of employment and a hiatus between provisions of the labour law and realities of operating a small company<sup>83</sup>.

Problems of the Polish labour market extremely strongly influenced solutions in the area of labour law, but also made a substantial impact on employees' situation. During the entire period of transformation the weakening of employees' position on the labour market could be observed, whereas in the area of labour law it was also possible to see a tendency for compensating the employee's weakening position by means of developing protection and increasing employer's costs related to employment and professional activation.

The costs of employment and bureaucratic obligations pertaining to labour relations increased significantly within a relatively short period of time. This included the introduction in 1989 of mandatory severance for employees made redundant for reasons attributable to the employing institution, creation of the Labour Fund in 1990 with the employer's contribution equalling 2.45% of the insurance contribution assessment basis per each employee, introduction in 1991 of the obligation of the employer giving employment to at least 50 workers to pay contributions for the State Fund for Rehabilitation of Disabled Persons; since 1998 this obligation has been extended to include employers employing at least 25 workers<sup>84</sup>. In 1992, the social insurance contribution was raised by 2% – from 43% to 45%, and in 1994 the Guaranteed Employ-

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<sup>83</sup> Cf. *Polacy pracujący...*, s. 278–284.

<sup>84</sup> Cf. W. Misiąg, E. Malinowska, *Finanse publiczne w Polsce*, IBnGR, ODiDK, Gdańsk 2002.

ment Benefit Fund was established with the mandatory contribution initially amounting to 0.5% of the social insurance contribution assessment basis, in time decreasing to 0.1%. Since 1995, for the time of being incapable of work as a result of a disease during a total joint duration period of 35 days within a calendar year, since 2003 reduced to 33 days, the employee retains the right to 80% of remuneration paid by the employer. Another burden introduced since 1996, is the employer's duty to establish a deduction for the Company Social Benefits Fund (ZFŚS), which presently concerns only employers giving work to the personnel exceeding fifty workers, however employers employing personnel of fewer than 50 and who have not established the Company Social Benefits Fund, once a year pay their employees a holiday benefit. Since 1996, each employer is obligated to pay an employee a retirement severance equalling 1 monthly remuneration. The balance of costs generated by these changes signifies an average increase of the personal fund by 30%, which substantiates companies' arguments regarding increased costs of employment, but at the same time it directly impacts the phenomenon of an increasing grey zone<sup>85</sup>.

Another direction of changes that generated costs of employment and conduct of economic activity included mandatory outlays on Occupational Health and Safety. The costs of preparing machinery and devices to OHS standards in connection with Poland's accession to the EU aside, the last 25 years have seen an introduction of a number of changes generating direct personal costs. Obligations to form an occupational health and safety service, to cover costs of periodical medical tests of employees working in hazardous conditions, and medical control tests (1991) were imposed on enterprises employing the personnel of more than 10. An obligation of carrying out tests and measurements of factors posing threat to health in the working environment at least once per 2 years, whereas in the case of exceeded Maximum Concentration and Maximum Intensity values - once every 6 months (1993).

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<sup>85</sup> J. Męcina, *Prawo pracy w przebudowie*, „Zarządzanie Zasobami Ludzkimi” 2003, No 3–4, IPSS.

Employers giving employment at production, storage, and commerce in comestibles were obligated to obtain qualifications in the scope of basic hygiene-related issues (1994). Employers cover costs of preliminary, periodic, and control tests of all employees, they have the duty to provide specific employees and managing personnel with preliminary and basic occupational health and safety training, and to appoint OHS committees (1996). The obligation to equip employees operating stations with screen monitors in sight-correction glasses was introduced in 1998, whereas the year 2004 brought an introduction of the obligation of performing employee's occupational risk assessment. These burdens, although in majority substantiated, contributed to increasing costs of running economic activity and confirm the thesis that subsequent changes in the labour law and in the social insurance generate additional costs. Although the need to create safe and harmless working conditions remains beyond any doubt, accumulating these obligations within the period of only several years constituted a palpable burden for many Polish companies, particularly in the SME sector.

The third direction of changes which also contributed to an increase in costs of operation, are obligations related to costs of labour and costs of changes in provisions on working time and holiday leaves. The year 2004 saw an introduction of employer's additional information obligations in terms of the content of the labour relation and planned organisational changes. The assessment of these solutions substantiates an opinion that during the entire analysed period, by increasing working standards, labour law generated costs, which although substantiated, did not remain without influence on the situation of companies and labour market. In the analysed period, especially in the years 1999–2003, when the unemployment level was high as a result of a radically deteriorating economic situation, a dangerous phenomenon of violating employee rights and employers' renegeing on their obligations towards employees was observed in labour relations. The most crucial issues included untimely payment of remuneration and use of civil law agreements and self-employment instead of concluding employment contracts. In conditions of high unemployment,

abusing civil law agreements may have led to social marginalisation of weaker professional groups. Therefore, a change to labour law provisions was made with the view of limiting negative phenomena, among others by introducing into the Labour Code limitations in the scope of transforming employment contracts into civil law relationships, including self-employment (Article 22 of the Labour Code). Since the times of the international crisis, that is the end of the first decade of the 21<sup>st</sup> century, trade unions' postulates, next to wage-related issues, have been focused on such changes to the labour law which will limit the possibility of using fixed-term employment contracts in favour of employment contracts for indefinite time or employment without contract as an alternative for a labour relation. An analysis of employment without contract will be conducted in the following chapter.

Analysing changes in the labour law to have occurred within last 25 years, we most often look at them from the point of view of adjusting this area of the law to European standards. Studying this process, W. Sanetra divides the time which has lapsed since 1989 into three periods. The first of them covers the years since the entry into force of the treaty of association between the Republic of Poland and European Communities and their Member States, which was concluded on 16 December 1991, but entered into force only on 1st February 1994. The second period commenced with the moment of opening of our country's EU membership negotiations, that is at the end of March 1998. The third period commences with negotiations, signing of the accession treaty, and Poland's accession to the European Union on 1 May 2004<sup>86</sup>. This division should probably be supplemented with the fourth period, coinciding with negative outcomes of the financial crisis, which painfully affected the entire EU. Although in this period Poland avoided a recession, nevertheless, the effects of the slowing down were felt both in Polish economy and on Polish labour market in the years 2009–2013. During this period, the most important change consisted in introducing solutions

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<sup>86</sup> *Europeizacja polskiego prawa pracy*, W. Sanetra [ed.], IPISS, Warsaw 2004, pp. 15–30.

in the scope of flexitime, with the possibility of extending settlement periods, and regulating flexible or intermittent working time. Prolonging the maternity leave and regulating parental leave to the total of 12 months was another important change. Also in 2014, the works commenced with the aim of limiting the use of fixed-term contracts and introducing obligatory social insurance contributions on contracts of mandate, as the most widespread form for replacement of employment in the frames of the labour relation with an employment without a contract. Undoubtedly, it is possible to state that the period of the financial crisis resulted in the growth of unemployment and deterioration of labour quality, among others by an increase in various forms of employment without a contract. The entry in 2014 on the path of economic development and improvement of the situation on the labour market commences the period of discussion about improvement of labour law in Poland.

Undoubtedly, standards of the European Union to an increasing degree shape both the content and the vision of development of labour law and system of labour relations in Poland. This opens a perspective for new changes to labour law, both individual and collective, which will facilitate the improvement in quality of employment, while maintaining flexibility of Polish labour law. Therefore, in the area of changes to labour relations, the policy of *flexicurity* will be gaining in significance; to be effective, this policy requires not only adaptive processes in the labour law, but also in the employment law, i.e. functioning and solutions of the labour market policy. Negative effects of the financial crisis and deteriorating quality of employment along with the observable growth of unemployment impacted the quality of labour. It can be expected that as of 2015 more attention will be paid to the question of the quality of work in Poland.

### **3.7. Influence of Social Dialogue on Regulating Labour Relations**

Social dialogue is considered one of the attributes of a democratic society and the best way to resolve conflicts as well as an important mechanism of influencing legislative process, in par-

ticular in the fields of labour law and social policy<sup>87</sup>. Social dialogue as defined by the ILO can take place on three levels: providing information, consulting and negotiations. In most countries this dialogue takes shape of collective negotiations and two types of indicators can be used to measure it. The first one pertains to legal and administrative regulations: Conventions No 87, No 98; the Collective Bargaining Convention, 1981 (No 154), namely the ratification rate; the second is based on the number of ongoing negotiations (share of employees currently covered by those). Yet another aspect is the participation of employees in management of their enterprise. However, also in this case there are no simple methods of measuring the level. The ILO does not provide detailed guidance, only general principles can be found in: Cooperation at the Level of the Undertaking Recommendation, 1952 (No 94), the Consultation (Industrial and National Levels) Recommendation, 1960 (No 113). Still, the best approach is to research in detail the legal, institutional and procedural situation in each country. Documents and papers published by the ILO draw attention to the fact that there is no simple method available to measure the level of participation of social partners in creating law at national level<sup>88</sup>.

A visible polarisation of views presented by trade unions and employers in terms of the final shape of labour law, model of labour relations and functioning of the labour market is manifest in an ever-increasing activity of social partners in discussions regarding directions of changes, in formulating postulates, and engaging in negotiations in this scope. This thread seems to be of particular importance, since the role and significance of social partners in reacting to market changes and phenomena on the labour market in the context of functioning of this area of the law is visibly increasing, particularly after Poland's accession to the EU. This is why the meaning of social dialogue in the process of negotiating changes

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<sup>87</sup> Baccaro, Lucio, 2001. Civil society, NGOs and decent work policies: Sorting out the issues. Discussion Paper No 127, Geneva, International Institute of Labour Studies.

<sup>88</sup> *Organized Labour in the 21st Century*, A.V. Jose [ed.], Geneva, International Institute for Labour Studies.

to labour law on the European and national levels will be increasing<sup>89</sup>. Therefore, on one hand it is worth taking a critical look at underdevelopment of collective labour agreements as a formula for decentralisation of labour law and democratisation of labour relations, while on the other hand it is also worth noting the increasing significance of social dialogue at the national level, especially of the Tripartite Commission for Socio–Economic Affairs for developing new solutions in the labour law area. The Tripartite Commission itself, or maybe otherwise representative trade unions and employers' organisations, despite the crisis in dialogue expressed by the suspension of tripartite talks by trade union organizations, display a huge activity not only in formulating postulates, but by participating in informal meetings and agreements concerning key changes to the labour law. In this context, it is worth emphasising the role of the ILO expert mission, which in mid-2014 engaged in consultations on changes in the collective labour law, including the act on trade unions and the right of association, the act on collective dispute resolution and collective labour agreements, thus contributing to creating space for negotiations and to building plans of returning to tripartite dialogue<sup>90</sup>.

In many European countries collective labour agreements constitute the basic source of labour law, defining employee rights and relations between employers or their organisations and trade unions. In Poland, next to the regulation of standards in the Labour Code, there is a possibility to negotiate sectoral and enterprise level collective labour agreements. The overarching principle according to Polish law is the principle of more advantageous solutions prevailing. This means that employment and wage related conditions negotiated under a collective agreement cannot be less advantageous than the statutory provision. Collective labour agreements

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<sup>89</sup> J. Męcina, *DIALOG społeczny w Polsce a integracja z Unią Europejską*, IPS UW, Aspra-Jr, Warsaw 2005, pp. 38–42.

<sup>90</sup> The ILO mission was invited by the Polish government and offered technical assistance. It conducted consultations with social partners and the government thus contributing to the reestablishment of tripartite dialogue as of early 2015.

may be concluded at the level of a workplace, but also on a level higher than a workplace, especially sectoral, regional, or even national<sup>91</sup>. The questions to be decided by partners on the principle of autonomy in the frames of a collective labour agreement by introducing departures from the generally binding standards regulated in the Labour Code and in other statutes are not numerous. They include, among others, certain regulations of working time systems, wage payment mode, company social benefits fund.

With trade unions' monopoly for concluding collective labour agreements and arrangements, the first formal limitation preventing their conclusion was and continues to be the low level of unionising, especially in the private and SME sector. Another limitation came as a weak condition of Polish companies, especially during the first decade of the transformation, which - along with the working conditions standards in force and costs of labour in relation to average productivity in comparison with the EU countries – for many companies constituted a barrier in incurring further obligations. In conditions of unfavourable economic situation at the end of the 1990s, most enterprises avoided incurring additional obligations, especially through collective labour agreements. The situation changed in the years 2005–2007 as a result of an improving standing of Polish companies and difficulties with recruiting and keeping employees. It opened a space for the increasing of working standards with the view of stabilising employment and offering more competitive working and wage conditions; it may also be conducive to development of collective labour agreements<sup>92</sup>. The crisis from the turn of 2008 and 2009 adversely impacted development of collective labour agreements in Poland and it persisted until the end of 2014.

It is worth emphasising that until 2001 unwillingness to regulate labour relations by means of agreements was connected with the existing legal status. Regulations of the Labour Code rendered

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<sup>91</sup> J. Wrątny, *Nowe układy zbiorowe. Przełom czy kontynuacja?*, IPISS, Warsaw 1998, pp. 11–13.

<sup>92</sup> G. Goździewicz, *Układy zbiorowe pracy. Komentarz*, Oficyna Wyd. Branta, Toruń 1997.

collective labour agreements practically interminable without consent of trade unions which finally discouraged employers from entering into such agreements, and this way from incurring obligations without possibility of terminating them.

Development of sectoral agreements, whose regulations maintain legal barriers discouraging employers from using them, encounters even greater difficulties<sup>93</sup>. The system of sectoral agreements does not have the space for development also due to strong diversification and disintegration of former sectors which operated yet in the times of the People's Republic of Poland. Currently, these agreements as a rule pertain only to traditional public sectors of economy, such as mining, railway transport, and, until recently, metallurgy or power industry. In turn, newly arising sectors are so strongly diversified in terms of the ownership sector, size of enterprises, and their potential, that it is difficult to speak of space for unification of labour standards on the sectoral level, all the more so that majority of them are small or medium-sized entities without trade unions, and frequently not affiliated with any sectoral organisation of employers. In turn, in new modern sectors of economy, such as media, transport, insurance, IT, financial or developer services, there is no representation on the part of trade unions. In 2012, only 169 sectoral collective labour agreements were in force in Poland and their regulations covered merely 390 thousand employees<sup>94</sup>.

The listed conditions have this effect that collective labour agreements in Poland only to a limited degree fulfil one of the fundamental functions of decentralising regulations in the scope of labour relations, they do not give a possibility to depart from statutory regulations in many crucial areas of labour law, especially those related to working time. Neither do they offer wider possibilities to render provisions more flexible, which would facilitate adaptation

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<sup>93</sup> An example of such a provision is Article 241 of the Labour Code making it impossible for an employer associated with an employers' organisation being a party to the sectoral agreement to terminate the agreement also after terminating membership in this organisation.

<sup>94</sup> Data from the the Ministry of Family, Labour, and Social Policy, December 2010.

of solutions in terms of labour relations to the needs of a specific enterprise and its personnel<sup>95</sup>. It seems that justified is the thesis proposing that insofar as collective agreements as a form of more advantageous regulation of working and payment conditions may have a chance of becoming a subject of compromise at the workplace level, whereas sectoral regulations under the present legal status and in face of the lack or diversification of sectoral representations both on the side of trade unions and employers are faced with obstacles in their development. In Polish conditions, employers more often avoid regulations through collective agreements, opting for working regulations and remuneration regulations as well as employment contracts as fundamental sources regulating labour relations within the enterprise. However, according to Polish legislation, internal rules and regulations, in particular those pertaining to wages, are also subject to collective bargaining.

Development of collective labour agreements may be promoted by progressing processes of globalisation of economy. Already today employers from various sectors are searching for methods of unification of minimum conditions for remunerating employees with the view of counteracting dishonest practices, understating rates or employing in the grey zone, and therefore social dumping of companies seeking contracts in the frames of public tenders. The space for agreements is also being opened by improvement in the standing of enterprises, accompanied by a simultaneous improvement of the situation on the labour market. Competition on this market will force development of wage regulations allowing employers to reduce wage pressures. Other regulations in the scope of continuous education, specific working time systems, employee retirement schemes or schemes aimed at provision of other benefits, e.g. in the scope of disease prevention and rehabilitation, paid for or co-financed by the employer, should also be developed. It seems that justified is the view that a bold opening of the negotiation space will facilitate faster transformations of the

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<sup>95</sup> M. Seweryński, *Wybrane problemy konstytucyjne kodyfikacji prawa pracy*, [in:] *Konstytucyjne problemy prawa pracy i zabezpieczenia społecznego*, Wyd. Uniwersytetu Wrocławskiego, Wrocław 2005, p. 12.

labour law in direction of adapting it the changing economy, competition conditions, but will also help to better meet challenges related to increasing wage expectations, employee development, and improvement of relations along the employer - employee lines. The negotiation based system of concluding collective agreements is also a method to exercise a socially-controlled process of adapting employment and remuneration conditions to the sector of the economy, number of employees, company developmental potential, fulfilment of training needs for both employees and employers, reconciling professional and family life considering employee's personal and professional situation<sup>96</sup>.

In the first phase of transformation, changes in the labour law occurred mainly inspired by the government, and they more often pertained to an introduction of entirely new institutions or adaptation of solutions to the needs of market economy, as was in the case of mass redundancies, the act on employment and unemployment, or regulating organisational and legal changes. The next stage of changes introduced in the labour law was realised by the government in order to ensure guarantees for employees, usually by introducing new institutions into the labour law. Many of these changes signified higher standards in labour relations, nevertheless, they were financed from employer's funds, whereas a part of these changes meant transferring the costs of public activities or social guarantees from the state onto the employer. An exceptional event against the background of experiences from the transformation period were autonomous negotiations regarding changes in the labour law engaged in at the beginning of the 2000s by the All-Polish Agreement of the Trade Unions (OPZZ) and Polish Confederation of Private Employers Lewiatan. Then negotiations ended in an agreement and changes to labour law, aimed at reducing bureaucracy and rendering certain solutions more flexible, were implemented.

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<sup>96</sup> Sectoral changes which are one of the most significant characteristics of development of economy and employment structure mean a future dominant position of the services sector which is governed by other employment characteristics than the formerly dominant industry.

It is worth emphasising that not only did change in labour law adopted in the course of negotiations between the OPZZ and Polish Confederation of Private Employers Lewiatan give rise to a current of thought focused on streamlining the labour law and adapting certain solution to market economy principles, but also initiated the process of construction of new institutional frameworks for social dialogue with the new Tripartite Commission and participation from the largest trade union organisations and representation of private employers and crafts. After the experiences of autonomic talks with participation of two organisations, attempts were embarked on to develop more extensive changes in the area of individual and collective labour law in the frames of the Tripartite Commission for Socio-Economic Affairs. Also, the 2013 crisis of the tripartite dialogue served to reinforce the autonomic dialogue in Poland, which, provided that the new tripartite dialogue institution is quickly reconstructed, may be conducive to reaching agreements in this area. This should also be further facilitated by an already mature discussion on directions of changes in the collective labour law, which was prepared by the government and enjoys a tentative approval on the part of trade unions and organisations of employers.

The outlined processes of changes which have transpired in labour relations during the period of socio-economic transformation and European integration point to the increasing significance of social dialogue in this process. Social dialogue plays a role in shaping new characteristics of labour relations, related to reacting to a situation on the labour market, changes to the economic structure, costs of labour, disadvantageous drop in professional activity, and finally changes to labour law provisions and development of new flexible forms of employment. Against the background of the conducted analysis, indicating characteristic features of labour relations in Poland is possible:

- as a result of changes to the labour law, labour relations in Poland have become an element of market economy, while new phenomena, such as mass redundancies or organisational and legal transformations have a strong impact on situation of employees.

- Labour market forced a whole range of adaptive processes, unemployment - a phenomenon weakening the employee's position in labour relations - emerged, along with a number of its disadvantageous characteristics, such as increased risk of unemployment among people 50+, youngsters, women, a decrease in professional activity.
- Although an employment contract for indefinite time is still a dominant form of employment, the role of flexible forms of employment is growing; a fixed-term contract, temporary work, part-time employment, but also work performed in the frames of employment without contract, especially civil law agreements and self-employment. The catalogue of new forms of employment introduced into Polish labour law and civil law is much broader, and it is made complete with flexible forms of labour organisation and working time.
- changes affect not only the basis of employment, but also the content of labour, which impacts development of new technologies and structural changes in economy, especially the growth of significance of services in the employment structure.
- Structural changes force adaptive processes on the part of employees and employers, the share of people with higher education in the employment structure is increasing, the structure of education is also changing, forms of continual education and training are developing.
- Structural changes also signify a new sectoral structure of economy and structure of employment, a dominating share of the private sector and the small and micro-enterprise sector.
- Labour relations are affected by labour market and wage-related regulations, labour migrations, extra-wage costs of labour and minimum wage regulations.
- Changes can be observed not only in regulations concerning collective labour relations and representation of interests, still low degree of unionising on the part of employees and employers, deprivation of representation of a substantial part of private sector labourers, especially in small enterprises and those employed under no employment contract.

Both social dialogue itself and its role were important during the analysed period as they influenced labour relations, in particular at an enterprise level. As demonstrated in this analysis, the role of social dialogue at sectoral level, especially during the last decade, was less pronounced. Still, when it comes to influencing labour law legislation, the role of social dialogue at the national level was significant. Through participation in consultations as well as in tripartite negotiations within the Tripartite Committee and its topical teams social partners influenced the shape of social legislation. Tripartite dialogue was suspended during the period 2013 – 2015. The crisis of social dialogue was conditioned among others by the fact that the government adopted working time regulations without the consent of trade unions and by non-realisation of some trade unions' postulates. Social partners were also exasperated by restrictive fiscal policy justified by the government by the consequences and impact of the economic crisis. Nevertheless, the importance and the role played by social dialogue in Poland are best confirmed by the fact that all parties search for possibilities of re-establish this dialogue. Only social dialogue can guarantee to work out a coherent and socially acceptable compromise between economic and social objectives of development. This search for opportunities to return to tripartite talks resulted in an important discussion on the new shape of social dialogue in Poland. A dialogue, conducted in new institutional and organizational formula that would better respond to contemporary challenges of the labour market and labour relations. A compromise between flexibility which is very much needed by the competitive economy and the key values of the ILO's Decent Work<sup>97</sup> concept as well as the European social model, characterised by such attributes as labour security and quality, should be the inspiration and the basis for solutions in the field of labour relations. Social dialogue on the compromise between flexibility and security, between competitiveness and social cohesion is needed in order to face the challenges of the future of labour relations in Poland.

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<sup>97</sup> Measurement of Decent Work, Discussion Paper for the Tripartite Meeting of Experts on the Measurement of Decent Work, ILO, Geneva, 2008.

# Non-Standard Forms of Employment in Poland in Light of Labour Law and the Labour Market

## 4.1. Non-Standard Forms of Employment and the Labour Law System

Non-standard forms of employment are scrutinised by lawyers, economists and specialists in social policy. There is constant deliberation about the defining features of various forms of work (differentiating features as well as similarities) and about the necessity of determining the limits to which parties are free to shape the legal terms of atypical work arrangements<sup>1</sup>. Today, non-standard forms of employment are becoming increasingly popular – but at the cost of traditional forms of employment. In consequence, bonds with the employer are cut and ‘directed work’ is displaced by ‘autonomous work’; this causes the number of workers not covered by protective legislation to rise. The lack of workers’ affiliation with the workplace limits the possibilities of association in trade unions, which can in turn facilitate abuse on the part of the employer. The protection of workers is particularly important in financial crises and during periods of high unemployment, i.e. in an employer’s market where atypical employment relationships thrive.

With regard to the evolution of labour law, one may distinguish certain stages in the development of its doctrine and notions. Thus,

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<sup>1</sup> *Wstęp do nauki prawa...* [Introduction to law...], p. 101.

the latter half of the 20<sup>th</sup> century saw an expansion and advancement of labour law, with regulation spreading to different forms of labour relations. The need to further extend regulation, (particularly as a means for workers' protection) on non-standard forms of employment was identified in this period. Also, clear limitations for the use of atypical employment arrangements were called for.

The last decades of the 20<sup>th</sup> century, on the other hand, brought about an expansion of new forms of labour relations and an increase in their share of the market. Conditions for economic growth changed and many economies, particularly in Europe, found themselves in a kind of transitional period from a 'Fordian' to a 'post-Fordian' economic model; changes in the structure of the economy brought about the dominance of small and medium size enterprises (SMEs), growth of the service sector, as well as the globalisation and digitalisation of labour relations. Finally, the weakening power of collective agreements and a 'decentralising' of labour relations may be observed. In Europe – and shortly after in Poland, which was then transitioning to a market economy – different forms of non-standard forms of employment (civil law contracts, self-employment, managerial contracts and other specific arrangements) spread in this period. In Poland, these changes took a form unprecedented in quantitative as well as qualitative terms.

Problems connected with negative consequences of departing from the traditional protection of employment relation are being indicated in the ILO programme documents. In 1999 the ILO proposed a new set of objectives 'Decent Work for All'<sup>2</sup>. According to the Decent Work for All concept three elements are important for achieving decent work: need to work, respect for basic labour standards and will to improve labour quality. Employment is the first element of decent work. Achieving full employment is one of the main objectives. In a situation when the economy is not able to propose a sufficient number of jobs, supplementary job programmes can be of assistance. Respect for fundamental labour standards is the second element, set forth among others also dur-

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<sup>2</sup> *Fields GS., Decent work and development policies*, ILO 1999.

ing World Summit on Social Development – prohibition of forced labour and child labour, freedom of association, prohibition of discrimination. Declaration on Fundamental Principles and Rights at Work of 1998 was another key document that preceded the ILO Decent Work Agenda and it contained prohibition of forced and child labour, prohibition of discrimination. The ILO focuses not just on job creation but also on the quality of these jobs. There has to be a relation between the number of jobs and their quality<sup>3</sup>. From this point of view, remuneration is important. Even before the international financial crisis half of the world's population lived in absolute poverty and the number of working poor was around 550 million. The fact that remuneration is not a part of international labour standards is an important problem from the point of view of making the process of shaping quality and conditions of labour truly international. Sanctions against countries which do not comply with standards are applied rarely. Remuneration should remain in close relation with the economic situation of a country in question but, as underlined by the ILO cannot mean that states would establish minimum standards for decent work as part of their public policy. The ILO promotes social dialogue as the most effective means to introduce and improve labour standards in individual countries.

However, the expansion of non-standard forms of employment was and constantly is followed by an evolutionary transformation of the labour law system: in order to limit the expansion of non-standard forms of employment and to make work contracts more appealing, new forms of work within the employment relationship are sought, working time and the organisation of work are better regulated, and new standards are set. This process is advancing even at the cost of certain revisions in the very fundamentals of labour law and its basic premises, its role in protecting workers' rights in particular. One might ask where the reasons for the popularity

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<sup>3</sup> ILO, 2000 Employment-intensive growth in the context of globalization. Speech by the Director-General of the ILO to a public meeting on a Social Summit 5, organized by the Swiss Agency for Development and Cooperation in Bern, 11 May 2000.

of non-standard forms of employment lie and where this serious evolution of the labour law system – which includes many forms of employment, such as fixed-term contracts, contracts for a trial period, apprenticeship contracts, telework, work sharing, part-time work, seasonal work and many others – comes from. What are the reasons for the increase in the flexibility of working time, payment terms, time management, the organisation of work, and the terms of contracts for specific- or project-based work? Can the need for compromise between the requirements of the economy and the protection of workers' rights account for these changes in labour law? Or might one attempt an explanation on the grounds of the tension between the Keynesian (i.e. funded on neo-corporatist principle) and the neo-liberal (i.e. one driving labour market flexibility and deregulation) economic models? In my opinion such disjunct and polarised divisions don't explain these changes very well, and a new perspective on the theory and the practice of labour law clearly shows an evolution of views both in terms of doctrine and the judicature. The European labour law has been under pressure from new socio-economic circumstances – such as unemployment and a fall in employment figures – which shifted the boundaries of compromise in dialogue among social partners, between economic reality and social policy, particularly with regard to the protective role of labour law. The priorities of employment policy and the actualities of the labour market (including growing flexibility in work organisation) force one into a change of perspective and a more comprehensive analysis of labour relations, or broader – employment itself. Such an analysis must take note of positive developments as well as negative consequences.

The main challenge facing labour law in its current form is the protection of the *status quo* with regard to workers' rights. The director general of the International Labour Office made this clear by averring that the state has a key part to play in creating the institutional ramifications necessary for maintaining the balance between businesses' need for flexibility and workers' need for security – in order to face the challenges of modern economy while guaranteeing decent work. A dynamic strategy for managing changes in the

labour market should lie at the heart of domestic policymaking<sup>4</sup>. As the International Labour Organisation pointed out in its introduction to recommendation No 198 concerning labour relations, serious changes in the organisation of work and the legal system's adaptation to these changes have made it increasingly difficult to identify who is employed (i.e. has an employment contract), and who is not<sup>5</sup>. The main problems mentioned in the report are ambiguous definitions of the rights and obligations of the parties concerned, attempts at concealing conditions that would ordinarily imply an employment contract and deficiencies in the wording of universally applicable labour law regulations.

There are a number of ways of discerning the legal character of employment. Three basic methods are usually mentioned in this context. The first is the **method of statutory definition**. In a legal order wherein this method is applicable, a legally binding definition of employment with an employment contract is in place; should a labour relation fulfil this definition, it becomes a labour relation of work with an employment contract. Austria, Belgium, Finland, Italy, the Netherlands, Portugal, and Spain are some of the countries that adhere to this regime.

The second method uses definitions elaborated in judicial decisions based on particular cases. After scrutinising labour relations, with particular regard to such features as subordination, continuity of employment, workplace and work time, an instance of employment is pronounced applicable or not applicable to an employment contract. This is the case of Denmark, France, Germany and the UK. The third, perhaps most widespread method is a combination of the two already mentioned. It is used in most legal systems, including that of Poland. Here, alongside a statutory definition of work with an employment contract an abundance of judicial decisions is also present. These decisions point to the rules of establishing labour relations and amount to a 'weighing' of the various vari-

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<sup>4</sup> Report by the ILO, Geneva 2004, p.17, <http://www.ilo.org/public/libdoc/ilo/2004/104B09-112-engl.pdf>.

<sup>5</sup> Recommendation adopted on 15 June 2006 during the 95th ILO general conference in Geneva.

ables that help verify the actual character of a given instance of employment.

Accordingly, French labour law does not provide any binding definition of either work with an employment contract or of the employment contract as such. However, labour law in France does note that on the grounds of an employment contract one individual works for another natural person or a legal person, to whom she or he is subordinated in return for remuneration<sup>6</sup>. This definition was elaborated through judicial decisions, i.e. in analysing particular cases. The main advantage of this approach, underlined in French legal doctrine, is its adaptability to changes in social circumstance and in labour relations.

The German model, on the other hand, lacks a conclusive definition of work with an employment contract. The distinction between work with and without a labour contract is based solely on the analysis of particular juridical cases. Courts, when inquiring into the character of an employment relationship, assume that an employment contract differs from other types of contract in the level of personal subordination during work<sup>7</sup>. An employee is someone acting under the auspices of their contract counterparty and within that same's organisation. The level of subordination stems from the fact that an employee works at the behest of their employer – whether with regard to the substance of the contracted task, the means of its completion, the continuity of work, work time, workplace or any changes made to the work assigned; subordination may also depend on the nature of the contract or the actual execution of terms of the contract.

Within the British system of juridical law – case law – no specific definition of work with an employment contract was coined. Taking this into consideration, juridical practice developed a so called system of tests with which the distinction between employees and the self-employed can be made. However, there is no single

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<sup>6</sup> G. Cavalier, R. Upex, *The Concept of Employment contract in European Union private law*, „International and Comparative Law Quarterly”, 2006, vol. 55, pp. 587 – 608.

<sup>7</sup> R. Wank, *Workers Protection National Study for Germany*, Ruhr.

test that would ultimately classify an individual as an employee. In the body of common law four tests exist to serve this purpose: the degree of control test, the integration test, the economic reality test and the test of mutual obligation<sup>8</sup>. In older cases the degree of control test was most widely used. Control exercised by the employer over the employee was in practice the only criterion determining the existence of a relationship of employment. This is a typical example of shifting the responsibility of classifying an individual as an employee to the judicature.

Clearly, the various orders of European labour law do not adhere to one model of determining legally appropriate labour relations for the protection of workers. Models vary depending on the legal traditions of the member states, and assessments of their practical efficacy<sup>9</sup>.

The second decade of the 21<sup>st</sup> century seems to be bringing further feedback and new dilemmas in the development of labour law; this is partly due to the international financial crisis, which brought about a huge crisis and imbalance of the labour market, together with segmentation and dual labour markets. Old discussions of limits to contractual arrangements and work with an employment contract, degrees of protection and flexibility, atypical work arrangements and the degree of freedom parties to a contract have in shaping labour relations are all back on the agenda, particularly in Poland. It would seem useful to supplement considerations of legal doctrine with a broader perspective on the mutual relations between the economy and labour, between employer and employee, and to submit an analysis of new phenomena in the light of broad economic and social processes and in the context of values and rights the protection of which ought to be our foremost concern. In addition, existing legal problems may be analy-

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<sup>8</sup> Information concerning the British system to be found [in:] K. Ewing: *Employed or Self Employed Special Issue.*; 'Bulletin of comparative Labour Relations', 1992, No 24.

<sup>9</sup> Compare: M. Gersdorf, M. Raczkowski, R. Wzyński, *Zatrudnieni i zatrudniający na aktualnym rynku pracy* [The employed and the employing in the current labour market], M. Gersdorf (ed.), LexisNexis, Warsaw 2012.

sed from the evolutionary and dynamic perspective characteristic of economics or social policy rather than jurisprudence. Such an outlook, together with a broader view of the labour market and social policy, can transcend legal doctrine and may seem useful not only for the analysis of the phenomenon of non-standard forms of employment, but also for drawing conclusions *de lege lata* and *de lege ferenda*.

#### **4.2. The Scope of Labour Market Flexibility and Non-Standard Forms of Employment**

Cultural and demographic change occurring in most societies, together with globalisation and technological advancement – particularly with regard to the Internet and communication technology – have a huge influence on the structure of employment, remuneration and labour relations. The nature of work changes and new professions emerge. Knowledge and information start to dominate over other resources, such as capital and commodities, and the worker and her knowledge are becoming companies' most precious resource. This is reflected in organisational management strategies and dynamically growing HR departments in modern companies, which treat knowledge as an important factor for growth and future success. Accordingly, creativity, open-mindedness, flexibility and a commitment to lifelong learning – in other words, mobility – are all expected of employees.

Within a modern organisational structure the functioning of enterprises rests on new paradigms, both in terms of internal management and businesses' setting within their social and economic surroundings<sup>10</sup>. Even more businesses specialise in services and information processing rather than manufacturing; this answers the demands of a varied market that needs to meet clients' individual demands for particular products. Changes in the consumer mar-

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<sup>10</sup> D. Walczak-Duraj, *Procesy przewartościowania pracy – główne uwarunkowania i tendencje* [processes reevaluating work – main conditions and tendencies], [in:] *Przemiany pracy, postaw i ról zawodowych* [transformations of work and professional roles], D. Walczak-Duraj (ed.), Wyd. UŁ, Łódź 2011, p. 29.

ket and in the structure of the economy provoke changes in the employment models of modern businesses. This has to do with the transition from an industrial economy, one resting on Taylorist-Fordian principles of labour organisation, to a post-industrial economy, from labour performed by teams grouped in large enterprises to decentralised forms of work performed by workforce disbursed in small companies or by self-employed persons. The changes that transformed the Fordian principles of work, together with the rise of new technologies and globalisation, have brought about a transformation of the labour market and of work itself. Employment in the traditional branches of industry fell, and so has the concentration of employment; the SMEs sector saw job growth, and so did services, particularly private (Gardowski 2009, p. 55)<sup>11</sup>. However, in parallel to these processes, labour markets are demonstrating considerable imbalance, and market segmentation occurs alongside unemployment.

Many experts agree that in answer to modern challenges and after corporatism failed to solve the problems of unemployment and competitiveness of economies, member states of the EU have been reforming their social policy models introducing more flexibility and non-standard forms of employment into the labour market<sup>12</sup>. What is peculiar to these changes, at least in some countries, is the inclusion of social dialogue in the reforming of economic and social systems, as well as in changes to labour relations, the labour market and remuneration<sup>13</sup>. Adaptive processes taking place in the labour market and changes to the model of labour relations are a challenge that the European countries have to struggle with. Through negotiations and consultations between employers and the labour unions, and even by means of social dialogue, many

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<sup>11</sup> Compare: J. Męcina, *Wpływ dialogu społecznego na kształtowanie się stosunków pracy w III RP* [the influence of social dialogue on the shaping of labour relations], IPS UW, Warsaw 2011.

<sup>12</sup> Compare: J. Męcina, *Wpływ dialogu społecznego...* [the influence of social dialogue...] op. cit.

<sup>13</sup> R. Hajn, *Związki zawodowe wobec transnarodowej...* [trade unions in the face of transnational...] Wyd. Uniwersytetu Łódzkiego, Łódź 2001, p. 239–242.

countries have managed to moderate the social and economic consequences brought about by the advent of new technologies and reductions in certain industries.

At the cost of high spendings on early retirement programmes, high severance pays and other social benefits, deep restructuring and technological change have been achieved in a number of European countries. Much emphasis was put on adjusting labour law to new challenges, although without making any fundamental shifts<sup>14</sup>. The second technological change to occur at the end of the 20th century consisted in the rapid progress made in information and communications technology. This had tremendous consequence for the very nature, as well as organisation, of work. The broad applications of IT influenced labour legislation and changed many rules in hitherto discrete labour relations<sup>15</sup>. A number of key changes around which most of the – still ongoing – debate and contention revolved may be named. These changes continue to be an important point of reference for experts, decision-makers, and the social partners – employers and trade unions – provoking discussions and analyses across Europe<sup>16</sup>.

First of all, the decentralising and relocating of manufacturing, which turns a modern enterprise into a strategic concept rather than a physical entity. Whoever makes decisions concerning the workplace, labour relations or remuneration is no longer an employer to his employees in the legal sense; rather, employers themselves are subject to decisions made by global or multinational investors.

Secondly, tasks assigned within the work process have become increasingly personalised. Since tasks can be coordinated electronically, there is no need for workers to share a common workplace.

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<sup>14</sup> The EC, Transformation of labour and future of labour law in Europe, final report, Brussels 1998.

<sup>15</sup> Compare: A. Bronstein, *International and comparative...*, p. 30–57.; W. Morawski, *Globalizacja i praca. Kontekstowa analiza świata pracy* [Globalisation and work. A contextual analysis of the world of work], [in:] *Przyszłość pracy...* [The future of work...], p. 15–32.

<sup>16</sup> Compare: J. Mecina, *Wpływ dialogu....* [The influence of social dialogue...], op.cit.

Thirdly, it has become difficult to describe the meaning of 'working time', since workers often perform work-related tasks from home or are required to be on standby.

In addition, tasks accomplished or results obtained, rather than hours spent at work, are becoming the basic categories in labour relations in the case of an ever larger group of workers. In the process, new ideas for the organisation of work emerge, including seasonally changing or demand-based labour relations, flexible working hours, working time accounts, on-call employment, as well as solutions for reconciling work with family life. Fourthly, the importance of continuous training and upgrading one's professional skills grows in a knowledge-based economy.

The dangers associated with the changing character of labour relations should also be pointed out. New occupational diseases and threats have emerged and become more dangerous; conditions like stress, feelings of alienation at work, burnout or depression may all be connected to the pervading application of IT in the workplace. Unemployment has become permanent in Europe, and fighting unemployment and increasing participation are some of the priorities the EU institutions and the member states, who are trying to support employment through public programmes or by improving and changing professional skills.

Finally, it is worth emphasising that the international crisis of the first decade of the 21<sup>st</sup> century laid bare the instability of socio-economic systems in Europe and revealed the risks facing European competitiveness, of which precarious growth, growing unemployment and the emergence of a dual labour market are but the symptoms.

In order to meet the challenges posed by an increasingly global economy, proprietors and managers of businesses are searching for alternatives to expensive and inflexible forms of labour based on the employment contract<sup>17</sup>. This in turn causes changes to the labour market, increasing flexibility (flexible working time and atypical work arrangements) and segmentation. In effect, a new

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<sup>17</sup> The employment relationship was formed on the basis of factory legislation.

system of employment is being formed – a system whose models have been corroborated in ample subject literature<sup>18</sup>. One solution frequently put forward is the so-called flexible employment model based on shamrock organisation. Within this model, a business's employees are divided into three segments – i.e. the leaves of the shamrock. The first segment consists of employees most crucial to the firm: highly-qualified individuals who constitute the firm's competitive advantage; this cadre termed the professional core is usually restricted to executives, managers and experts. The second segment consists of specialists hired on short-term contracts, the third of flexible labour force<sup>19</sup>. The participation of each group in the overall employment structure is business-specific and varies according to circumstances.

The model of a flexible organisation put forward by J. Atkinson divides employees into two groups: core workers and peripheral workers. This means a departure from a hierarchical organisational model and implies a functional, de-centralised managerial approach. In consequence of this process, staff segmentation must occur: an essential permanent staff and a marginal task- or non-permanent staff emerge. This in turn demands increased numerical flexibility and changes the balance between typical and atypical employment arrangements. The term 'labour market flexibility' essentially means that businesses can increase or reduce employment depending on economic, market and technical conditions. In other words, labour market flexibility boils down to the possibility and the ability of applying 'piece-rate human resources management'<sup>20</sup>. It is businesses' freedom to adjust employment levels to the demands of the economy, which in the micro scale means numerical flexibility, i.e. limiting legal obstacles and costs to employment as well putting more emphasis on atypical work arrangements.

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<sup>18</sup> Ch. Handy, *Wiek przezwyciężonego rozumu* [The age of defeated reason], Business Press, Warsaw 1998.

<sup>19</sup> A. Cierniak-Emerych, *Uczestnictwo pracobiorców w gospodarowaniu potencjałem pracy przedsiębiorstwa* [The participation of workers in managing the labour potential of enterprises], EU publication, Wrocław 2012, p. 63-64.

<sup>20</sup> E. Kryńska, *Elastyczność zatrudnienia na polskim rynku pracy*, [in:] *Polityka Społeczna 2007*, nr 11-12, s. 1-8.

As a consequence of these developments, increased diversity of work arrangements is to be observed: contracts of indefinite duration are gradually replaced with atypical arrangements, including non-standard forms of employment. Only permanent staff is employed based on employment contracts for an indefinite period of time (nomination or appointment to a post), whereas peripheral workers are hired either for a definite period or according to other atypical arrangements, usually without an employment contract.

In this way entrepreneurs 'escape' labour code regulations, particularly with regard to job security, which is often viewed as a hindrance to the hiring of new personnel. This facilitates lay-offs in an economic slump or whenever businesses have to adapt to the demands of competitiveness without having to face the costs of severances, but also without being obliged to pursue alternative solutions such as outsourcing or even entering the informal economy. With regard to peripheral workers, atypical work arrangements place them somewhere between full-time, secure work and unemployment; their jobs are the first to go in a recession and it is they who suffer from financial instability, low job security and little social protection. As pointed out by Carnoy, it is not important in this perspective how long an employee will work at a given company or workplace, periodically securing renewals of her employment contract; the point is that her job is of secondary nature, or completely insecure, without career development prospects, and that she did not agree to these labour relations voluntarily<sup>21</sup>. In order to conduct HR policy in accordance with the above mentioned presuppositions of flexibility, i.e. give businesses the possibility to adapt levels and structures of employment to growing market competitiveness, the need for labour market deregulation naturally arises.

Labour market deregulation combined with the introduction of atypical work arrangements can be decisive in creating jobs, which can have a direct influence on labour market participation of pro-

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<sup>21</sup> Carnoy, op.cit, p. 97, [in:] E. Stroińska, *Elastyczne formy zatrudnienia. Telepraca. Zarządzanie pracą zdalną* [Forms of flexible employment. Telework. Managing remote labour], p. 24.

professionally inactive persons. The creation of a flexible labour market means not only increased flexibility of labour law, but also greater freedom given to various entities in the employment sphere, and greater freedom to use non-standard forms of employment, which may help streamline labour resources.

However, it is worth remembering that these processes can be accompanied by socially negative phenomena limiting the dimension of legal and financial protection, if not leading to exclusion from the labour market altogether.

### 4.3. Directions and Scope of Labour Market Deregulation

Labour market deregulation involves moving away from the traditional labour model, employment structure, organisation of work and collective labour relations<sup>22</sup>. It can be a way of limiting unemployment, and in a broader sense – of utilising untapped resources, creating new jobs. Extensive labour market regulations are seen by many economists as a factor limiting the adaptivity of labour resources to the diverse and ever-changing needs of employers<sup>23</sup>. Rigid labour regulations are a particular hindrance to economic growth and economic restructuring, which is badly needed in the face of rapid changes taking place in the business environment. The growing role of IT, globalisation<sup>24</sup>, new technologies, and fierce competition in the services and manufacturing sectors alike – both domestic and international – force businesses to become more flexible, also with regard to the labour market.

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<sup>22</sup> Deregulation, according to the definition adopted, is the reducing of regulation or the changing of the nature of regulation, as well as the limiting of certain forms of labour market control; it increases the liberty of business entities.; *Deregulacja polskiego rynku pracy* [Deregulation of the Polish labour market], K.W. Frieske (ed.), Warsaw 2003, IPSS.

<sup>23</sup> The term 'labour resources' applies to the number of employees as well as their remuneration and work schedule.

<sup>24</sup> S. Borkowska, *Regulacja rynku pracy w Polsce a polityka gospodarcza* [Labour market regulation in Poland and economic policy], [in:] *Deregulacja polskiego rynku pracy* [Deregulation of the Polish labour market], K.W. Frieske (ed.), IPiPS, Warsaw 2003, p. 29.

Changes in employment structure are also important: the role of the service sector is growing, the SME sector is paramount. All of these factors are forcing evolutionary change to labour relations, in other words: deregulation. The main point in deregulation is to cut the red tape that limits workers' ability to adapt to changing labour needs. The efficiency of employment is increasingly important to businesses: labour is required according to current demand, be the demand based on quantity, quality or working time<sup>25</sup>. Changes in labour relations are needed, and so is knowledge-based work. This is why advocates of deregulation point out that employers should be given the opportunity to adapt employment to growing competition on the labour market.

The debate on the role of regulation and deregulation in reducing the size of unemployment has been ongoing in Western Europe since the 1980s. The premise for this discussion was the weakening effectiveness of macroeconomic policy as an instrument to fight unemployment. According to many experts, the rigidity of the labour market, its over-regulation, is the main cause of high unemployment in the European Union. Both neoclassical and new Keynesian economics pointed out that deregulation should primarily concern 'lowering the minimum wage and its differentiation across the working group or regional level, liberalizing procedures for dismissing workers, reducing cash benefits on dismissals, shortening notice periods, Also depart from limiting the number of fixed-term contracts (...). Deregulation proponents stressed that it would allow for a smooth functioning of the labour market as a result of market mechanisms'<sup>26</sup>. Experts justify that excessive external controls on labour relations make labour market balancing difficult, and that comprehensive and rational deregulation can help

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<sup>25</sup> Z. Mierzejewski, *Elastyczne formy zatrudnienia w obecnej sytuacji na rynku pracy* [Flexible forms of employment in the current labour market situation], [in:] *Elastyczne formy pracy. Szanse i zagrożenia* [Flexible forms of work, opportunities and threats], C. Sadowska-Snarska [ed.], published by the Academy of Economics in Białystok 2008, p. 74.

<sup>26</sup> E. Woźniak, *Dylematy regulacji i deregulacji rynku pracy*, w: *Przekształcenia społeczno-gospodarcze w Polsce w okresie transformacji. Stan i perspektywy*, Oficyna Wydawnicza SGH w Warszawie, Warsaw 2010, p. 383.

improve the labour market'<sup>27</sup>. From the perspective of the labour market, the negative impact of over-regulation should be highlighted, especially in the area of minimum wage and protection of employment for disadvantaged groups, especially in the face of high imbalances in the labour market.

For many experts deregulation means increasing the freedom of business entities and decreasing state involvement in the shaping of collective labour relations. New forms of work and employment, as well as appropriate adjustments in law, are all matters that must be tackled if the challenges of globalisation, a modern economy and rapid technological advancement are to be met. An ever larger role in the process of business adaptation (indispensable in a competitive environment) may be played by numerical flexibility, working time, pay, as well as functional flexibility connected to the organisation of work and appropriate utilisation of workers' diverse skills<sup>28</sup>.

However, labour market deregulation does have its opponents. In their opinion a low degree of labour market regulation does not in itself guarantee low unemployment, it is rather one of many factors contributing to potential employment growth. These sceptics point out that the formal and legal regulatory mechanisms in place in Poland are weakening the self-regulatory effects of reciprocity. Instead of deregulation, the introduction of effective reciprocity-enforcing regulation is put forward; this would create conditions for employers and employees to keep to their mutual commitments.

Deregulation can influence not only labour relations, but can also produce certain negative social effects, to which workers are naturally opposed. There is contention around deregulation as a means for reducing unemployment and stimulating job growth in an economy. On the one hand, employees and their representatives, mainly trade unions, are concerned with decreasing job security and labour relations protection, growing job uncertainty,

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<sup>27</sup> Wiśniewski, *Kierunki i skutki deregulacji rynku pracy w krajach Unii Europejskiej*, UMK, Toruń 1999.

<sup>28</sup> *Ibidem*.

### 4.3. Directions and Scope of Labour Market Deregulation

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and an overall weakened negotiating position with regard to the employers. On the other hand, employers are expecting more freedom, better efficiency (with regard to the workforce and potential production output) and faster adaptability to the ever-changing conditions of a global economy.

Another point in the discussion on the limits to flexibility, one emphasised in the literature of the subject, is that deregulation should go hand in hand with increasing corporate social responsibility<sup>29</sup>. Without CSR the gains in efficiency achieved at particular businesses are lost to growing global social costs; negligence in human capital investment has long-term effects on corporate performance and prevents employees from progressing in the labour market<sup>30</sup>. The limitations of deregulation are also pointed out in documents drafted by the ILO which underlines economic objectives should not be separated from social ones. The criteria for evaluation of the current level of welfare economics are based on the following indicators: GDP growth, unemployment, poverty level. Policies that influence decent work are called labour demand policies (a growing number of employees). Labour supply policies focus on the number of persons willing to work and on the quality of human capital. Labour market functioning – remuneration, information about vacant posts. The implementation of the decent work concept, that is based on social dialogue mechanisms, should help in particular the poorest employees, who are under risk of marginalization and segmentation. The poorest employees are not always found in the poorest countries, more and more frequently this category of workers is also found in developed countries<sup>31</sup>.

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<sup>29</sup> *W trosce o pracę. Raport o rozwoju społeczeństwa*, UNDP, Poland 2004.

<sup>30</sup> Wiśniewski, *Kierunki i skutki...* [Directions and effects...], p. 142.

<sup>31</sup> Lee S., McCann D. *Regulating for Decent Work*, ILO 2000, Reducing the decent work deficit – A global challenge. Report of the Director-General to the 89th Session of the International Labour Conference, Geneva 2001.

#### 4.4. Deregulation, Flexibility, Atypical Employment Arrangements and Non-Standard Forms of Employment

Labour market deregulation is closely linked to the introduction of flexibility, both in macro- and microeconomic terms. In macroeconomics, the term flexibility is used to describe certain features of the employment system and that system's means of operation. In microeconomics, flexibility – in accordance with the definition provided above – may be divided into three more precise notions: **numerical flexibility**, meaning the ability to adjust the number of employed according to changes in the market; **working time flexibility**, i.e. a departure from or a modification of standards regulating working time; and **pay flexibility**, or the ability to manipulate wages according to external economic factors and workers' productivity<sup>32</sup>.

When discussing the flexibility of labour relations, one needs to address the issue of flexibility in the organisation of work, particularly in terms of working time management. The notion of labour relations flexibility or – in legal terms – atypical employment arrangements covers a number of methods for adjusting levels of employment to volatile economic conditions. This analysis proposes to assume that atypical arrangements mean forms of employment other than full-time work with an employment contract for an indefinite period of time. Numerical flexibility, meaning changing labour relations in order to adapt to evolving circumstances of business operations, is particularly important. However, as some lawyers and social policymakers have noted, flexibility helps create new jobs, which has a positive impact on unemployment, but only at a cost: with the introduction of flexibility, the bond between employer and employee is weakened and job security suffers. Ad-

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<sup>32</sup> A division proposed by E. Kryńska may serve as an example: quantitative flexibility, meaning the ability to adapt the number of employees and their working time; working time flexibility which means adapting working time to the needs of an enterprise, or employees, and a functional flexibility, internal to a given enterprise.; E. Kryńska, *Między elastycznością a bezpieczeństwem rynku pracy*, op.cit., Biblioteka Monitora Prawa pracy Laborlex.

vocates of flexibility, on the other hand, believe that even though flexibility weakens such ties and decreases job security, more often than not it creates an alternative to unemployment as it enables creation of new jobs and helps to reduce unemployment.

Broad application of atypical employment arrangements may stimulate the labour market insofar as it promotes participation; temporary programme financing from the Labour Fund may be helpful in this regard. The aim is to restore balance to the labour market, i.e. increase employment and decrease unemployment.

Advocates for flexibility underline that atypical employment arrangements are becoming a necessity if a business is to retain competitiveness in a global market transformed by new services and technologies<sup>33</sup>. This is why efficiency-friendly employment terms are so important.

What is stipulated are labour relations allowing for dynamic numerical flexibility and a broader application of 'specific work' and interim contracts, but not non-standard forms of employment, which deprives workers of certain rights relating to social insurance, healthcare, leave, regulated working time and rest, as well as a guaranteed minimal wage. It is important to tie flexibility and atypical employment arrangements to the interim needs of both the employer and the employee, particularly when work is reconciled with education, childcare or care for a family member, or health-related limitations; atypical arrangements should also be connected to be transitory mechanisms leading to regular work with an employment contract, with full legal and social protection.

Another kind of action discussed in the public sphere is the inclusion of certain forms of non-standard forms of employment into the social insurance system, or providing workers employed without an employment contract with certain benefits, such as the right to unemployment benefit or maternity leave.

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<sup>33</sup> E. Bąk, *Nietypowe formy zatrudnienia na rynku pracy*, Wyd. C.H. Beck, Warsaw 2009, p. 23.

Employers, however, tend to regard labour law – particularly in terms of job protection – as an obstacle to hiring new workers. The situation is made even more complicated by other costs, such as taxes and contributions to social and health insurance, particularly with regard to often less competitive groups, such as those aged above 50, the disabled and juveniles.

Both these factors have a negative effect on entrepreneurs' decisions to hire, and are thus a barrier to growth and competitiveness. This can in turn lead to the implementation of atypical employment arrangements, be it temporary jobs, outsourcing or even entering the informal economy.

However, critics of high flexibility argue that atypical employment contracts, and non-standard forms of employment in particular, do not in the long run contribute to microeconomic efficiency. This is because bonds between the employer and the employee are loosened, incentives for investments in skills and education are low, and productivity and the quality of work are also likely to suffer. Meanwhile, employers value workers' experience, loyalty, particular skills and mobility, as all of these influence their firms' competitiveness on the market.

Research on both employers and employees, as well as analyses of public debates and negotiations between social partners and the government within trilateral social dialogue all point to the fact that none of the aforementioned aspects of flexibility are put to appropriate use<sup>34</sup>. The majority of employers, particularly in the SME sector, seldom use any of the legal, organisational or financial forms of working time flexibility such as special working time arrangements or part-time work. Usually, only the most basic legal instruments are being employed, i.e. civil law agreements, self-employment, which deprive employees of the protection of labour law<sup>35</sup>.

When discussing flexibility, employers focus on costs; they seldom see the benefits of the organisation of work, motivation, creativity and competitiveness. Meanwhile, employees, and particularly their

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<sup>34</sup> Own study, based on *Pracujący Polacy 2008*, [www.konfederacja](http://www.konfederacja.pl) <[http://www.konfederacja/](http://www.konfederacja.pl)>[lewiatan.pl](http://www.konfederacja.pl).

<sup>35</sup> J. Męcina, [in:] *Rzemieślnicy i biznesmeni...*

representatives – trade unions activists – are against such solutions, fearing cutbacks on labour rights and lower job and social security. They also fear a polarised labour market, i.e. one divided among internal workers employed permanently and external contractors employed part-time or informally (the unemployed and those excluded from the labour market would also be counted in this group). This contributes to further decomposition and makes a balanced labour market with functional and interim (i.e. choice-based) flexibility harder to reach. Segmentation and little transitioning to and from stability and flexibility is also due to imperfect organisational management and poor skills in developing mechanisms for managing flexibility; this is particularly true of the SME sector.

As was determined, the term ‘flexible employment’ usually means employment arrangements other than full-time work with an employment contract of indefinite duration. Traditional (non-flexible) labour relations mean permanent, subordinated and paid full-time work under the supervision of the employer and with the employer carrying the risks of effects of work performed. However, flexible employment can be a term applying to work with an employment contact as well as work regulated by civil law agreements or self-employment, depending on the manner and basis for work<sup>36</sup>.

Accordingly, flexible employment ought to be divided into:

- a) flexibility within work with an employment contact, but in atypical conditions (unusual working hours or organisation of work etc.);
- b) flexibility within the organisational framework and working hours of work with (usually) an employment contract (such as extended settlement periods, work sharing or telework);
- c) flexibility within work performed without an employment contract, usually on the basis of civil law contracts (contracts of mandate or contracts for specific work), or flexibility within self-employment (work based on business-to-business civil law contracts).

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<sup>36</sup> E. Bąk, *Nietypowe formy zatrudnienia na rynku pracy*, Wydawnictwo C.H. Beck, Warsaw 2009.

The notion of atypical<sup>37</sup> or flexible employment covers a great variety of employment forms, legal as well as organisational. The typology presented above is but an attempt at organising the notions here discussed. It does not include an overview of all of the organisational forms of flexible employment. This is due to the fact that within work with an employment contract as well as in atypical employment arrangements, similar organisational structures occur; moreover, these structures are often interconnected, leading to an overlap in responsibilities.

In procuring a short overview of labour relations, both with and without an employment contract, this analysis focuses on the forms of work most widespread in Poland: arrangements that are atypical, but related to work with an employment contract and the most common instances of non-standard forms of employment.

#### **4.5. Work with an Employment Contract – Atypical Employment Arrangements**

Atypical forms of employment have been described in detail in the literature of the subject; they are becoming ever more prominent on the labour market and even casual observers will not fail to notice that we are witnessing a rather dynamic process in which traditional forms of employment are displaced by alternative arrangements, often perceived as more flexible and more suitable to changing demand for labour. This process can be observed in most the EU and the OECD countries, but is marked in Poland.

Alternative forms of employment are often labelled 'atypical' or 'non-standard', but these terms are merely matters of convention and lack precise definitions<sup>38</sup>. Thus, it may be assumed that 'atypical' features are to be found in work with an employment contract (e.g. fixed-term, part-time, interim or outwork employment contracts) as well as in work without an employment contact, such as

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<sup>37</sup> Own study, based on elaboration [www.labourlex.pl](http://www.labourlex.pl) <<http://www.labourlex.pl/>>; 2014.

<sup>38</sup> See: A Chobot, *Nowe formy zatrudnienia...* [New forms of employment...], p. 136.

civil law contracts, particularly contracts for specific work and contracts of mandate, self-employment or management contracts.

The following is a brief legal overview of particular forms of employment.

##### **Term-specific employment contract**

Term-specific work with an employment contract is a form of work which specifies the duration of employment. This is either agreed upon by the signatory parties or capped by universally applicable labour law. The labour code (art. 25) divides fixed-term contracts according to their duration and specific aims: into contracts for a trial period, a definite period, the period necessary for the completion of a specific task and contracts for an indefinite period.

One should add that the labour code also mentions labour contracts for apprenticeships and a special type of contract for substituting employees during their absence. All of the aforementioned contracts (with the exception of the apprenticeship contract) can be preceded by a contract for a trial period, which is facultative in character: its basic aim is to verify the fitness of a newly hired worker for a given post. In general, this kind of contract may be signed only once with a given worker, but it is generally assumed that contract for a trial period may be repeated if the nature of the work performed changes. This practice is widely used by many employers. Trial period contacts have a relatively short period of notice and do not require the employer to provide reasons for termination; these features make these contracts very popular with employers.

A separate form of term-specific employment is the employment contract for a definite period of time which, as a rule, holds for a specific, agreed-upon time. Exceptions include cases of employer insolvency, redundancies, and the legal possibility of introducing provisions allowing for early contract termination (in contracts for definite period of 6 months or more). The termination of an employment contract for a definite period, if it occurs under provisions introduced under art. 33 of the labour code, does not

require providing the reason for termination, nor does it require consultations with the trade unions. If such an employment contract is terminated illegally, the employee can demand damages only to the amount of remuneration for the remaining duration of the contract, though not beyond 3 months. As of today, the maximal duration of an employment contract for a definite period is not specified<sup>39</sup>. However, a second definite-period contract signed with a given employee automatically becomes a contract for an indefinite period, unless there is a 30-day break between the contracts. The law does not allow for periods defined in a contract to be prolonged; prolonging a contract is equal to signing a new definite-period contract.

The Supreme Court has underlined that term-specific employment forms must be used according to purpose, i.e. be closely related to the matter and purpose of particular work; clearly, long-term definite-period contracts could bypass regulation concerning work with an employment contract for an indefinite period. To name an example: the Supreme Court precisely described the rules for term-specific employment in a Labour Chamber resolution (4 April 2013, sig. II PK 351/12): the conclusion of a long-term (e.g. 9-year) employment contract for a definite period, with a provision for early termination with a two-week period of notice, may qualify as an attempt at bypassing labour law, the socio-economic purpose of labour law, or a violation of the principles of community life.

However – in accordance with the principle of freedom of contract – the conclusion of these kinds of contracts is allowed when implied by regulation, the nature of the contract or when because of other reasons no violation of justified mutually beneficial work relations occurs. Legal protection from unjustified termination of year-long employment contracts covers only cases where the conclusion of a term-specific contract was forced upon the employee only in order for the employer to have full liberty of terminating the contract at his own discretion. Term-specific employment con-

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<sup>39</sup> ECJ Verdict of 4 April 2013 sig. II PK 351/13.

tracts are thus a form of employment provided by the law and may be applied as long as their specific purpose is not abused. Accordingly, if an employer is not exercising her financial advantage on the labour market and does not conclude a term-specific and long-term employment contract only in order to avoid certain statutory consequences of employment for an indefinite period (particularly stating the reasons for contact termination or compulsory consultations with the trade unions), then she is not said to attempt to bypass the Labour Code.

Another kind of fixed-term employment contract is a contract signed in the case of substitutions, when an employee is justifiably absent from work. This kind of contract is a flexible alternative to hiring an additional employee when a permanent employee is absent. The law does not list the reasons causing such an absence; from the legal point of view it is only important for the absence to be justified. This sort of contract, as a rule, terminates in a defined period, i.e. at the return of the employee being substituted for. It is possible to terminate such a contract early, with a period of notice of 3 days. (art. 33 of the Labour Code)<sup>40</sup>; there is no need to justify this early termination. Moreover, this kind of contract – in contrast to all the other term-specific contracts – is not automatically prolonged up to childbirth in cases described in art 177 par. 3 of the Labour Code<sup>41</sup>. Substitution contracts do not rule out the possibility of employers organising substitutions in other ways, say as described in art 42 par 4 of the Labour Code or through temporary employment agencies.

An employment contract concluded for the period necessary for the completion of a specific task is a kind of term-specific employment contract in which no precise duration is provided; rather, certain tasks are set out, together with time limits. Usually contracts of this kind are concluded for casual work and odd jobs, be it renovation work, harvesting, etc. This sort of contract may also be appropriate in hiring professionals in restructuring, liqui-

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<sup>40</sup> Compare: Labour Code, art. 33.

<sup>41</sup> Compare: Labour Code, art. 177.

dation or in implementation of new technologies. In other words, the duration of this contract is dependent on the completion of a specific task, and not on the reaching of a specific point in time. This sort of contract cannot be terminated, it expires after work is completed.

It must be stressed that at the present time the mood around term-specific employment contracts in Poland is changing.

In connection with i.a. European Court of Justice and Polish Supreme Court verdicts, it is recognised that legislation currently in place is faulty and constitutes a *de jure* practice of unequal treatment in terms of the legal standing of workers employed for and indefinite period. This was the stance taken by the European Court of Justice in its verdict of 12 March 2014<sup>42</sup>; according to the verdict, in the case of an employment contract for a definite period, but of more than six months, giving notice in keeping with the rigid two-week period of notice (irrespective of length of service) breaches the EU law. Art. 33 of the labour code which allows for this practice treats workers hired for an indefinite period and those hired for a definite period unequally. The Polish Supreme Court, on the other hand, in a verdict passed on 5 June 2014 acknowledged that two-week periods of notice in long-term contracts for a definite period are unfounded. An employer who hires an employee on a long-term employment contract for a definite period cannot treat such an employee worse than other employees hired on the basis of employment contracts for an indefinite period. Otherwise, she may be charged with discrimination<sup>43</sup>. Therefore, work is currently being carried out to change the legal status of term-specific contracts in Poland. The main concern is with periods of notice in employment contracts, which ought to depend on length of service, and with putting caps on the length of term-specific contracts. Representatives of the trade unions point out that the aim of these sorts of changes is to give workers hired only for a definite period actual protection. Employers, on the other hand, maintain

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<sup>42</sup> Compare ECJ verdict of 13 March 2014 (C-38/13).

<sup>43</sup> Compare Supreme Court verdict of 5 June 2014 (I PK 308/13).

that the introduction of elaborate protective schemes will significantly decrease employment flexibility in the Polish labour market. It is worth mentioning that term-specific contracts are widely used by employers today, which certainly has to do with better flexibility both in concluding and in terminating employment contracts, a flexibility badly needed in a volatile labour market. In particular with regard to contract termination, the employer is exempted from keeping to procedures associated with contracts for an indefinite period. Moreover, the employer can speedily adjust her business to changes occurring in the labour market, i.e. hire or lay off workers according to demand for goods or services that her business provides. One needs to note, however, that employment for a definite period is perceived as less advantageous than employment for an indefinite period, and as such lowers workers' motivation, thereby affecting productivity.

#### **Part-time employment**

Part-time employment is also considered an atypical arrangement. In practice working hours are left to the discretion of the contracting parties. Part-time employment is popularly perceived as an element of employment flexibility, as it makes it easier to reconcile professional and family life, enables employees to continue education or makes it possible to accommodate for health requirements. In accordance with art. 29 par. 1 of the Labour Code the conclusion of a part-time employment contract cannot result in employment conditions less advantageous for the employee than the conditions applying to other employees performing the same or similar work based on full-time employment contracts, though taking into consideration remuneration and benefits proportional to working hours. This regulation implements directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work, introducing its provisions into the Polish legal order. The directive states that workers employed part-time cannot be discriminated against, i.e. treated less advantageously than full-time employees<sup>44</sup>.

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<sup>44</sup> Journal of Laws No, 200, pt. 1679 8 with later amendments.

Depending on the demand for labour and on its supply at a given time, an employer requires a certain number of employees, employed full- or part-time. The figure varies according to vacancies available, shifts worked, and the natural replacement of workers (due to leave, sickness and the like). In a part-time employment contract, working time is determined by the employer and the employee and put into appropriate provisions of the contract. Working time is usually expressed as a fraction:  $\frac{1}{2}$ ,  $\frac{3}{4}$ , or  $\frac{4}{5}$  of the regular full-time working time. Accordingly, an employee working  $\frac{1}{2}$  of full-time employment will be obliged to work 84 hours a month if full-time employment equals 168 hours a month. Naturally, the part-time employee is remunerated proportionally to her working time. The minimum wage or leave entitlement could serve as an example: according to the act concerning the minimum wage of 10 October 2002, in the case of workers employed part-time the minimum wage is calculated in proportion to working time; the minimum wage laid out in said act applies to full-time work and serves as the basis for further calculations<sup>45</sup>. With regard to leave, in accordance with art. 154 par. 2 of the Labour Code leave entitlement for workers employed part-time is calculated in proportion to their working time, rounding up to a full day.

It is worth bearing in mind that rules concerning violations of statutory working time are the same for part- and full-time employees: if an employee to whom the provisions of the labour code apply is employed part-time, e.g.  $\frac{1}{2}$  of regular, full-time working time and works 4 hours a day, then her overtime starts from the 8th hour (breach of daily working time norm) or from the 40th hour (breach of weekly working time norm).

Part-time work can be categorised in different ways. One form of part-time work is job sharing, which usually means two or more employees sharing a full-time job. Other forms include job splitting and work-sharing. The former means dividing a full-time job into two independent part-time jobs; workers splitting a job are not able to divide work at will, as is the case with job sharing. The lat-

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<sup>45</sup> Journal of Laws, No 125, pt. 1035.

ter means periodical reductions in working time, usually with the consent of workers affected; the aim is usually to prevent lay-offs, say in a financial slump. Work sharing can be seen as an alternative to lay-offs or a means of mitigating lay-offs that are inevitable. This form of employment was introduced into Polish law in a period of economic slowdown in the act of 1 July 2009 on appeasement of economic crisis effects for employees and employers, which was enacted on 22 August of that year and was in force until 31 December 2011. Similar legislation is to be found in the act concerning the protection of the workplace of 2012.

#### **Telework**

Art. 67<sup>46</sup> of the Labour Code defines telework as work performed regularly outside the workplace, with the aid of electronic means of communication; a teleworker is defined as an employee performing work in the form above described, who transmits the product of her work to the employer – particularly by means of electronic communication technology. From the point of view of the labour code telework is clearly a very broad notion. Telework does not require any static workplace, a teleworker is not constrained to any location and may work from home or any other place. The introduction of telework at a given business requires the consent of the trade unions, i.e. an agreement defining the terms of telework in a particular environment; however, trade unions are not able to prevent an employer from introducing telework altogether: if within 30 days of proposing a draft no agreement is reached, then the employer is free to define the terms of teleworking, though in consideration of arrangements made in the negotiations process (art. 67<sup>47</sup> of the Labour Code). In businesses with no trade unions, the rules and conditions for performing telework are set

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<sup>46</sup> See: Dariusz Makowski: *Praca tymczasowa jako nietypowa forma zatrudnienia* [temporary work as an atypical form of employment], Wydawnictwo Difin, Warsaw 2006.

<sup>47</sup> See: justification of the draft of the act on employing temporary workers, The Parliament (Sejm) files, No 1349, 12 February 2003 [http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/1349/\\$file/1349.PDF](http://orka.sejm.gov.pl/Druki4ka.nsf/wgdruku/1349/$file/1349.PDF).

out by the employer after consultations with representatives of the employees, appointed in a customary manner (art. 67<sup>48</sup> par. 4 of the Labour Code). It is not allowed for an employer to charge employees with telework by way of temporary transfer to a different post (mentioned in art. 42 par. 4 of the Labour Code; see art 67<sup>49</sup> par. 4 of the Labour Code). The decision to perform telework may be taken at the signing of an employment contract or later, after employment has already begun (art. 76 par. 1 the LC). In the second case a change in employment terms may only occur under mutual agreement, though it can be put forward by either the employer or the employee. An employee that agrees to changing her current employment terms for telework can ask to be reinstated in her former post within three months from commencing telework. The same right is given to the employer. In such cases, previous terms of employment have to be reintroduced no later than within 30 days after the appropriate application is filed (art. 67<sup>49</sup> par 1 the LC). Lack of consent on the part of the employee to change her terms of employment, or discontinuing telework on the terms described above do not give the employer grounds sufficient to terminate an employment contract (art 67 the LC). According to art. 67<sup>50</sup> the LC, the employer is obliged to provide the teleworker with all equipment necessary to provide telework and cover insurance- as well as installation-, maintenance- and operating costs. The employer should also provide the employee with technical assistance and training. However, a separate contract independent of the employment contract may allow the teleworker to use her private equipment for telework purposes; the parties must then de-

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<sup>48</sup> According to the principle of free association, the signatory parties may shape their mutual obligations at will, as long as the provisions of their contract do not violate absolutely binding regulations of the law, the properties of the legal relation in question and do not infringe the principles of community life. Accordingly, the parties cannot shape the contract in a way that effectively amounts to an employment relationship.

<sup>49</sup> A gross amount is determined. However, social insurance contributions need to be paid by the manager herself. A fixed salary can be supplemented with bonuses reflecting profitability or value growth (success fee). Some management contracts base the entire salary solely on the firm's income or profit.

cide upon the amount of insurance and rules governing the usage of such equipment. Moreover, the employer is to pay out a cash equivalent taking into account equipment wear and market value.

When telework is performed on the grounds of a labour contract, the contract should specify not only the nature of the work, but also the place and time at which work is to be performed, as well as means of communications between the employer and the employee. Responsibility for the security of data sent rests with the employer, as does appropriate security training (art. 67<sup>51</sup> the LC). A teleworker's workplace should comply with health and safety standards, particularly with regard to equipment such as computers, scanners, xerox machines and the like; it should be prepared and inspected (art 67<sup>52</sup> the LC). The main point is that teleworkers are not subject to ongoing control, and modern management is concerned with results rather than the process of work. Accordingly, the selection of employees for teleworking (well-organised and self-disciplined) should reflect the tasks they are to perform within the businesses' – possibly well-defined – targets. Those selected as teleworkers must be able to work more independently compared to workers employed on traditional terms.

#### **Temporary work**

Another form of work with an employment contract is temporary work, even though the act on the employment of temporary workers of 9 July 2003 also allows for civil law contracts. Temporary work is good for employment flexibility, and labour resources costs are tied to actual demand for a given kind of work at a given time. There are three parties to temporary work: the employee, the employer (i.e. an agency) and the end-employer or client-employer. According to art. 1 of the act on the employment of temporary workers the law regulates the rules of employment of temporary workers in temporary work agencies and the rules that govern the placing of these workers, as well as persons who are not agency employees, at the client-employer's business. The wording of the above-mentioned legislation implies that the traditional, bilateral model of labour relations based on reciprocal obligations – an em-

ployer paying for work, an employee working in the time required and space provided by the employer – has undergone ‘atomisation’ through the additions of a new party in the labour relation, i.e. the so called client-employer. Accordingly, in the case of temporary work the agency is the formal employer and party to the temporary employment contract. However, the agency itself is not the receiver or beneficiary of work, and it is not under the agency’s direction and supervision that the work in question is to be carried out – these are the prerogatives of the client-employer. Work is carried out by the temporary employee, i.e. a worker employed by the temporary employment agency particularly in order to perform the work in question. The nature of temporary work lies in the fact that three entities are involved, which is why this kind of work is referred to in the literature of the subject as an atypical work arrangement<sup>53</sup>. This atypicality has been noted in the Polish legal order since its very conception; this is not only a question of multiple parties being involved, but also of the rules of concluding and resolving employment contracts and the exemptions from certain universally applicable Labour Code laws (e.g. caps on the number of contracts for a definite period or the protection of employees in pregnancy); additionally, entitlements traditionally associated with the employment contract (such as entitlement to leave) are separately regulated in the case of temporary work. The particular legal character of the trilateral model of employment is tied to the legal character of temporary work, the definition of which can be found in art. 2 part 3 of the act: temporary work is work carried out for the benefit of a given client-employer for a duration not exceeding certain legal limits; it usually involves tasks of seasonal, periodical or interim character, or which lie within the responsibilities of an absent worker employed by the client-employer. One additional characteristic of this kind of employment is its maximal duration: according to art. 20 of said act, within a period of 36 consecutive months a temporary employment agency is allowed to direct a worker it employs to at most 18 months’ employment at a single client-employer. One exception to this rule is when an employee of the employment agency is fulfilling the responsibilities of an ab-

sent worker. In such cases the temporary employment period may be extended to 36 months, after which the employee may be directed to work for the same client-employer only after a 36-month break<sup>54</sup>. On the grounds of the above-mentioned information one can maintain that the Polish legal system is very precise at stressing the provisional character of temporary work by introducing the legal definition of temporary work and by limiting the maximal duration of such work.

### **4.6. Non-Standard Forms of Employment**

The principle of freedom of contract and the choice of various forms of employment permits resort be made to non-standard forms of employment, especially under civil law contracts. Among many contracts made provision for in the Civil Code, three of them serve most widely as the basis on which work is performed: the contract of mandate (in articles 734–751 of the Civil Code), the contract for specific work (in articles 627–646 of the Civil Code), and the contract of agency (in articles 758–764 of the Civil Code). Three other civil law employment models of note are outwork, the managerial contract and self-employment. These six types of non-contract employment are particularly favoured in Poland and the analysis will restrict itself to them.

#### **Contract of mandate**

In the contract of mandate the contracting party (the party taking the order, or the contractor) is to undertake certain legal transactions on behalf of the ordering party (the party giving the order, or the service purchaser), for example concluding a contract or submitting an offer. A contract of mandate is a contract of due diligence, by which is to be understood that the contractor is entitled to a consideration provided that he cannot be accused of lack of diligence in conducting the affair for the ordering party, and the contractor is not responsible for the result of actions taken. Most contracts which identify as this type are in practice service provision agreements to which the regulations of the contract of

mandate apply, notwithstanding that the contract parties term it a contract of mandate. The contracting party is obliged to perform the service set down in the contract personally. It is permissible, however to entrust some or all of the tasks to a third party. The contract of mandate may be a paid or an unpaid contract. In the first case the contracting party is entitled to a consideration only after the expiry of the contract unless the parties agreed otherwise. Either party may terminate the contract at any time. The parties may determine the notice period of the contract freely. They cannot waive in advance the right to terminate the contract in case of valid reasons, such as not having an advance of funds for entailed costs.

### **Contract for specific work**

In a contract for specific work the contractor undertakes to perform a designated task while the ordering party agrees to pay remuneration. This contract must always finish with a specified, foreseeable and verifiable result. In contracts for specific work the lead concern is that the end result is achieved, whereas the obligation to perform work personally is of lesser matter. This model is always a paid contract and provides that the remuneration for the person tasked can be defined in various ways of which using specific rates or a tariff are examples. If the parties to the contract have not set the remuneration nor indicated the basis for determining it, the assumption holds that the contractor is entitled to the usual remuneration due for work of the kind. The contract for specific work is usually unduplicable, from which follows that it aims to obtain a thoroughly-specified result. For this reason, the regulations grant of the possibility to withdraw from the contract, feasible all the more by that fact that the contract cannot trigger any legal ensual, because it is considered void. Withdrawal from the contract should only take place in exceptional circumstances, hence it is permissible only in cases specified by law.

### **Contract of Agency**

Signed to a contract of agency, the party taking the order (the agent) relies on his own firm's commercial activity and through it undertakes to run an agency continuously for reward, in order to enter into contracts with clients for the business of the ordering party or to conclude them in the business's name. A contract of agency may be concluded only by an agent in business for himself, hence usually proprietor of a small firm, and another businessperson. The main obligations on both parties include mutual loyalty, understood as an obligation to act in concert where the agency has commitments and to tend common interests. It is also the duty of the parties to inform each other of all matters of shared concern. The agent is independent as a business and so is not subject to the authority of the ordering party. The contract of agency is a contract for reward. The remuneration of the agent most commonly takes the form of a commission, the value of which is determined as a percentage of the contract value concluded by the agent, or as piecework when the commission value depends on the number of contracts concluded. The generally applicable labour law holds in principle only over employees and employers – the two sides of a regular employment relationship. This concerns in particular the rules of entering and dissolving employment contracts, earnings protection, working hours and holiday leave. To people employed under this contract model the above-mentioned regulations do not apply as a rule, except for the health and safety labour law in general force. The popularity of this form of employment is associated with acute demand for labour which is typical of the modern labour market. The business community also finds the relative ease of recruiting and terminating workers appealing, making possible as it does quick reaction to a fluid need for labour.

### **Outwork**

Outwork is employment of natural persons giving earnings and an occupation, carried out in the outworker's flat or other place owned by them as jobbing work for employer and at their cost.

The components and consumables are most often provided by the employer. The constructor carries out the work personally or with the help of the members of the family on the basis of an outwork contract. Here is an example of non-standard forms of employment which is however pervaded by some elements of labour law. The outwork itself can be either manufacturing certain products or their parts from the components and consumables provided by the employer or can be finishing, assembling parts, refining products, repair and maintenance of products or their parts or performing services. The outworker independently plans their time, method, and place of work. The outworker is nevertheless entitled to remuneration and holiday leave and their material liability through carrying out the work is consistent with that of regular employees. How contracts are permitted to be terminated has been restricted for outworkers entitled to and enjoying special protection (for example workers unable to work for a period due to illness). A woman outworker is entitled to maternity leave on the entitlement basis afforded female employees in regular positions, with the exception that she has no right to parental leave. Yet labour law regulations concerning work particularly onerous for women apply to her. Outworkers differ little in entitlements from regular employees in the areas of health and safety at work, occupational diseases, accidents in the workplace, death benefits and redundancy. Most significantly this form of employment helps the outwork employer to reduce employment costs due to there being no need to provide and maintain a workplace on the premises of the enterprise. An outworker toiling in their own home is an employer obligation to contribute for into social insurance funds for retirement and other benefits, however for accident insurance they are not, and sick-pay insurance is only a contribution at goodwill.

### **Managerial contract**

Managerial contracts are signed with people whose qualifications, experience, knowledge, connections, etc. may translate into value growth in the company. When such people are in positions to assume the management of all or part of the business, mana-

gerial contracts are the model. The contracts concern those with senior management skills who are ready to take responsibility for the company's results, and contain a broad swath of entitlements. Managerial contracts are civil law contracts under which the contracting party (the manager) undertakes to continuously manage the principal's (entrepreneur's) company in their name and on their behalf. It is a mixed agreement which contains elements of various types of contracts. It often contains both obligations of due diligence and performance as well. Managerial contracts may contain elements typical of a contract of employment, which may suggest a labour-law-bound employment relationship. In the managerial contract the parties themselves can decide how to define their rights and obligations. This contract model (also known as a management contract, contract for the exercise of management, contract of management mandate, and company director agreement) is a specific form of employment which is not regulated directly by law (uniform text in the Civil Code or any other Act is lacking; and the legal regime of the Labour Code does not apply to it). It ranks among the so-called unnamed contracts (not regulated by the legislature), it is a flexible civil law agreement. There is freedom of contract when concluding the managerial contract<sup>50</sup>. The manager is obliged to act in the name and on behalf of the owner (entrepreneur), therefore they must be properly authorised not only to manage the company but also to represent it in dealings with external entities. To give somebody a managerial contract means to charge them with full liability under civil law for the consequences of their actions. The mistakes on a manager's part attach the possibility of the manager's liability for damages, under the terms of the contract, with exposure even of all their assets, without limitation on the sum. In the case of liability on the part of an employee the liability for damages is limited to the amount of three times

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<sup>50</sup> The principle of freedom of contract consists in the fact that its parties are free to form their mutual obligations, in the sole discretion of law, in their will to do so, and not to oppose the character of a given legal relationship or the rules of social coexistence. Therefore, parties can not form a contract in such a way that the employment relationship between them is actually established.

their salary. It is also possible to establish a contractual penalty, for example because of manager failure to address the responsibility to achieve defined goals. Enacting a managerial contract guarantees greater independence and freedom in decision-making than adheres under a regular employment contract and this may exert a markedly positive influence on a manager's career development potential. A manager herself chooses the managerial style of the enterprise, and she has no scheduled working hours, but contingent upon that her employment also falls outside the Labour Code, she takes no paid holiday leave, nor receives sick pay or social insurance benefits. A contracted manager has less protection than is afforded by a regular employer-employee relationship, but the extent of the protection is negotiated before the contract is signed into life. Inconstancy of employment may be a manager's problem because the contract may be dissolved at any time. The elements of the managerial contract include the subject of the contract, mutual obligations, the responsibility of the contracted manager, remit of tasks charged and criteria of task achievement appraisal, attestation of the manager's independence, duration of the contract, consideration, and additional benefits package, social package, bonuses<sup>51</sup> and the 'golden parachute' (severance package). How the clauses finally look in a managerial contract, and if it confers greater advantage on the manager or on the enterprise largely depends on the relative negotiating skills of the two sides. The lead motive for enacting managerial contracts are financial advantages, because the employer, be they businessperson or proprietor, is able to offer the employee a higher salary thanks to reduced employment costs. The reduced costs derive from the chance of listing expenses incurred by a manager as business expenses – possible

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<sup>51</sup> The gross amount is determined, but contributions from contract are being paid to ZUS - they must be paid by the manager himself. The permanent remuneration can be strengthened by an addendum, eg dependent on profitability or growth in the value of an enterprise. This is a direct dependency of the manager's salary on the success of his or her work. There are also managerial contracts where the total remuneration of the manager is calculated on the basis of the company's income or profit.

when the manager is not a member of the management board or supervisory board, and favourable when costs as expenses for supervisory board members, audit committees, and all bodies being legal persons may not be offset, except for salaries for execution of office. For tax purposes the contract in every instance is treated as other than a contract of mandate, similarly it is not brought into the scope of small firm activity even if the manager who signs the contract runs such a small firm. In every instance the contract is accounted for as commercial activity carried out by the person. However, claims for overtime are precluded by the setting of no limit on the manager's working hours in the contract.

#### **Self-employment**

This form of employment provides for collaboration between two separate entities, which in practice are usually a commercial enterprise which is relatively complex organisationally and an independent businessperson running a one-person small firm. The shared enterprise of these commercial entities is founded on a civil law contract between bodies including resolutions which bind them. This form of employment usually does not entitle the party undertaking work to any of the privileges associated with employment in the labour-law-bound employer-employee relationship, including holiday entitlement or assurances on working hours, and certainly does not confer the employment contract-specific protection against contract dissolution. Inclusions can however be found in the contract of this form of employment which are typical for legal relationships in civil law, these being stipulated penalties, avals, and confidentiality clauses. Observations of the current market show a consistently rising total of one-person small firms which is also unignorably related to the less onerous social insurance and tax regime for the employer which marks out this form of employment. Seen through the prism of labour law protection and its real effect, the removal of this ever-larger occupational group from the auspices of labour law's standards of protection is a cause for concern. Reacting to this, Polish labour law is seeking to preserve the effect of certain standards of protection, even for the benefit of

those working and earning this way. This ‘absorptive’ tendency in labour law which aims to expand the constituency of employment protection measures is discussed in the next section of this work.

#### 4.7. Non-Standard Forms of Employment in the Polish Labour Market

Non-standard forms of employment are an arrangement for the execution of work under which there is neither employer nor employee, but merely party and counterparty to a contract. Such work takes place under a civil law contract entered into with a specified task. It is becoming more and more widespread and is advantageous for the employer, because it rarely imposes an obligation to guarantee workers’ benefits, i.e. social insurance contributions, paid holidays, sick pay, and social security benefits. The hallmark of such employment without an employment contract is the employer’s protection from the economic liability which comes with the traditional form of employment, principally with a regular employment contract. This liability has both operational and fiscal dimensions. Improving employment flexibility in this case means the employer ceasing to find solutions within the ambit of the employment contract, which is to say putting flexibility into the rules for the work that contracted workers do, and instead paring the arrangement down to work without contract.

Table 1. Comparison of the main characteristics of regular contract and without-contract employment

Characteristics	Employee under regular contract	Employee without contract
Extent of mutual obligation	Employment with full mutual obligations	No mutual obligations
Financial dependency	Total	Total
Terms and conditions of employment	Terms and conditions enforced by the Labour Code	Partial abrogation from terms and conditions

#### 4.7. Non-Standard Forms of Employment in the Polish Labour Market

Freedom of choice	Obligation can be imposed on a worker to perform certain tasks	Obligation cannot be imposed on a worker to perform certain tasks
Continuity	Continuity of work is maintained	No continuity of work; contracts of various forms are signed for the execution of one task or a finite series of tasks only
Worker subordination	Worker is fully subordinate and employer is entitled to issue instructions	The party engaging the other to work cannot direct his actions or issue instructions of varying nature over time
Obligation on worker to perform tasks personally	Worker is so obligated	No such obligation unless otherwise stipulated in the contract
Liability borne by the engaging party	Significant	Limited; provision for stipulating liability transfer in the contract
Working hours	Fixed	No obligation to document hours worked
Paid leave	Right enshrined in the Labour Code	No paid leave, except in the case of a person performing outwork
Health and safety at work regulations	Compliance with regulations for the worker's protection enshrined in the Labour Code	Stipulated in the contract
Training and professional development	Frequently at the employer's expense and sanctioned by requirements stipulated in the Labour Code	No employer cost participation
Private and family life	Dependent upon flexibility or lack thereof in working hours	More perfect balance between professional and private life
Costs to the employer	High	Lower

Source: Own study, based on L. Grzonka, *Alternatywne formy zatrudnienia z wzorami umów i pism. Świadczenia poza stosunkiem pracy* [Alternative employment provisions, template contracts and written legal instruments. Rendering service outside the ambit of the regular employment contract], Polskie Wydawnictwo Prawnicze, Warsaw 2013.

The nature of employment an enterprise proposes to those who perform tasks for it depends to a large extent on the position a particular individual holds in the structure of the workforce. The further that person's position is from the core of the structure, the more frequently is seen non-standard forms of employment (Figure 1). Here the exception is the managerial contract, which among the forms of employment without contract is the only one to be found near the core. Without-contract employment for ancillary staff clears the way for their replacement at any time by other workers or their termination in the event of a weak market. Two employee groups stand out. Older people predominate in the first, who were recruited job-secure in the old system (having a regular permanent contract) and who are often protected in their positions by labour organisations or personnel with high levels of specialisation who are critical to the company. In the second group rank-and-file workers dominate, and particularly young people retained through unconventional employment arrangements encompassing not only without-contract work but also work on fixed-term contracts.

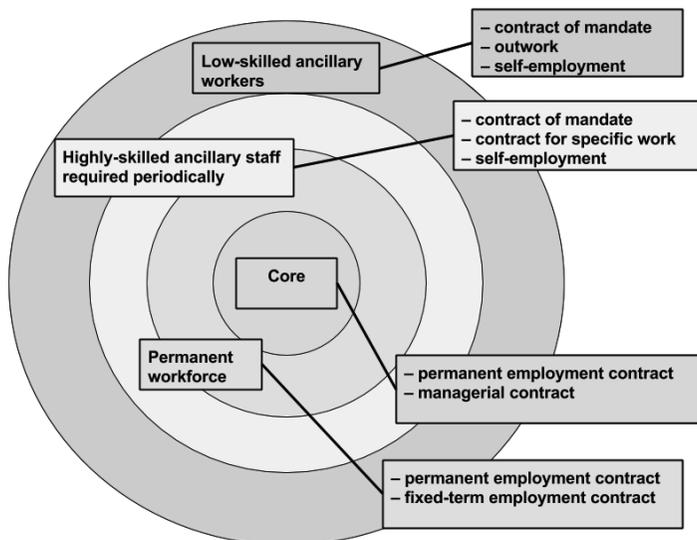
Forecasts for the evolution of the labour market and its direction indicate that in the future the field of non-standard forms of employment will broaden, allied to the growing importance of task-based employment. The demand profile is changing for the professionals most sought and the need for highly-qualified 'knowledge workers' is growing. Growing too alongside is employment in the service sector and the growth has been sustained. Employment through civil law contracts will cater to these changes better than employment through regular employment contracts. The signs are there even now that this kind of employment is gaining greater and greater currency. According to the Polish Central Statistical Office there are close to 1.4 million people employed on civil law contracts, and while the National Workplace Inspectorate recorded the percentage of people thus employed as 9% in 2008, it was already nearly 13% by 2013<sup>52</sup>.

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<sup>52</sup> <http://www.mpips.gov.pl/aktualności-wszystkie/prawo-pracyart.,6610,oskładkowanie-umow-zleceń.html>.

## 4.7. Non-Standard Forms of Employment in the Polish Labour Market

Figure 1. Diagrammatic representation of the flexible employment model and the dominant forms of on-contract and without-contract employment



Source: Own study.

Calculations have yielded an estimate of the number of natural persons operating non-farming small enterprises and not having others in their employ at the end of 2012 (those termed 'self-employed') at 1.1 million, representing approximately 29% of all natural persons operating non-farming small enterprises and approximately 8% of all people in employment in Poland at the time<sup>53</sup>. Nevertheless, from the same calculations, the estimated number of people who signed a contract of mandate or contract for specific work in 2012 and who were not employed anywhere under regular employment contracts, and also without people who receive retirement or other forms of gratuity. This corresponds to approxi-

<sup>53</sup> <http://stat.gov.pl/obszary-tematyczne/praca-wynagrodzenia/praca/monitoring-rynku-pracy,11,1.html>.

Table 2. Employment figures for workers on contracts for services, contracts of mandate, or contracts for specific work in 2012

	Workers on contracts for services contradistinct to employment contracts	Workers on contracts of mandate or for specific work and not on regular employment contracts	Total
Total	76 571	1 010 250	1 086 821
Administrative and support services	8 377	290 538	298 915
Processing industries	1 799	149 082	150 881
Retail sales and mechanical trades (vehicular)	1 759	136 835	138 594
Scientific, technical, and miscellaneous professions	1 083	61 087	62 170
Construction	666	51 980	52 646
Catering and hospitality	161	39 175	39 336
Education	765	37 670	38 435
ICT	1 315	34 397	35 712
Haulage and warehousing	449	34 373	34 822
Defence and civil service	267	33 866	34 133
Healthcare and social services	58 026	31 004	89 030
Culture, entertainment, and leisure	695	30 524	31 219
Insurance and financial services	734	25 699	26 433
Farming, forestry, hunting, and fishing	96	15 681	15 777
Property	103	14 133	14 236
Water supply and sanitation	99	11 257	11 356
Miscellaneous service industries	4	8 902	8 906
Power generation and supply	120	2 081	2 201
Mining and extractive industries	53	1 966	2 019

Source: *Employment in the national economy in 2012*, the Central Statistical Office, table 15, pp. 78-79.

mately 13% of the total number of people employed in Poland and 10% of the total number of people working in any form in Poland at the end of 2012<sup>54</sup>.

As Table 2 data show, the highest number of contracts for specific work and contracts of mandate were signed in the administrative and support services sector. The total number of contracts does not, however, give a fully accurate picture of how many people work in this form of without-contract employment, because one person may sign several contracts in the course of one year. The highest number of workers retained on contracts for services were employed in the healthcare and social services sector. It is entirely possible that these contracts correspond to clinicians taking consultations in more than one clinic.

One of the gravest accusations levelled at employers who take advantage of their entitlement to engage workers without an employment contract is that they conceal the fact of an employer–employee relationship under the guise of a different legal relationship of the parties. As Małgorzata Gersdorf wrote, ‘Circumstances most often suggest that employers have encouraged their workers (or former workers) to start up their own small enterprises but to perform the same work as those enterprises which they formerly did as employees, and the consequence of this is that the distinction between work with an employment contract and work without one becomes blurred’<sup>55</sup>. National Labour Inspectorate statistics show that incidences of entry to an unfair contract of this kind are rising from year to year. While only 4% of companies audited for compliance in 2007 broke the law in entering contracts with workers, there were 18% in 2013. What is seen in practice is that situations often exist in which a worker party to a contract of mandate is actually performing work appropriate to a regular employment contract. This therefore means that the person is no more nor less than an employee, and the rules of the Labour Code apply to that employee. Entering a civil law contract when in fact all conditions

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<sup>54</sup> Ibidem.

<sup>55</sup> M. Gersdorf, M. Raczkowski, R. Wyziński, *Zatrudnieni i zatrudniający na aktualnym rynku pracy*. M. Gersdorf (ed.), LexisNexis, Warsaw 2012, p. 21.

are met for a regular employment contract is punishable by a fine of 1,000 to 30,000 Polish zloty.

For working people an undoubted advantage of such a form of employment is the possibility of choosing the place and hours, which acquires great significance for people for whom full-time work or work on the employer's premises is undesirable or impossible, for instance because of other commitments. Flexible working time enables the worker to reconcile work and family responsibilities. The 'employee' benefits from a certain level of independence and self-reliance in planning the work schedule. For their part the employer can optimise the pattern and weekly duration of work and the size of the workforce in their enterprise by selecting from the many varieties of contract. Taking advantage of working arrangements without an employment contract gives an enterprise the ability to react quickly to changes happening in its business environment and to adapt the structure and number of employees to the needs of the enterprise, while limiting the cost of workforce reduction<sup>56</sup>. The negative aspects of employment arrangements without an employment contract may manifest themselves for employers just as much as for those retained this way. There are appreciably more of these negative aspects from the perspective of the employee, however. This has caused partly in the fact that employers habitually exploit their economic advantage over their employees (equality of bargaining power being illusory) and lay down working conditions in their own favour, those carrying out tasks being only able to accept or reject those conditions. For these workers one of the fundamental demerits of this employment is the lack of stability and certainty of employment. The Civil law contracts (contracts for specific work or contracts of mandate) are frequently signed anew every month and the contract party which is the worker has no certainty of having work in the next month which is no less than having or lacking means of sustenance. When the next contract is not signed, the ex-worker nevertheless

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<sup>56</sup> In such cases legislation on group redundancies is not applied by employers and this means that persons, who were made redundant do not receive compensation as would happen in the case of persons employed based on an employment contract.

does not gain entitlement to unemployment benefit. This form of employment also does not bring about any sense of commonality of purpose between the worker and the body employing the worker. From this derive the ineffectuality of social ties to the work environment and the atomisation of labour relations which manifest themselves in isolation and wide dispersal of the workforce. Not enjoying a permanent employment contract does not only signify lower social prestige, but also less preferential treatment in comparison with employees in the same enterprise who do enjoy such permanent contracts. Those employees can expect promotion, training, investment in their skills capital, and a system of financial motivation taking the form of rewards and bonuses. These 'perks' do not fall to those working under civil law contracts. As previously stressed, knowledge is and will continue to be fundamental for a worker and so every element of knowledge is key which contributes to personal development in broad terms such as courses, training, first degrees, and subjects pursued to higher education/higher degrees. Knowledge becomes outdated quickly and as the labour market becomes globalised it imposes the need for constant updates to a professional's skill portfolio. All those working without employment contracts have to acquire new knowledge at their own expense, which is difficult because they generally earn lower pay than colleagues in the same enterprise who have permanent contracts. As ancillary workers they are pigeon-holed as collaborative workers. They do not have other privileges written into the Labour Code, which is to say they cannot rely on sick pay or health insurance and consequently to enjoy these provisions they have to pay state health insurance contributions from their own means. Neither do they have entitlement to paid holiday. Individuals working without employment contracts fall outside collective labour agreements, which are premised on setting out more favourable terms for employees than those of the agreements effective before them. Falling outside the agreements, these workers gain nothing when such an agreement is signed into force in the enterprise. Furthermore, workers without employment contracts do not have representation in trade unions. The Polish social insurance institution does not count

the years they have worked under this arrangement towards their total years in employment. Yet another detrimental aspect of this type of employment is a worse credit rating from banks. For this reason also non-standard forms of employment are generally held in low regard among workers and jobseekers alike.

There are however also caveats for employers in using without-contract employment. They need be concerned about the possibility that a worker who carries out their duty off the employers' premises and under no employer supervision may not carry out that duty diligently enough. Difficulty in correlating quality achieved in work with the time spent doing it may also arise. The view is also voiced that widespread use of without-contract employment places an undue burden on other employers who conscientiously meet their social obligations towards their workforce<sup>57</sup>. Such employers bear greater costs and are thereby less competitive.

### **Protective measures for those in remunerated work**

At the core of the part of Polish domestic policy which must address the challenge of globalisation to society there should be a fluid strategy for managing labour market changes<sup>58</sup>. It would provide a way to guarantee appropriate legal protection to people performing remunerated work in a rapidly evolving labour market. As the International Labour Organisation indicated in its introduction to Employment Relationship Recommendation No 198 regarding contractual employment arrangements, knowing who in fact remains under regular employment contract and who does not have to become a problematic issue in the last few decades, which is an after-effect of far-reaching changes in labour patterns as well as a result of reforms to legislative regulations accommodating these changes<sup>59</sup>. The underlying problems outlined in the

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<sup>57</sup> M. Gersdorf, M. Raczkowski, R. Wyziński, *Zatrudnieni i zatrudniający na aktualnym rynku pracy*, LexisNexis, Warsaw 2012, p. 32.

<sup>58</sup> ILO Report, Geneva 2004, 17 (ILO website <http://www.ilo.org/public/libdoc/ilo/2004/104B09-112-engl.pdf>).

<sup>59</sup> Recommendation adopted on 15 June 2006 during 95th ILO General Conference in Geneva.

report are the lack of clarity in the delineation of the rights and responsibilities of both sides, attempts to conceal the existence of employer–employee relationship, and imperfections in the standard applicable regulations in the Labour Code.

Mindful of the change processes examined above, the standard employment law applying in Poland seeks to limit the long-evident ‘flight’ from a contract-defined employer–employee relationship as traditionally understood towards unconventional forms of employment, and in particular employment on the basis of civil law contracts, these being principally contracts of mandate, contracts for specific work, and self-employment. The labour law regulations currently in force stipulate circumstances under which employment is deemed employment on a regular employment contract, irrespective of how the parties to that employment arrangement denominate the contract. Employment to be so regarded has characteristics such as: the authority of the party offering employment over the party undertaking work to assign that party with tasks in the nature of work, as they may arise; remuneration; the appointment of a defined place and defined times of work; and the bearing of the liability associated with the execution of the work by the employing party. The Polish legal system, taking the position that a ‘discretionary presumption’ may apply to establish the fact of a regular contract of employment, defined employment with employer–employee contractual nature as a form of employment with predefined characteristics, laying this down in article 22 of the Labour Code. It also formulated a straightforward prohibition on substituting other forms of employment for employment under regular contract if the nature and ambit of the duties do not change. Lawmakers also endowed the supervisory bodies, i.e. the courts and the National Labour Inspectorate with the general power of competence to ascertain the actual form of employment in a case. In light of the systematic nature of the solution to the civil contract abuse problem, it is recognisable that a judicial system of assaying the nature of employment has been created as the ultimate adjudicator of the legality of employment practices. Complementary to it is an administrative system for worker protection,

mandated with legal and punitive capabilities by which to prove a breach of a worker's rights and bring plaint for the establishment of the appropriate form of employment where non-compliance is proven. Taking a cue from this two-tiered system, This part of the work is divided into two basic facets of worker protection: the judicial, adjudicating on the true form of employment through legal process; and the administrative, denoting the procedure of the National Labour Inspectorate when exercising oversight and seeking legal adjudication on the form of employment in a case it brings.

### **The judicial mechanism for worker protection**

The mechanism for protection of people carrying out work on the basis of civil law contracts is broadly defined by the judicature. A piece of the definition is the Polish Supreme Court verdict of April 13, 2000, in which the court found that 'the concerned parties have power of decision over the legal form chosen for employment –but not steered by the defendant's presumption that there is obligation only as far as there is a means of fulfilling it'<sup>60</sup>. The deliberation issued by the Court establishes very precisely that when there is litigation over the nature in law of a contract signed between two parties, the real circumstances of the employment have primary relevance and not the formal issue of the model of contract entered into by the parties. If one or other of the contract parties in litigation question what the court does, the protocol for appraising the factual state of employment which the court tests can be reduced descriptively to adjudicating whether the characteristics of the employment sustain the presumption of establishing the existence of an employer–employee relationship. In the Supreme Court's opinion, 'the absence of any absolute personal obligation to perform work precludes all possibility of defining in law an employment as a regular employment contract'<sup>61</sup>. Further, 'the absence of any obligation on a worker to carry out the bidding of a superior weighs against the possibility of deeming the legal re-

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<sup>60</sup> Supreme Court Ruling of 13 April 2000 (PKN 594/99 OSNP 2001/21/637).

<sup>61</sup> Supreme Court Ruling of 28 October 1998 (I PKN 415/98 OSNAP 1999/24/775).

lationship to be employer–employee<sup>62</sup>. In adjudicating on the true nature of an employment, the court primarily appraises its characteristics, comparing the formalities of the contract model which the parties entered into with the characteristics typical of regular contracted employment wherein the party performing work submits to the authority of the party charging it with that work.

In practice uncertainty may arise regarding the evaluation of the specific model of employment, and by consequence uncertainty in determining if it is rather as employer and employee with its legal ramifications or employment under civil law. The evaluation criteria of course may only here be characteristics signalling regular contract employment, the basis for which is the content of article 22, paragraph 1 of the Labour Code. Despite these characteristics having been enumerated, it is not always an easy task to assign an employment its true nature in law. The orientation provided by court judgement may therefore be useful. In a judgement dated September 2, 1998 the Supreme Court pronounced that ‘Where the characteristics of regular contract employment do not predominate in a legal relationship, the title of the position in which worker accepts obligation and the manner of that obligation’s performance are decisive’<sup>63</sup>. Another judgement however confirmed that ‘the legal status of the president of a joint board of directors in a public limited company when that president is not a shareholder may be defined through a contract of mandate, a contract of employment (including a fixed-term contract of employment), or a legal relationship of individual to company justified upon the competencies, rights and responsibilities of the presidential function and included in the company charter, articles of association or contract between these parties of president and company’<sup>64</sup>. The view expressed in the judgement dated June 18, 1998 may also have great import: ‘1. If a contract presents characteristics common to both employment contracts and civil law contracts and

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<sup>62</sup> Supreme Court Ruling of 11 April 1997 (I PKN 89/97 OSNAP 1998/2/35).

<sup>63</sup> (I PKN 293/98, OSNAPiUS 1999, No 18, poz. 582).

<sup>64</sup> Supreme Court Ruling of 17 May 1995 (I PKN 14/95 OSNAPiUS 1995 No 21 item 263).

equally strongly the one as the other, its type (contract model) is decided by the common intention of the parties to the contract and by the purpose of the contract, which may also be stated in the contract title. 2. The adjudication procedure of a contract may not fail to note the circumstances pertaining at the time it was signed<sup>65</sup>.

Cases may be encountered of concealment through contract clauses of the true wishes of the parties to the contract, for example by cancelling the requirement for the work to be performed in person or passing the liability attaching to the work to the party performing it, as well as maintaining the principle that the performer of work is subject to the authority of the party charging them with its performance. Such situations are sources of problems in the evaluation of the nature in law of the employment and may also incite attempts to superficially circumvent the labour law regulations. It seems therefore that for the evaluation of the nature in law of an employment, absolute pre-eminence should afford to those characteristics of a regular employment contract which are iterated in the content of the previously cited article 22 paragraph 1 of the Labour Code, and in the first rank the subjection of the worker to authority. The court subjects not only the content of the obligations in a contract to formal legal test, but it also scrutinises aspects of how those obligations are performed in practice, to which the Supreme Court also directs attention. The Supreme Court holds the position that for evaluation of the nature in law of an employment it is indispensable to establish the manner of the contract's execution and the circumstances motivating the parties to enter into that contract. The content of the contract alone is not decisive<sup>66</sup>.

It is nevertheless noteworthy that in recent years the judicature has begun to display a tendency to admit more extensively of civil law contracts. By way of example, the Supreme Court pronounced in its judgement of September 11, 2013 that elements of oversight

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<sup>65</sup> (I PKN 191/98 OSNAPiUS 1999 No 14 item 449).

<sup>66</sup> Supreme Court Ruling of 3 November 2010 (I PK 85/10 Legalis No 406155; Supreme Court Pos 19/07/2012 II PK 55/12, Legalis No 538414).

and subjection to authority may find inclusion in contracts of mandate, although unlike those in a regular contract of employment<sup>67</sup>. In this judgement the Court expressed support for the view that work subject to authority is not reserved exclusively for regular employment contracts. On the other hand the Supreme Court takes up this position in the judgement handed down on July 10, 2004: 'The intention of the parties and the purpose of the contract determine the existence and nature of the legal relationship deriving from the contract, however where doubt arises as to what the intention of the parties was (regarding the contract model), what must be regarded as conclusive is that which found expression in the direct statements of the parties' wishes and in the definition of them by the parties in a legal transaction, and hence found expression in the name appointed to that transaction'<sup>68</sup>. The parties are therefore unfettered in their decision upon which basis they wish to embark on work together.

#### **Countermeasures to excessive use of without-contract employment**

Enacting civil law contracts is associated with lower costs of employment and decidedly greater flexibility than regular employment contracts. For such reason, in many cases where the characteristics of the work performed would argue for labour-law-bound contract employment, civil law contracts are adopted in their place. This is an illegal practice because it causes the dissociation of the employment from the labour law legislation for worker protection which should apply by virtue of the defined role of the contract parties and the conditions under which work is carried out. Naturally there is one principle across the whole legal system, being that evaluation of the nature in law of a legal relationship takes in the matter of the relationship and how it is realised, but not the nomenclature of the contract signed between the parties. The legislative body has included regula-

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<sup>67</sup> Supreme Court Ruling of 11 September 2013 (II PK 372/12 Legalis No 830679).

<sup>68</sup> Supreme Court Ruling of 7 October 2004 (II PK 29/04 Legalis No 67868).

tions in the Labour Code which directly confirm this principle in labour law. According to article 22, paragraph 1, subparagraphs 1 and 2 of the Labour Code employment under conditions which correspond to the characteristics of an employer–employee relationship is materially labour-law–bound contract employment regardless of the title borne by the contract. Substituting employment contracts of other form for labour-law–bound employment contracts when the circumstances of work do not change is also in contravention of the law. The Supreme Court clarified by its judgement of September 23, 1998 that ‘article 22, paragraph 1, subparagraph 1 of the Labour Code does not create a legal presumption of an employment contract having been enacted’<sup>69</sup>. Notice was given of a similar position in the July 7, 2000 judgement: ‘The rule of article 22, paragraph 1, subparagraph 1 of the Labour Code does not create a legal presumption of a labour law employment contract having been enacted. First the common will of the parties, and next the manner in which that will is enacted are conclusive for the determination of the factual contract model which applies’<sup>70</sup>; and was also in the judgement of May 27, 2010: ‘When it is established that the contract joining the parties presents characteristics common to both employment contracts and civil law contracts and equally strongly the one as the other, the decisive element in ascribing contract type should be the wish of the parties in recorded fact. Article 22 paragraph 1, subparagraph 1 of the Labour Code does not create a legal presumption of a labour law employment contract having been enacted. Neither does it preclude establishing the true contract model by interpreting the stated wish of the parties according to the criteria in article 65 of the Civil Code’<sup>71</sup>. For practical applications the viewpoint adopted by the Supreme Court on 21 May 1999 judgement has real significance: ‘It is not necessary for there to have been wrong done to the worker or for the worker to remain affected by a mistake in entering an employment con-

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<sup>69</sup> (II UKN 229/98, OSNAPiUS 1999, No 19, item 627).

<sup>70</sup> (I PKN 727/99, Legalis).

<sup>71</sup> (II PK 354/09, Legalis).

tract for article 22, paragraph 1 and paragraph 1, subsection 1 to apply'<sup>72</sup>.

#### **Administrative oversight of the nature of employment**

The National Labour Inspectorate is mandated with legal and punitive capability, entitling it to prove a contravention and impose a fine, and with legal and administrative competence to lodge an application for workers to be employed under a labour-law-bound employer–employee relationship. To reach a conclusion when exercising oversight, the labour inspector applies the Inspectorate's own test of employment. As it carries out an inspection, the national body investigates how work is performed, and specifically whether under subjection of the worker to the employer's authority. For this the National Labour Inspectorate's agent has an investigative questionnaire for their use, drawn up by the Inspectorate, and known as the evaluative test<sup>73</sup>. The monthly journal 'Labour Inspector' in issue 6, 2007 revealed that the inspector applies the test by asking workers in a company questions about the manner in which they carry out their work, their working hours, and the condition of authority they are under. The questions assist the inspector in reaching a decision on whether the person engaged there carries out work as part of an employer–employee relationship or on the basis of a civil law contract.

The rules for court proceedings under article 281 of the Labour Code permit only a natural person to be the defendant. The contravention at issue may be committed by an employer or a person acting in the employer's name, as provided for by the rule referred to. According to article 3, an employer can only be a natural person if the employer retains workers—in practice anybody which is an employer has a person providing work to at least one employee. However, according to article 3<sup>1</sup> of the Code the contravenor is a person or organ of the company acting for the employer when it manages the company unit controlling activities in scope of labour

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<sup>72</sup> (PKN 65/99, OSNAPiUS 2000, No 15, item 581).

<sup>73</sup> According to 'Inspektor Pracy (Labour Inspector)' monthly 6/2007, Labour Inspector asks the above listed questions to an employee of an organization.

law, and that company unit is the employer; or the contravenor is another person appointed to so act for the employer. In such case as the employer is a natural person, the contravenor is the person indicated by the employer when the employer themselves does not control activities pertinent to labour law. In practice identifying the individual to whom to apportion blame is a matter of analysing the organisational structure, company procedural rules, and other documents revealing the true division of responsibilities within a given employer.

A contravention where a civil law contract is enacted in conditions appropriate only to a regular employment contract may be committed by an employer or a person acting in his name, or alternatively another person entitled to enact such contracts. A referral by an inspector for the application of sanction need not have as a precondition that a prior complaint has been brought to the labour tribunal for the establishment of a labour-law-bound employer–employee relationship and binding decision upon the contract parties. It is accepted however that referral to court for application of sanction should only take place in clear-cut situations, when the characteristics of a labour-law-bound employer–employee relationship, such as the worker being subordinated to the employer's will regarding the nature of the work performed and the place and time of its performance, are self-evident. In less clear-cut cases it is possible to submit the facts of the employment to the labour tribunal for their evaluation of its nature. Where there is a strongly arguable case that the employment arrangement the parties have entered into bears characteristics of employment which should be under labour law, the labour inspector takes the set path of administrative and judicial proceedings and requests the employer to change the employment model from one under civil law to one under labour law. This means of prevailing upon an employer is widely regarded as a soft method and is one which is not ultimately legally binding upon the entity being inspected. Should parties to an agreement fail to reach resolve in a dispute over the appropriate model for the contract which binds them, the ultimate adjudicator may only be the labour tribunal. The Labour Inspector is also

empowered to bring plaint to the court on the behalf of a person employed under a civil law contract model, when that employment bears characteristics of employment under labour law. The ultimate verifier of the permissibility of employment so formulated is the adjudicating labour tribunal.

#### **Outcomes of inspections prompted by complaints from people working under civil law contracts**

At the time of writing, 501 entities had been inspected proceeding from complaints lodged with the National Labour Inspectorate about work performed on the basis of a civil law contract under conditions appropriate to labour law contracts<sup>74</sup>. These enterprises employed 69,500 people under labour law employment contracts, but 149,000 worked for them on the basis of civil law contracts, and almost 1,300 did so through sole proprietorships carried on in their own names. This means that in these entities the number of people performing work under contracts other than employment contracts was almost double the number of workers contracted conventionally. The complaints evaluated by inspectors contained a total of 519 accusations, the majority of which (78%) had regard to contracts of mandate. Contracts for specific work lay at the centre of 17% of the complaints lodged, and the remainder pertained to other civil contract forms and work on behalf of employers and enterprises by people operating sole proprietorships and meeting all costs themselves but seeing conditions which per article 22, paragraph 1 of the Labour Code merit an employment contract. The greatest number of complaints regarding civil law contracts came from performers of work in small enterprises in the retail sales and mechanical trades sector and administrative and support services (including security and cleaning services, rental and leasing services, recruitment agencies, and tour operators).

Successful attempts to establish the due contract form allowed the labour inspectors to substantiate 246 worker accusations, which

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<sup>74</sup> Inspection results as presented in Chief Labour Inspector Report on the Activities of NLI in 2013.

amounted to 47% of the total accusations brought in complaints. The accusations which did not gain substantiation when an inspection took place were 178 in number, or 34%. However, for 19% of accusations an attempt to establish the due contract form allowed no categorical substantiation or repudiation of the accusation; this occasioned that the dispute between the parties in these cases could be adjudicated only by the sole discretion of the court.

Routine inspections in which labour inspectors audit comprehensively for compliance with article 22, paragraph 1 of the Labour Code were carried out at 1,238 entities in the reporting year closest to the time of writing. Nearly 48,000 workers were employed in those enterprises on conventional contracts, 35,900 people worked as signatories to civil law contracts, but 1,300 gave their services as self-run sole proprietorships. In aggregate from the companies audited, workers on unconventional contracts were only 1/5 lower than those on regular employment contracts. Contracts of mandate dominated the civil law contracts that had been signed into being at 85%, among 8,800 civil law contracts in this statistical digest. The entities audited were differentiated by workforce size and nature of business activity. The data gathered show that the problem of enacting civil law contracts heedless of conditions which befit a labour-law-bound employer–employee relationship is least prevalent in large establishments with a minimum workforce of 250, but most prevalent in microenterprises and medium-sized enterprises. Among the audited establishments, civil law contracts running afoul of article 22 paragraph 1 of the Labour Code had been signed into being most frequently in construction firms, and in companies whose business activity conformed to retail sales and mechanical trades and industrial processing.

In companies in the construction industry the norm are frequent changes of physical location of the work and very large-scale redeployment of the workforce, which favours the writing of civil law contracts instead of regular employment contracts. Out of the establishments in the retail sales and mechanical trades sector, infractions of article 22, paragraph 1 occur principally in small shops which cannot withstand the competition from larger retailers and

attempt to cut costs in order to survive. A major consideration for the selection of these forms of employment is also the possibility of moving the cost and risk burden of conducting business onto the employee, the employee being so jeopardised among other instances when it is not possible to work through problems at the workplace. A businessperson employing workers in an employer-employee relationship would have to provide statutory lay-off pay in such circumstances, whereas that pay need not be offered to those employed on unconventional arrangements.

As labour inspectors perceive it, businesspeople very readily employ under civil law contracts, thereby reducing the costs of operating business. Through employing people on such contractual bases employers spare themselves the obligations stemming from social insurance and likewise spare themselves the need for compliance with the rules enshrining employee rights, particularly concerning working hours. Retaining workers on civil law contracts, a businessperson meets none of the costs associated with worker sickness and comes under no obligation to give holiday pay, grant paid leave of absence, systematise the worker's hours, respect the standards for daily working hours or minimum daily and weekly rest periods, or act on workers' entitlements in regard to parenthood. Concern is also aroused by the practice of taking on the workforce in factories on civil law contracts. This phenomenon is able to effect artificial reduction of the headcount in the factory and engagement of people retained on civil law contracts by external entities to carry out work previously done by employees contracted to the factory. External companies such as these deploy a range of strategies to obscure the presence of characteristics of a standard employer-employee relationship, such as for example staying in constant contact with the employee and summoning them to work only when there is need. Putting this strategy into practice deprives the employee's work of the profile of a permanent position, leaving them constantly 'at the disposal' of the entity which engages them.

Labour inspectors asserted as they carried out audits that many enterprises were exploiting the economic situation which faced

Poland in 2013. A wave of mass redundancies and a recruitment freeze constrained people pursuing jobs to accepting any and all conditions of employment merely to gain or keep a job. The next frequent motive for running afoul of the law established during visits by the National Labour Inspectorate is the wish to assess the aptitude of an individual for work in a specific position prior to enacting a regular employment contract with that individual. Employers are frequently guilty of the practice of drawing up a civil law contract instead of a regular employment contract for a probationary period or a regular contract for an employee seconding for an absent staff member. Individuals in these positions usually perform identical work to their counterparts in labour-law-bound relationships with the employer. It is not unknown for these people to get regular employment contracts after employment 'on probation'. Employment proceeding from civil law contracts makes it easy for the employer to dissolve the legal relationship. Terminating an employment contract, and particularly a permanent employment contract, the employer is obliged to observe certain legal formalities such as giving the reason justifying the termination of the contract and holding a meeting with union organisations. By contrast, dissolving a legal relationship in civil law gives rise to no such obligations upon the businessperson. For all the preceding reasons, civil law employment forms are perceived as attractive by employers. The reasons for breaches of labour law named by labour inspectors also include ignorance of the rules of this law on the part of those engaging workers, which is particularly the case for small enterprises having no highly-qualified management in their service. Regular employment contracts and civil law contracts are rather often regarded as equal in status and fully mutually substitutable legal relationships. Some businesspeople recruit interchangeably on regular employment contracts and civil law contracts, unaware that when the work conforms to the premises of a labour-law-bound relationship with the employee, a regular employment contract should be entered into. In addition to the aforementioned audits comprehensively examining the issue of civil law contracts and audits prompted by a need to investigate a com-

plaint, the Inspectorate mounted other actions to learn how well industry complies with article 22, paragraph 1 of the Labour Code. Inspectors found opportunity to probe particularly in the course of inspections of employment legality. In 2013 labour inspectors looked at approximately 44,000 civil law employment contracts in total, entered into in close to 9,000 firms. One in five employers or businesspeople inspected (19.7%) failed to respect the prohibition on signing civil law contracts where employment conditions bear the traits of labour-law-bound employer-employee relationships. The 2013 total was 1,900 employers found to be in infringement of article 22, paragraph 1, affecting 9,500 workers. A comparison of these data with statistics of previous years' inspections indicates a clear upward tendency, and this is clear in the case of retention of workers under civil law in employment appropriate to regular employment contracts, where the problem affected almost every fifth example of civil law contract (19.4%) falling under the inspectors' scrutiny. The inspectors also discovered contracts falling afoul of paragraph 1 in over 200 other inspections invoked for diverse labour law issues including safety at work.

#### **Legal actions to rule on existence of true employer-employee relationships**

In 2013 240 legal actions were brought to the appropriate courts to rule on the existence of true employer-employee relationships. They were brought on behalf of 440 people, while in 2012 81 actions were brought on behalf of 89 people and in 2011 actions numbered only 41 for 50 people. In 32 cases the courts handed down judgements establishing the existence of a true employer-employee relationship and finding that the labour inspectors' action should be granted. The parties settled out of court in ten cases. There were, however, 55 actions which were dismissed on the grounds that the wish of the parties was to enact a civil law contract. Proceedings were suspended in one case. As of April 30, 2014 the courts are still deliberating on 138 actions brought in 2013. The experiences of the labour inspectors leading up to the time of writing indicate that in the courts' adjudications of cases,

they still concede the primacy of the civil law principle of freedom of contract, despite article 22, paragraphs 11 and 12 of the Labour Code clearly directing that this rule is not to be applied to cases of the type under discussion. The courts invoke the freedom of contract principle specifically in contract situations of mixed characteristics, that is the contracts include facets of regular employment contracts and of civil law contracts. The most effective form of influence for the inspectors in practice is to issue recommendations and warning letters concluding the necessity of replacing of civil law contracts with regular employment contracts. By far the majority of employers accommodate the proposals in the warning letter of their free will, and in particular their effect is to convert civil law relationships into employer–employee relationships. Cases revealing infraction of article 22, paragraph 1 of the Labour Code precipitated due instigation of the legal measures in the inspectors' remit. That judicial process is the bringing of plaint to the court for establishment of the existence of a labour law employer–employee relationship. In the outcomes of all the inspections carried out in 2013 and reported as cases of unfounded civil law contract enactment, the National Labour Inspectorate gave 437 spoken recommendations and made 1,879 stipulations to employers in warning letters of the necessity to convert civil law contracts into regular employment contracts. The inspectors imposed over 1 million Polish zlotys of financial penalties on 860 people for infringements, made 246 applications to the court for imposition of a penalty, and used educational measures on 519 people.

#### **4.8. Instances of Non-Standard Forms of Employment on the Labour Market and the Labour Law System – Conclusions *de lege lata* and *de lege ferenda***

The notion of atypical<sup>75</sup> or flexible employment covers a number of diverse forms of employment, both organisational and legal. Work performed on the basis of an employment contract as

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<sup>75</sup> Own study, based on [www.labourlex.pl](http://www.labourlex.pl) <<http://www.labourlex.pl/>>; 2014.

well as work without such a contract can, depending on circumstances, fall under the category of atypical employment<sup>76</sup>. This is because the same organisational forms of work occur in both kinds of employment, moreover, they often coincide and overlap. Non-standard forms of employment can contribute to employment growth and decrease of unemployment<sup>77</sup>. On the other hand, abusive application of non-standard forms of employment at the expense of labour law regulations can be at odds with the principles of a social market economy, which in turn is a cornerstone of the Treaty establishing a Constitution for Europe and the basis for the economic system inscribed in the Polish constitution. The constitutional principle of social economy is the fundament for the protective role of labour law. It presupposes legal guarantees of the rights and interests of workers. The particular institutions of labour law are responsible for enforcing the social policy of the state. This policy should support not only entrepreneurship, job creation, infrastructure and the development of social services, but also promote healthcare and care for the natural environment, as well as education, social dialogue, full employment, and measures against unemployment, poverty and social exclusion; it should also ensure decent working conditions.

Labour law is one of the instruments of implementing social policy; it serves both social and economic aims. In a kind of feedback relationship, labour law influences the development of social policy, and social policy influences labour law, which is shaped in a way that advances the aims of social policy, particularly with regard to employment and pay. As pointed out by W. Piotrowski, the law serves to mark out social structures, aims and tasks of social

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<sup>76</sup> E. Bąk, *Nietypowe formy zatrudnienia na rynku pracy* [Atypical forms of employment in the labour market], Wydawnictwo C.H. Beck, Warsaw 2009.

<sup>77</sup> As stated by J. Jończyk in his article *O społecznej naturze zatrudnienia* [On the social nature of employment] 'the dynamic development of certain forms of employment is caused not only by economic and organisational factors, including the necessity of relaxing an overly tight labour code, but also, and to a large extent, by the will, or event necessity, to reduce (non-pay) labour costs.' „Praca i zabezpieczenie społeczne” [Work and social protection] 2011, p. 2.

policy, as well as to set policy priorities<sup>78</sup>. As demonstrated by the analysis hitherto performed, it often happens that what should be a regular employment relationship is converted into non-standard forms of employment instead. This, the appropriate guarantees and protective provisions of labour law notwithstanding, continues to be a serious problem of the Polish labour market. The rise of non-standard forms of employment on the Polish labour market is both quantitative and qualitative; the scale of this rise is usually explained by the need for job creation in conditions of high unemployment as well as by the specific labour needs of the SME sector. However, increasingly more attention is paid to the continuing segmentation and polarising of the labour market in Poland. More flexibility in labour relations, the wide application of non-standard forms of employment included, should cause job growth – but also provoke the creation of an adequate system of social protection that would also preserve a certain standard of living. As observed by C. Varga, a representative for the ILO: „A double system of norms is called for, with one part dedicated only to workers with an employment contract, but the other consisting of core labour rights, i.e. norms applying to all workers, including those without an employment contract”<sup>79</sup>.

In this context one needs to emphasise that, certain attempts in doctrine and judicature notwithstanding, no effective mechanisms of protection and countermeasure against the excessive application of non-standard forms of employment have been created. Meanwhile, economic processes favour work without an employment contract; what follows are undesirable consequences such as segmentation and growing numbers of the so-called working poor.

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<sup>78</sup> Compare W. Piotrowski: *Prawo a polityka społeczna* [Law and social policy] [in:] *Commemorative book on the 5th anniversary of death of prof Andrzej Kijowski*, [ed.] Z. Niedbała, Warsaw 2010, p. 204.

<sup>79</sup> D. Bąk-Grabowska, *Realizacja interesów wykonawców zadań przedsiębiorstwa w ramach zatrudnienia niepracowniczego*, [Accomplishment of interests of enterprises tasks contractors as part of non-worker employment] [in:] *Zarządzanie w praktyce* [Management in practice], B. Olszewska [ed.], „Nauki o Zarządzaniu” [Management science]. Wrocław University of Economics, Wrocław 2011, p. 26.

From this perspective – since labour law does not apply to non-standard forms of employment – it seems necessary to shape a new model of labour relations, one with decent protection not only of employees, but also of those working without an employment contract.

When looking at the changes occurring in the labour market, one cannot neglect the economic efficiency of atypical labour relations (and their growing role in labour law), flexible forms of work organisation and working time, and non-standard forms of employment. However, certain threats must also be noted: a polarised labour market, segmentation, and the growing problem of the working poor. These negative effects are accompanied by a waste of human capital, growing risk of unemployment in most disadvantaged groups and increasing pressure on the state to provide social protection to groups in risk of social exclusion. The search for compromise on the labour market in the course of social dialogue must take into account new challenges to labour regulation while respecting both decent work and social policy values, and the needs of the economy. The objective of finding a way to implement the ILO's concept of decent work for all leads to a number of proposals for measures:

First, it is necessary to find new legal solutions and procedures for the protection of workers' interests, taking into account technical and financial limitations. What needs to be discussed with regard to this is the promotion of certain forms of transitional employment, such as outwork, which in essence provides workers with protection, at the same time giving both sides flexibility in shaping their mutual obligations. This is a case of non-standard forms of employment, though with some elements of labour law. The person contracted is free to choose her working time, means of work and place of work; she has the right to remuneration and leave, and material liability is the same as for workers employed with an employment contract. The law regulates dismissals with regard to contractors, who are under particular protection; women are entitled to maternity leave on terms identical to those of an employment contract, though there is no entitlement to parental leave.

Contractors performing outwork have similar entitlement to workers with an employment contract in terms of health and safety, occupational disease, accidents at work, death and group lay-offs. For the contracting party outwork is convenient as it allows for a reduction in employment costs, since there is no need to maintain a physical workplace. Additionally, in contrast to an employee with an employment contract, a contractor working from home is covered by compulsory health, pension and disability insurance, but not with accident insurance; sickness insurance is facultative. This employment structure could play a larger role in the economy and replace some controversial instances of non-standard forms of employment.

Second, one may assume that employment law is not only labour law, but also protective regulations for persons working without an employment contract. These individuals should be covered by appropriate protection with regard to conditions of employment; compromise in this matter should be found on the basis of the labour law system. Particularly important areas requiring protective measures for non-standard forms of employment are health and safety, freedom of association in trade unions and protection against discrimination; also worth considering, in terms of formulating minimal protective norms, are other areas in accordance with the ILO recommendations<sup>80</sup>. However, in terms of health and safety, the labour code does foresee a broader application of certain norms also with regard to natural persons performing non-standard forms of employment. Also, regulation is in place to protect against discrimination not only in an employment relationship, but also with regard to other forms of work. The issue of expanding freedom of association to persons working without an employment contract has recently been the subject of numerous analyses. On the grounds of international obligations, particularly the ILO conventions ratified, extending the right to association – though without the protective guarantees particular to industrial trade union organisations – seems advisable.

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<sup>80</sup> ILO 2003, Global employment trends, Geneva 2003.

Third, an interesting trend in the development of protective measures may be observed in the steps taken by the government to provide coverage with unemployment and maternity protection for workers without an employment contract. The rights to maternity and parental leave and allowance, as well as social security entitlements, were given to persons working on civil law contracts of mandate. Including (consecutive) contracts of mandate that sum to the minimal wage into the social insurance system, (a rule which will come into effect in January 2016) will broaden entitlement to a number of social insurance benefits and protective measures.

At this point the question arises whether all civil law contracts ought to be covered by social security.

Which is how we arrive at the fourth conclusion:

As some experts have been pointing out, the instances of work based on civil law contracts that should be covered by social security are the instances where: i) work is carried out, in principle, by the person employed; ii) work is carried out, in principle, for a single contractor; iii) remuneration equals at least the minimum wage; iv) work has been performed for at least six months<sup>81</sup>.

Fifth, new occurrences on the labour market point to the need of integrating labour law regulations with the law of the labour market and labour market institutions. A debate, as well as codifying action are called for in this matter. Employment law must be seen not only with regard to labour relations, but also employment and protection against unemployment, with a broad regulatory spectrum covering forms of employment and obligations of the parties as well as instruments of financial support from the Labour Fund and the Guaranteed Employment Benefit Fund.

It would also be advisable to conduct a survey of atypical arrangements currently being applied, both in cases of work with an employment contract and without, pointing out their differences

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<sup>81</sup> Compare M. Gersdorf, M. Raczkowski, R. Wyziński, *Zatrudnieni i zatrudniający na aktualnym rynku pracy* [The employed and the employing in the current labour market], M. Gersdorf [ed.], LexisNexis, Warsaw 2012.

and similarities. Both legal doctrine and judicature would be of help in this regard. There is also the need to popularise certain atypical employment contract arrangements that could offer employees greater security such as: telework, part-time work or employment contracts with flexible forms of work organisation and working time.

The review and analysis of the flexibility of the Polish labour market here performed suggest that the abuse of forms of non-standard forms of employment are partly due to the fact that many employers, particularly in the SME sector, have insufficient knowledge of other forms of employment. Appropriate, universal regulation covering all workers is important for the implementation of an effective social policy. One needs to bear in mind that overly restrictive regulation and lack of flexibility in the application of certain laws not only has a negative effect on the economy, which is unable to bring balance to the labour market by creating jobs, but also leads to pathologies such as law evasion, abuse of workers' rights and even to growth of the informal economy. Permanent, structural unemployment in groups disadvantaged on the labour market is yet another risk.

This is why the doctrine of labour law, taking into account new developments taking place on the labour market and its very own *acquis*, should take the initiative in working out new rules for regulating work relations and non-standard forms of employment; regulatory synergies between promoting participation and collective labour law should be taken advantage of.

The practice of applying regulation and the stance toward atypical employment arrangements is not without relevance. With regard to employees and atypical arrangements, freedom of choice and a mechanism for reverting to standard employment (and back again, depending on circumstances) seem paramount. This mechanism must be reinforced by legal guarantees, financial instruments of the Labour Fund and social security regulation. These aspects of employment security and the necessity to undertake social dialogue in this field are being underlined by the ILO which advocates decent work for all. Poland will be able to implement the concept

of decent work into labour and employment law through appropriate legislation and through negotiation between social partners at enterprise level. Principles of *flexicurity* policy and greater flexibility of the labour market with the consent and to the benefit of both employers and employees. The aim is to reach relative balance in the labour market – employment growth and a fall in unemployment – and to plan activities aimed at improving the quality of employment in Poland. Only such vision of labour law and labour market development can provide the economy and employers with enough high quality human capital, which will enable growth and economic and social advancement.



## The New Labour Market Policy – the Reform of the Public Employment Services and the Youth Guarantee Plan

Earlier analyses show that Polish economy has experienced many crises during the 25 years of transformation, of which the shock of the initial reforms and the recession of the early 1990 were the most significant economic and social challenges. Later years were a time of relentless struggles of structural changes and their social consequences, particularly those connected with high unemployment. As is underlined by the ILO in its documents, global economic integration resulted in serious challenges connected with income inequality, high unemployment rate, high level of poverty, susceptibility of economies to external turbulences being faced by many countries. These problems were also connected with increase in unprotected and informal economy which in turn impacted labour relations and the level of protection offered by this relation. Measures recommended by the ILO are to contribute to improving the situation on the labour market, to strive for full productive employment, to promote sustainable economic development and social policy aimed at building decent living standards and social progress. Similar activities were carried by Poland with varied level of success as Poland struggled on one hand with the results of structural changes and with global challenges on the other hand. Polish economy weathered through the recession without pro-

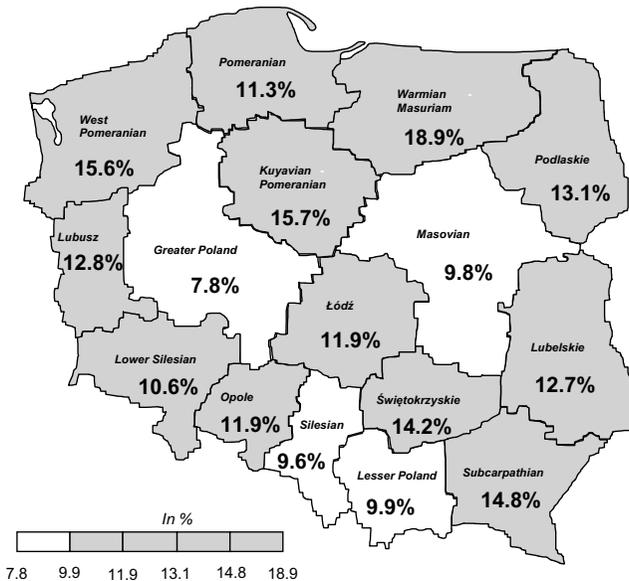
found tremors, despite suffering from its impact in 2009 and then again in the years 2012-2013. As early as in 2014 the economy regained its dynamics, which translated into an improvement on the labour market. The consequences of the recession were less severe for Poland than for other European nations and the country overcame it sooner than the others. As a result, the gap between major indicators of the situation on the labour market in Poland and their average values for the European Union narrowed. This success is not only due to the improved economic situation in Poland, but also to the actions of the public employment services, the effectiveness and efficiency of which have improved after the reform of 2014. Despite the recession, the labour force participation rate in the age group of 15-64 increased in comparison with 2007 – in Q3 2014 it reached the value of 68.2%, just 4.4pp lower than the average in the European Union, while in 2007 the difference was over 7pp. Another gap that has narrowed considerably in relation to the EU average is in the employment-to-population ratio. While in 2007 the difference was over 8pp, it decreased to 3pp as of the end of Q3 2014 (Poland – 62.5%, the EU average – 65.5%). Poland has made the most spectacular progress in narrowing the gap in the field of the unemployment rate. In the early years of the 21<sup>st</sup> century Poland was among the present EU countries with the highest unemployment rate – at 20% in 2002, it was more than 11pp higher than the EU average. Currently, the rate is lower than the EU average. According to Eurostat, at the end of 2014 the unemployment rate in the 16-64 age group in Poland was 7.8%, as compared to the EU average or 9.7%. While in 2007 the unemployment rate in Poland was higher by 2.5pp than in the EU, at the end of 2014 it was lower by 1.5pp. Data shows that at the end of 2014 the harmonized unemployment rate in Poland (15-74 years) was at the level of 8.2% compared to 10.00% in EU(28). Following the high ratio of unemployment growth in early 2010s, the situation improved significantly in 2013. The symptoms of economic recovery, evident quarter by quarter in the growing GDP rate, translated into gradual, beneficial changes on the labour market. Registered unemployment rate at the end of 2013 was 13.4% and, for the

first time in several years, it did not grow, remaining at the same level as one year earlier. At the end of 2014 the unemployment rate was 11.5%, 1.9pp lower than a year before.

The decrease in the unemployment rate, and therefore in the number of the unemployed in 2014, resulted from a marked labour market recovery, a decrease in the inflow of job seekers accompanied by their growing outflow. The increase in the deregistration from the ranks of the unemployed resulted predominantly from the number of job offers registered with labour offices – over 25% greater than in 2013. The number of job offers listed by employers with labour offices was 1,094,900 in 2014 (higher by 220,800 than in 2013). All voivodeships witnessed growing numbers of job offers. Traditionally, the largest increase was in Masovian Voivodeship, by 33,500 vs. 2013 (making the total of 130,900 job offers); and the smallest in Podlaskie Voivodeship – by 4,700, to 27,800 offers. Other voivodeships that benefited from many registered job offers were Silesian Voivodeship (123,100) and Lower Silesian Voivodeship (101,300 offers). The increase in the number of registered vacancies influenced the unemployment rate which decreased in all voivodeships. The level of unemployment decreased as well, from 10.6% in Subcarpathian Voivodeship to 21.2% in Lubusz Voivodeship. In late 2014 the difference between the lowest and the highest unemployment rate was 11.1pp (Greater Poland – 7.8%, Warmian-Masurian – 18.9%). However, a decrease in the diversity of unemployment by area was recorded on the level of voivodeships – by 0.9pp as compared to late 2013. In 2014 a longer than usual seasonal decrease in unemployment was recorded in comparison with 2013. It lasted 8 months in 2013 (beginning in March), while starting as early as in February in 2014. The greatest decrease in unemployment was from March to June. An increase in unemployment rate was recorded only in January, November and December. The number of job seekers registered with labour offices in late 2014 was 1,825,200, lower by 332,700 (15,4%) than in late 2013.

Another symptom of the labour market improvement is the fact that although the number of available subsidised jobs has been

Map 1. The unemployment rate by voivodeships in 2015

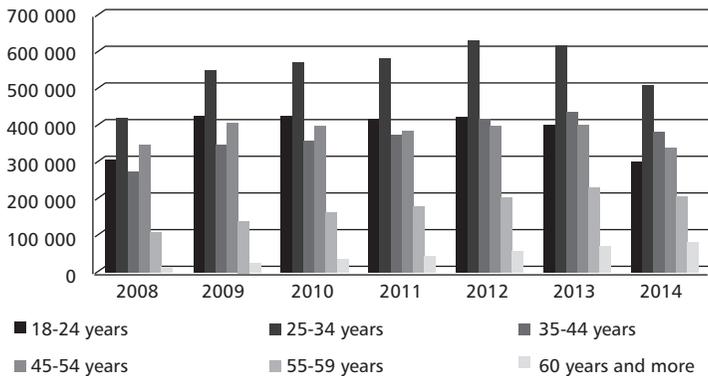


Source: The 2015 Ministry of Family, Labour, and Social Policy (MPiPS) data.

growing recently, the growth in the number of unsubsidized jobs has been substantially higher (in 2014 it amounted to 34.6%). As a result, subsidized jobs accounted for 34.8% of all vacancies registered with labour offices, while in 2009-2010 for more than 53%.

Despite obvious symptoms of improvement, the Polish labour market witnessed some adverse developments. One of them is the increase in the number of unemployed persons over 60. This is an unfavourable trend in view of the retirement age increase to 67. At the same time, as the chart below (Figure 1) shows clearly, the number of unemployed young people aged up to 25 decreased, which can be attributed to the changes in the labour market policies and the implementation of the policy of priority support for young people on the labour market, introduced in 2013. It should be noted that the youth is a group that has suffered most from the recession – not only in Poland, but through Europe –which considerably limited their chances at the start of their professional life.

Figure 1. The unemployed by age in 2008–2014



Source: The Central Statistical Office (GUS) data.

The improvement in the labour market situation in Poland has been accompanied by legislative changes, the goal of which was to boost positive trends, as well as to facilitate process of solving structural problems. On 14 March 2014 Poland adopted the amendment Act of 20 April 2004 on Employment Promotion and Labour Market Institutions. The amendment marked the commencement of a new labour market policy and it has already resulted in some institutional changes, which will continue. Its main purpose is to increase the employment-to-population ratio through the provision of more effective and efficient assistance to both unemployed persons and employers. The description of the reform's goal promises stronger emphasis on efficiency of employment services and on a better collaboration with employers. This objective requires a focus on relevant operational purposes, such as: expanding the availability of services and labour market instruments, supporting labour offices and endowing client advisors with new skills and instruments, reduction in the long-term unemployment rate, employment growth in the priority groups (30-50+, returnees to the labour market after an interruption related to child's upbringing or caring of a disabled person) providing the unemployed individuals and job seekers with a better ac-

cess to job offers and increasing the availability of labour market services and instruments.

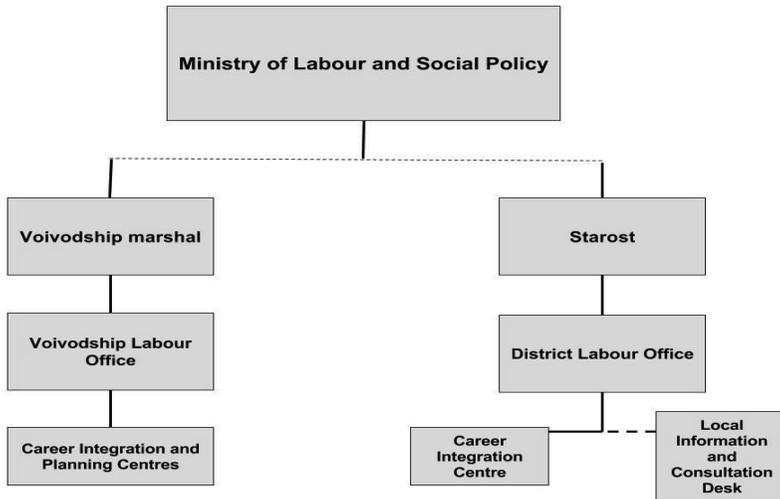
The last challenge can be implemented not only through the growth of district labour offices' potential, but also through the introduction (in the framework of the reform) of a provision allowing to commission services from private activating entities. The novelty is that an unemployment preventing mechanism, supporting the continuing education of entrepreneurs and employees through its funding under the National Training Fund has been introduced in the provisions of law. Complementary to these provisions is the implementation of the Youth Guarantee by Poland, inspired by the recommendation of the EU, which translates into specific actions for the vocational activation of young people and improving the quality of their professional start.

### **5.1. The Staff and Organizational Potential of Public Employment Services and the Problems of Vocational Activation of the Unemployed**

The public employment services currently include the Ministry of Labour and Social Policy (MPiPS), the provincial labour offices (WUPs) subordinate to voivodeship marshals, district (powiat) labour offices (PUPs) subordinate to starostas, and Voluntary Labour Corps (OHP) as institutions providing aid to young people at risk of social exclusion. Therefore, the quality and efficiency of employment institutions and the range of services offered by them are the key elements providing for the efficiency of the system in its goal of reintroducing unemployed individuals to the labour market and building enduring relationships between job seekers and those employers who seek employees.

Labour market services – matching employers and job seekers, vocational guidance and information, organization of trainings – constitute the basic (minimum) scope of help in finding employment provided to unemployed individuals and job seekers. These services are provided primarily by the well-trained staff of district labour offices, therefore their availability to job seekers largely de-

Figure 2. Structure of public employment services



Source: Own study.

depends on the number of this category of workers. The availability of activation services is much lower in Poland than the average in the EU countries. This means that the rendering of real support to the unemployed requires new actions, which depends not only on the amount of the resources obtained from the Labour Fund. It is necessary to change the overly traditional work organisation, simplify procedures, lessen bureaucratic burdens, and increase the number of employees of labour offices in relation to the number of the unemployed. A sustained high number of the unemployed (approximately 1.7 million) does not lead to a regular increase in the number of district labour offices' staff, therefore, the public employment services (labour offices) are focused on the most pressing needs, and often they concentrate on those unemployed who are relatively easy to be guided back into the labour market. Staff of the district employment offices focus on services to unemployed individuals, neglecting other responsibilities, such as active contacts with employers. The number of the offices' staff in relation to the number of clients (about 1.7 million of the unemployed plus job seekers and employers), is insufficient to provide personalized

services<sup>1</sup>. The availability of those services that can really help in the return to the labour market is far from perfect. There are 323 unemployed persons per one employment agent and 1238 per one career counsellor. Such a workload excludes the real possibility of guiding customers back to work, as there is no chance for each person listed in the records of the unemployed to meet an employment agent or a career counsellor at least once a month. This reduces the effectiveness of the actions taken by the staff of the PUPs and WUPs.

The expansion of the personnel resources in public employment offices is not an easy task due to budget restrictions (higher expenditures from the state and local budgets are necessary) requirements demanded from workers dealing with activation of the unemployed, and factors resulting from the variable demand for such services depending on the number of the unemployed. The current scope of economic inactivity and unemployment would require a vast development of employment offices. However, the proposed increase in the expenditures on employment offices relatively to current requirements of the 12% unemployment rate may be eventually unjustified as soon as the situation on the labour market improves due to a better economic situation. Therefore, the public employment services' reform provides for boosting their potential through public-social partnership and public-private partnership, commissioning activation services from such entities as employment agencies. Thanks to assigning some of the unemployed registered with employment offices to projects realised by NGOs and employment agencies, the quality of the services and the activation process will improve.

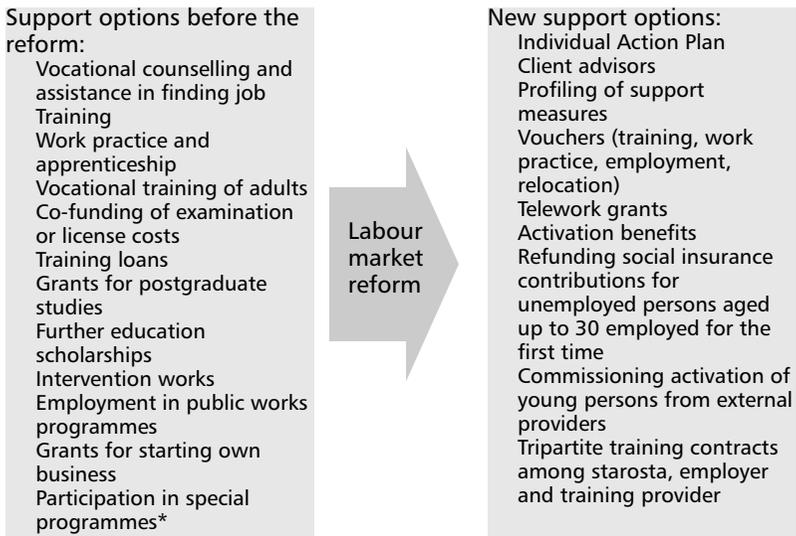
Apart from the above mentioned labour market services, the unemployed may be subject to active forms of guiding out of unemployment - labour market instruments, including training (group and individual), job creation programs, public works, socially useful works, apprenticeship, funds for starting businesses or

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<sup>1</sup> During the last five years, the average of 2.7 million unemployed persons registered annually with employment offices, and 2.8 million were discounted from unemployment. Employers registered about 1 million vacancies.

refunds for upgrading the workplace equipment. The implemented 2014 amendments to the Act on Employment Promotion and Labour Market Institutions supplemented the said support forms with instruments directed to individual groups of the unemployed – young people, 50+, and returnees to the labour market after an interruption related to child’s upbringing or caring of a disabled person. Another form of assistance, directed to the long-term unemployed who claim benefits, is the Activation and Integration Programme.

Figure 3. Available forms of vocational activation



Source: Own study.

Labour market instruments are financed from the resources of the Labour Fund (FP), derived from contributions collected by employers. The amount of FP resources assigned in a given (calendar) year to active policies of the labour market has a significant impact on the possibility to include a sufficient number of unemployed individuals in activation processes. The FP resources grew significantly in 2009 and 2010, while they were reduced in 2011, resulting

in a lower availability of active form of assistance to unemployed. Only 302,002 activation measures were provided to 1,982,700 registered unemployed. Apart from the offered vacancies, only 15% of unemployed individuals were covered with active labour market instruments, which means that a large majority of them received no assistance<sup>2</sup>.

Table 1. Total active measures of counteracting unemployment, 2008–2015

	2008	2009	2010	2011
Budget Act	3,128,100.0	4,339,683.0	6,536,745.0	3,235,080.0
Expenditures	3,362,409.0	6,204,800.0	6,747,900.0	3,327,606.0
	2012	2013	2014	2015
Budget Act	3,435,080.0	4,655,080.0	4,958,030.0	5,540,030.0
Expenditures	3,889,667.3	4,632,954.8	5,052,127.0	5,294,327.0

Source: The 2008-2015 Ministry of Family, Labour, and Social Policy (MPiPS) data.

The volume of resources allocated to economic activation has systematically increased since 2012. The number of unemployed persons, which has been decreasing since 2014, coupled with the growing number of job offers, allows for an increase in the number of interventions and for offering support to nearly 40% of all the registered unemployed in 2015. This is also possible thanks to the introduction of the above mentioned opportunities for outsourcing activation services. The most commonly used activation measures for the unemployed are work practice and apprenticeship, the aim of which is to introduce unemployed individuals into work environment, so that by performing work they could acquire useful skills to be used in the future. Work practice and apprenticeship were most frequently offered to young people entering the labour market<sup>3</sup>. It is a reasonable strategy, as it allows people without

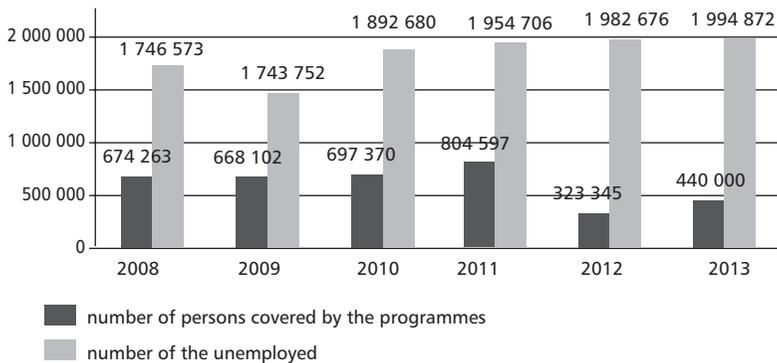
<sup>2</sup> Data: Labour Market Department, the Ministry of Family, Labour, and Social Policy.

<sup>3</sup> *Młodzi 2011*, scientific editing and recommendations for public policies: M. Boni, K. Szafraniec, P. Arak, Chancellery of the Prime Minister of Poland, Warsaw, 2011.

## 5.1. The Staff and Organizational Potential of Public Employment Services...

any work practice to gain experience, which is often a prerequisite when applying for a job. The second most frequently applied measure is training that supplements or updates skills and knowledge. It often provides an opportunity to obtain certificates confirming the acquired or formerly held qualifications, which translates into better chances of finding employment.

Figure 4. Number of the unemployed under programs of active exit from unemployment in relation to the number of the unemployed registered with PUPs



Source: The Ministry of Family, Labour, and Social Policy, the Labour Market Department (MPiPS) data.

Socially useful works are the third most frequently used measure. It is an instrument directed to those unemployed individuals who do not qualify for unemployment benefits but at the same time receive welfare benefits. It should be emphasised that, apart from their activating role, socially useful works also promote social inclusion. A relatively low use of the start-up grants is worth noting here, due to such factors as the high costs of that instrument and the high failure risk of companies founded by unemployed persons, who often have insufficient knowledge about the functioning of the labour market. Therefore, despite the support for the individuals who want to start their own businesses, that instrument cannot be widely employed due to its makeup. It should

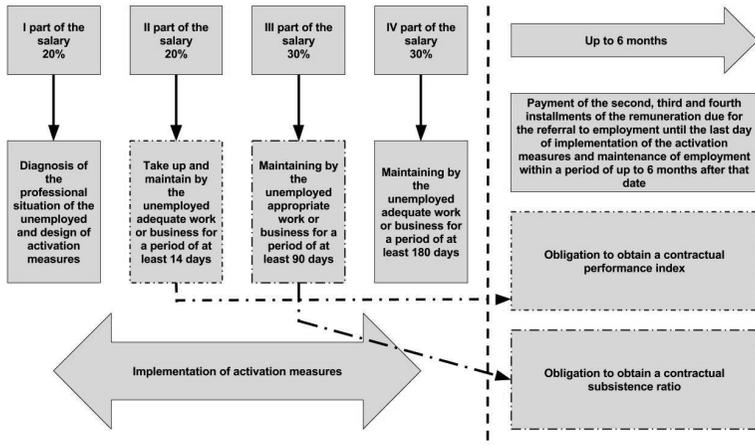
be stressed here that, in the framework of the reform, a new, 'renewable' instrument has been introduced – preferential start-up loans.

## **5.2. Collaboration with Employment Agencies**

The possibility to activate unemployed persons by non-public entities allows district employment offices to hand over to them those clients whom they are not able to help, e.g. due to the excessive number of such clients or due to the necessity to take an individualised approach to a special group of the unemployed, most frequently LTUs or those detached from the labour market. This solution is a novelty in the Polish labour market policies. It is based on public-private partnership and the payment-by-results formula. Private employment agencies fulfil the tasks of the state, using their organisational potential, resources, knowledge, skills and experience of their employees. Collaboration between public employment services and employment agencies is necessary for the success of this solution. The agencies do not compete for clients, but – based on the results of support profiling – activate such persons, for whom employment offices normally do not have a relevant offer. Handing over of the long-term unemployed (often facing many various problems) to non-public entities for activation may release an organisational potential in district employment offices. It can be used for the sake of other unemployed people, for whom the assistance received from employment offices is sufficient to re-establish them in the labour market. Another characteristic feature of the Polish model of outsourcing services is the introduction of the payment-by-results principle, where the contractor's remuneration depends on the number of people permanently placed on the labour market who remain employed for a specified minimum time (3 to 6 months). Pilot studies helped eliminate the most important risk areas: as compared to provisions included in the draft, large portions of the payments are made throughout the time period of employment, thus prolonging the activation time.

## 5.2. Collaboration with Employment Agencies

Figure 5. Polish model of outsourcing activation services



Source: Own study.

The remuneration to an employment agency for each person guided out of unemployment may not exceed the amount of threefold the average salary on the date of the activation services contract, which is equal to the average cost of providing an unemployed person with a job by employment offices. The remuneration is paid in no more than four instalments: 20% of the gross remuneration for the diagnosis of the unemployed person's professional/vocational situation and designing activating measures in order for the person to find a job or start business; another 20% of the gross remuneration in the event the person starts a job or a business for at least 14 days; 30% of the gross remuneration in the event the person has hold the job or has run the business being a result of the employment agency's efforts for the minimum of 90 days; and finally another 30% of the gross remuneration in the event the person has hold the job or has run the business started as a result of the employment agency's efforts for the minimum of 180 days.

In 2015, the first year of the reform's implementation, activation of 20,000-25,000 unemployed persons has been planned, along with

growing numbers in the following years, depending on the labour market situation, in the range of 250,000-500,000. The Ministry of Family, Labour, and Social Policy (MPiPS) recommended the following indicators: employing about 50% of persons assigned for activation and maintaining the level of about 40% persons re-established in employment. The second indicator may be treated as a measure of the steady outflow from the population of the unemployed resulting from activation efforts of a non-public entity. The transfer of some of the unemployed to employment agencies means that will not be dealt with by employment offices' staff, allowing the staff in question to intensify their activation efforts for their remaining clients.

The method of selecting employment agencies to pursue activation programs is extremely important for the proposed solutions<sup>4</sup>. The choice is limited by the provisions of the Act on Public Procurement<sup>5</sup>. To ensure the rationality and safety of the public resources management, the selection of employment agencies is carried out in an open tender, prepared by the provincial labour offices, while coordinated and controlled by MPiPS as the administrator of the FP funds. The subject of the tender is to provide services throughout a voivodeship. The implementation of a contract covering the area of the entire voivodeship allows to outsource the activation of specific and relatively small groups of unemployed persons, to which it would be pointless to offer district-wide services. This allows the agencies, on the one hand, to achieve economies of scale, and on the other hand, to take into account trends that are regional, rather than limited to the local labour markets. The terms of invitation to tender specify the minimum criteria – the eligibility of the employment agency (entry in an appropriate register, legal form etc.) and also refer to its experience in the implementation of activation projects, organizational base for the provision of services, etc. Additionally, the commissioning party specifies the required minimum employing placement efficiency. Criteria for the evalua-

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<sup>4</sup> In each region invitations to tenders for activation services were announced in 2014.

<sup>5</sup> The Act of 29 January 2004 the Public Procurement Law (Dz.U. of 2010, No 113, item 759, as amended).

## 5.2. Collaboration with Employment Agencies

tion of individual tenders must be so chosen as to ensure effective management of public funds and, at the same time, create conditions for efficient and good quality services. For this reason, the price criterion, mandatory in the light of the Act on public Procurement provisions, is not of a key importance. Apart from the price, other criteria are taken into account, such as the required employment placement efficiency, the offered activation forms and tools, staff and organisational potential.

Table 2. The planned number of persons covered with activation by employment agencies.

Year	Expected number of unemployed persons activated by non-public entities	(%)	Number of persons placed in employment at the projected indicator value	Recommended minimum value of the employment maintaining indicator (%)	Number of persons maintaining employment for 6 months and more at the projected employment maintaining indicator – permanent outflow from unemployment
2015	25,000	50	12,500	40	5,000
2016	50,000	50	25,000	40	10,000
2017	60,000	50	30,000	40	12,000
2018	100,000	50	50,000	40	20,000
2019	150,000	50	75,000	40	30,000
2020	250,000	50	125,000	40	50,000
Total	500,000	50% obtained	250,000	60 % obtained	c. 150,000

Source: Own study, based on the Ministry of Family, Labour, and Social Policy (MPiPS) data.

Another aspect in which recruitment agencies will differ in their operations from district labour offices is the lack of a strict list of actions that they must or should take in relation to unemployed persons. The basic premise of this solution is that an agency has discretion in the selection of measures and forms of activation, but also responsibility, including a financial one, for the effects of the actions taken.

Assuming that the number of unemployed persons does not change as a result of other measures and the number of counselors remains unchanged, the mere introduction of the possibility

of commissioning activating services, provided that the projected employment indicators are met, will change the number of the unemployed per one counsellor to c. 120 in 2020.<sup>6</sup> Bearing in mind the importance of forging local partnerships for support of unemployed persons' return to the labour market, the original concept provided for a specific (not more than 10% of the value) part of the contract to be obligatory implemented by non-government entities or social partners. This solution would not only support the third sector, but also the partners, as well as promote commitment and remunerate the engagement of such organisations in solving problems of unemployment persons. Unfortunately, due to legal issues, the solution that enforces participation of the third sector organisations is unfeasible. One acceptable solution is the participation of non-profit organisations, trade unions or employers' associations as members of a consortium implementing a voivodeship contract or the commissioning of activation tasks from such entities by a selected employment agency.

### **5.3. Limiting Long-Term Unemployment**

As a result of structural problems of the Polish labour market, combined with the limited availability of activation measures (at 15-20%), LTUs make a significant group of the unemployed. In 2011, the long-term unemployment remained at the level of more than 30% of the unemployed persons' total number (it affected 640,000 persons). In the following years the long-term unemployed accounted for the largest group, among others due to the deteriorating situation on the labour market. As of the end of 2014, 1,054,000 persons were LTUs (the annual decrease in that year was by 104,700 persons, or 9.0%), while the total number of the unemployment decreased by 15.4%. LTUs accounted for 57.7% of all the registered unemployed.

Long-term unemployment, in addition to the obvious consequences in the financial situation, carries other negative effects

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<sup>6</sup> As it was also projected, the number of the unemployed would decrease to under 1.4 million people.

reducing the possibility of social or emotional accomplishment. Time limits of the right to unemployment benefit means that in a situation of prolonged unemployment, jobless persons and their families, short of any other sources of income, are subjects to the processes of impoverishment, thus becoming welfare clients. Lack of employment is one of the most common reasons for the payment of welfare benefits. Social transfers satisfy material needs on a low level and are only an auxiliary solution addressing just a fraction of problems. The lack of work is often caused not only by the situation on the local labour market, but also by certain limitations of the unemployed. Due to difficult family circumstances resulting in the necessity to exercise care of a household member, health problems, addictions and social attitudes, some individuals are unable to find employment – even if they are willing to take a job, and to maintain it once they find it. They are often discouraged and do not take any effective actions to find a job. It is worth noting that social welfare centres' individual assistance to clients is limited due to their staffing capacities. The social contract tool, although showing some effectiveness, is applied on a limited scale due to the operating capabilities. These factors mean that individuals suffering from significant deficits and are deprived of systematic support in their attempts to return to the labour market, and over time become long-term, or even permanently unemployed. It should be emphasised at this point that particularly in the case of low-skilled workers every month spent outside the labour market significantly reduces the chances of returning to it. The longer the period of unemployment, the higher the probability of the loss of employability, defined as the ability to maintain employment<sup>7</sup>. It is also worth noting that social welfare benefits allow the unemployed to satisfy their basic needs, although on a very poor level,

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<sup>7</sup> W. Kwiatkowska, *Bezrobocie w grupach problemowych na rynku pracy w Polsce, w: Innowacyjność gospodarki, rynek pracy, determinanty wzrostu gospodarczego w procesie transformacji*, „Acta Universitatis Lodziensis’ Folia Oeconomica”, p. 268, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, 2012.; G. Spytek-Bandurska, *Aktywizacja zawodowa szczególnych kategorii bezrobotnych*, IPS UW, Warsaw 2010.

merely ensuring survival. There is a danger of unemployed persons becoming addicted to social benefits and becoming professionally passive, which is often caused by the lack of hope of finding employment. Moving to the grey zone of informal employment is another negative phenomenon. It merits to underline that the ILO consistently works on influencing governments to undertake measures aimed at achieving: full employment and the raising of standards of living; the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments; the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement; policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection. It is underlined by the ILO that the results of such policies are quickest achieved through appropriate policy of the state and investment in fighting unemployment, through active use of the right to collective bargaining, through cooperation between management and employees in order to improve effectiveness of production, through cooperation between employees and employers in preparing and implementing social and economic concepts. Commitment to carry out such policy stem out from the Philadelphia Declaration and were later confirmed in many other ILO documents and programmes<sup>8</sup>.

Another issue that needs to be addressed here is the fact that activation of long-term unemployed, dependent on the benefits received from employment and social assistance offices is not only expensive, but in many cases very little effective. This is due to the fact that such individuals require multifaceted assistance largely exceeding the capabilities of district labour offices. Therefore, such persons are trapped on the lists of the unemployed,

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<sup>8</sup> Philadelphia Declaration of 1944, ILO Declaration on Social Justice for Fair Globalization adopted during 97th Session of the ILO.

### 5.3. Limiting Long-Term Unemployment

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with no chance of employment, as they are not able to take it, and they cannot count on a comprehensive and adequate assistance, because employment offices are not prepared to deliver it. LTUs, as a rule, are not eligible for unemployment benefits, therefore, to a large extent, they are beneficiaries of social assistance. Long-term unemployment considerably increases the risk of social exclusion and its consequences, both for the individual and the family. One of the problems of the Polish unemployment is a relatively large percentage of long-term unemployed, often poorly qualified persons, in the total number of the unemployed.

Experience shows that the vocational activation of those individuals is lengthy, and therefore expensive, and its employment efficiency is rather low. Hence, many district employment offices witness the phenomenon of 'creaming' – concentrating on those unemployed whose activation is relatively easier and more promising. Lower-qualified individuals, plagued by many problems, often in various spheres of life, are deprived of proper support. Improvement in the situation of the long-term unemployed is one of the priorities of the new labour market policy in Poland, however, its implementation is spread over time. It is planned to extend the scope of support, so that by 2020 it covers about 30% of persons assigned to the second support profile and 60% of the persons assigned to the third support profile. At the same time the support profiling system must shift towards prevention and early diagnosis of long-term unemployment risk. The intensification of the activities addressed to the individuals assigned to the third support profile should greatly help reduce their share in the total number of the unemployed, to the level of 15% in 2020. It should be noted that the reduction in the number of persons assigned to the third profile may help focus on three types of support: by placing these people in the labour market, whether open or subsidised; by carrying out activation measures that develop qualifications or motivations of the unemployed, so that they may be assigned to the second support profile; and by preventing LTUs from a prolonged presence in the ranks of the unemployed – the early and effective activation. In accordance with the idea of the reform, all these lines

of support may be carried out by labour offices, in cooperation with social assistance centres or NGOs or by commissioning their activation from employment agencies. Improvement in the situation of the long-term unemployed requires more effective measures aimed at the unemployed who are distant from the labour market. The problem of the lack of instruments or services which could meet the complex needs of the long-term unemployed people with regard to their social and professional integration has been identified. For that reason LTUs are also clients of social assistance. Apart from the above-discussed programme of contracting-out activation services from employment agencies, the public employment services reform created the room for close and coordinated collaboration of social assistance and labour market institutions, supported by NGOs. The Activation and Integration Programme (PAI) is directed to individuals assigned to the third support profile. Both this solution and the outsourcing of activation services for the unemployed from non-public employment services should contribute to the decrease in the number of long-term unemployed persons, which will manifest itself as a reduction in both the number of long-term unemployed and their share in the total number of the unemployed.

Table 3. Percentage of the unemployed (receivers of social assistance benefits) covered by PAI

Index/calculation method	Baseline value in 2012 (before the amended employment promotion act)	Value in 2014/2015 (introduction of the reform)	Targeted value in 2016	Targeted value in 2020
% of the unemployed (social assistance recipients) covered by PAI	N/A at the time	2% (5,000 persons)	5% (12,000 persons)	20 % (50,000 persons)

Source: Own study.

The Activation and Integration Programme provides for a collaboration between public employment services and the social assistance in the public-public partnership formula. Currently, despite the fact that both these institutions support the unemployed,

### 5.3. Limiting Long-Term Unemployment

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especially those that have remained outside of the labour market for a long time, their actions are random and inconsistent. The implemented changes are focused on the institutionalisation of assistance addressed to persons distant from the labour market. The assistance is to be of a comprehensive nature, i.e. it will cover many areas of the clients' lives, and its purpose will be both to re-establish them in the labour market, as well as to help them overcome existing deficits. The support provided to such individuals would be consistent with the nature of the programme, i.e. it would be clearly limited in time, and the individual goals of the support would be established with the client and described. Institutionalization of cooperation between district employment offices and social assistance centres provides for both these institutions to work together on the implementation of the Activation and Integration Programme. Within the framework of the programme, an unemployed person will perform socially useful works for 10 hours a week and participate, for another 10 hours a week, in a support programme in the form of group and/or individual sessions. The limit of 10 hours of socially useful works was established in order to avoid a situation where the activities of the unemployed outworkers from their jobs, and to focus on the works performed for the benefit of the local community. The integration classes will be devoted to issues connected with the operation of the labour market, methods of searching for jobs, writing a CV and a cover letter, as well as workshops motivating the unemployed persons to find and maintain jobs, to identify their strengths and weaknesses or their individual potential and barriers of vocational activity. Due to the fact that the Activation and Integration Programme should be implemented in the environment of the individuals participating in it, and by the staff of the institutions formerly involved in support of those individuals, it will be possible to supplement the programme with a content adjusted to their needs. If necessary, they should be offered an opportunity to see an occupational medicine specialist, psychologist, lawyer or any other specialist in the scope justified by their individual situation. Also, in justified cases, the participants of the programme should be offered coupons that

can be used to buy necessary clothes required by the job, improve their look, visit a specialist, buy glasses or any other equipment improving their chances to find jobs. The programme is financed jointly from the resources of the Labour Fund (Fundusz Pracy – FP) and the budget resources for social assistance. In view of the difficult financial position of the local authorities it is necessary to increase the funding from the FP. This would allow for the integration activities to be carried out by a Social Integration Club (KIS), a Social Integration Centre (CIS) or an NGO under supervision of Social Welfare Centres (OPS) staff, in the framework of public-social partnership. The Labour Fund should be more actively involved in financing various forms of activation of long-term unemployed, including funding of socially useful works which reintroduce the habit of work while providing additional funds to finance the cost of living of the unemployed person and his or her family. Additionally, premises of Labour Clubs could be offered to the participants of the programme. A district employment office will assign at least one counsellor who will implement the programme. Phase one lasts for two months (due to its educational dimension and implementation of one of the objectives of the programme, namely the consolidation of habits which are desired and necessary on the labour market). After that time a review of the programme's individual results will be performed. Following an analysis, a decision concerning unemployed individuals may be made as to whether to prolong measures provided for in the programme to six months, assign them to a group requiring a support with use of labour market instruments, assign them to social employment or to work in a social cooperative. The decision should specify the scope of the social contract to be concluded, or to assign to activation by an employment agency.

The amendments are also associated with the necessity of different treatment of the unemployed persons' readiness to take a job. The new labour market policy implies tightening the requirements towards the unemployed – close monitoring of the unemployed, their frequent contacts with the employment services and the confirmation of their willingness to start a job. The advantage of this

solution is the reduction in 'welfare dependency' – long-term use of benefits without vocational activation.

### **5.4. Increasing Employment Rate in Priority Groups**

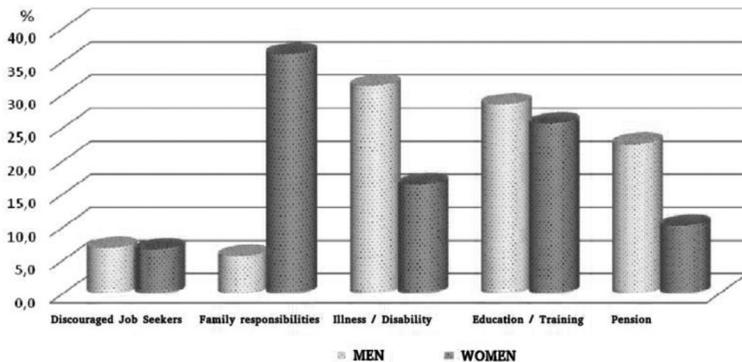
Three groups of the unemployed, 30–, 50+, and parents returning to the labour market have been recognised as priority groups for district employment offices due to their difficult situation on the labour market, which is due to the existence of barriers that hinder their entry into the labour market. According to many analyses, thanks to the activation of these groups it is possible to use the potential of the labour market on a larger scale and increase the Polish employment indices<sup>9</sup>. As the graph below shows, the causes of economic inactivity are highly varied in respect to gender. The disparities are most pronounced in the case of family responsibilities and home-keeping. Women traditionally prevail in this group, while men prevail in the remaining ones. This is particularly evident among those who declared inactivity due to sickness or disability. A comparison of the economic activity rate in Poland with the one in the European Union reveals that the activity of men at the age of 25-54 is slightly lower in Poland. However, in the extreme age groups the activity of men is much lower than that in the EU, although in recent years there has been a significant increase in the economic activity rate among men aged 55-64 in Poland.

However, when comparing the economic activity of Polish women with female residents of the EU, it is clear that in the 25-54 age group their economic activity rate is higher than in the EU countries, despite the fact that part of them are in a child-bearing age. However, due to Polish female residents' lower rates in other age groups, the total economic activity of Polish women is much lower than in the EU. Despite the positive trend to improve employment indices, a fundamental improvement can be achieved only by using the untapped potential of the Polish human capital. In order to do this, concurrent actions in several areas are necessary, although

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<sup>9</sup> J. Męcina, *Niewykorzystane zasoby. Nowa polityka rynku pracy*, IPS UW, Warsaw 2013.

Figure 6. Causes of economic inactivity by gender (2012)



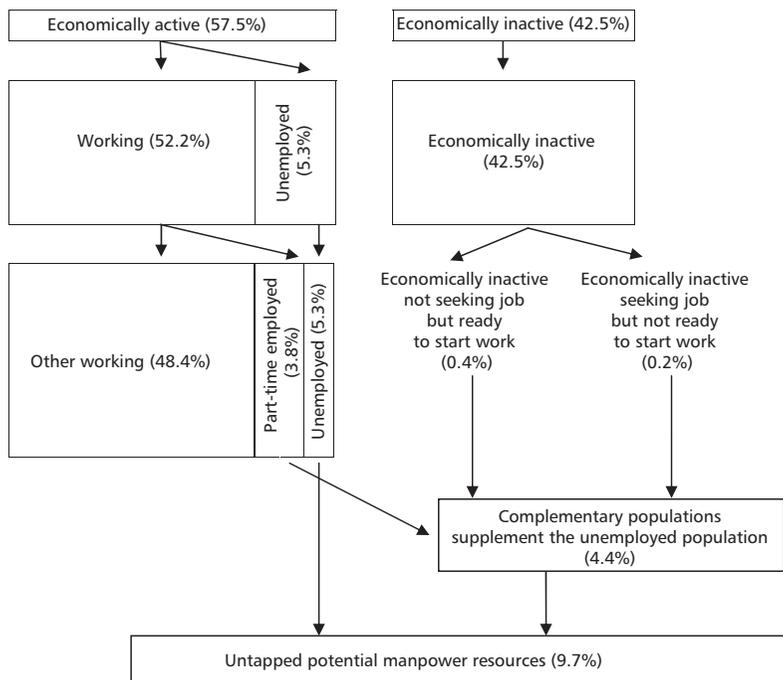
Source: Own study, based on the Central Statistical Office (GUS) data.

the most important ones include the improvement of the labour market situation and new instruments of active labour market policies that will stimulate the growth of employment in these groups. The effect of the new labour market policy can be achieved thanks to new instruments dedicated, for example, to women returning to the labour market after raising children or thanks to offering activation in the new public-private partnerships formula, commissioning activation services from private employment agencies.

As the diagram shows, the problem of the untapped potential refers not only to the unemployed, but also to the economically inactive. Both these groups include individuals ready to start work and those choosing economic inactivity due to various reasons discussed above. In respect to these groups, highlighted in the employment promotion act, labour market instruments were established that are addressed solely to individuals who meet certain specific criteria of age (30- and 50+) or a family situation (giving birth and personal childcare). With regard to young people, Poland implements the provisions of the Youth Guarantee, the goal of which is to provide all young people up to the age of 25 with good job offers, further education, vocational training, work prac-

## 5.4. Increasing Employment Rate in Priority Groups

Figure 7. Untapped potential. Population in the 15–74 age group



Source: *Own study, based on, Q1 2012, the Central Statistical Office (GUS).*

tice or apprenticeship within four months of the moment of losing a job or finishing formal education<sup>10</sup>. The youth guarantees are implemented by employment offices, Bank Gospodarstwa Krajowego (BGK), Voluntary Labour Corps and entities selected in national and regional competitions. In the case of the 30- group, the list

<sup>10</sup> *NETs Young people not in employment, education or training: Characteristics, costs and policy responses in Europe*, ed. Mascherini, Eurofound 2012, *Młodzież a rynek pracy*, ed. B. Leszczyńska, Wojewódzki Urząd Pracy, Warsaw, 2013, Pańków M., *Młodzi na rynku pracy. Raport z badania*, Instytut Spraw Publicznych, Warsaw, 2012.

of the available assistance measures that are the responsibility of the labour offices has been significantly expanded with solutions tested in the framework of the Ministry's pilot programme. In the second half of 2014 the employment offices registered 621,546 unemployed persons at the age of up to 30, while deregistering 646,179 unemployed persons in this age group, of which 302,787 due to finding jobs (46.9%)<sup>11</sup>. At the end of that year, 505,586 unemployed persons at the age of up to 30 were registered, of which 8.9% were eligible to receive unemployment benefits.

Considering the particularly difficult situation of young people who often start their careers, the amendments to the act on employment promotion provide for support in employing young persons. This support consists in exempting employers who hire unemployed persons at the age of up to 30 directed to them by employment offices from payment of contributions for the Labour Fund and the Guaranteed Employee Benefits Fund for these persons. Facilitating vocational training through the refunding fees on social insurances for young unemployed persons taking a job is another form of support. The refunding will cover 6 months, and its amount in one month cannot exceed half of the minimum wage set forth in separate provisions.

The „Pierwszy biznes –Wsparcie w starcie’ [‘First Business – Support for the Start’] entrepreneurship promotion programme, implemented by the Ministry in collaboration with Bank Gospodarstwa Krajowego, is another instrument that helps young people enter the labour market. The programme is dedicated to young people – final-year university students and graduates (up to 48 months of receiving their diplomas). Within the framework of the programme, a loan of up to PLN 60,000 can be granted to start a business, or up to PLN 20,000 for creating a new job for an unemployed person in the framework of an existing business. The interest on the loans is preferential (0.25 of the NBP's bill rediscount rate) and the payback period is seven years. The „Pierwszy biznes

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<sup>11</sup> *Plan realizacji Gwarancji dla młodzieży w Polsce*, MPiPS, MliR, Warsaw, April 2014, *The youth employment crisis: A call for action*, Resolution and conclusions of the 101<sup>st</sup> Session of the International Labour Conference, Geneva, 2012.

#### 5.4. Increasing Employment Rate in Priority Groups

– 'Wsparcie w starcie' programme is a response to the problems of the growing unemployment rate, also among young people with university education. The support for the most active, enterprising students and graduates is also intended to stop them before the possible emigration. In view of the fact that the programme is dedicated to a different group of people (beneficiaries) than other instruments, a separate indicator should be used in the monitoring of its results – the number of loans granted during a given year.

Table. 4. Baseline and targeted indicator values

Indicator/Calculating method	Baseline value in 2012 (before the amended employment promotion act)	Value in 2014/2015 (introduction of the reform)	Targeted value in 2016	Targeted value in 2020
Number of granted loans	N/A at the time	1,000	2,500	9,000

Source: Own study.

Employment policy issues arising from the provisions of the Youth Guarantee will be discussed in detail in the next chapter.

Due to the need of activating persons approaching retirement age, the employment of individuals aged 50+ should be considered as one of the most important activities undertaken in the framework of the draft of the amended act on employment promotion. The long-term trend for the economic activity of the population shows that both the economic activity rate and the employment rate decrease very rapidly with age. This refers to individuals 50+, and in particular to the 60+ population. Measures should be taken to reduce such negative trends. The draft of the amended act on employment promotion and labour market institutions provides for a new instrument – the partial refund of a labour office-appointed 50+ jobseeker's salary, granted by starosta to the employer or an entrepreneur for the period of 12 or 24 months. The refunding time period depends on the age of the jobseeker.

The use of these instruments should result in improving the labour market situation of people aged 50+, i.e. in the reduction of their share in the total number of registered unemployed persons and in the reduction of the unemployment level in this age group.

Table 5. Baseline and targeted monitoring indicator values

Indicator/Calculating method	Baseline value in 2012 (before the amended employment promotion act)	Value in 2014/2015 (introduction of the reform)	Targeted value in 2016	Targeted value in 2020
No. of the unemployed aged 50–59 employed due to the salary refund	N/A at the time	1,200	15,000	25,000
No. of the unemployed aged 60 or more employed due to the salary refund	N/A at the time	-	7,000	5,000

Source: Own study.

Table 6. Baseline and targeted monitoring indicator values

	Baseline value in 2012	Value in 2014/2015 (introduction of the reform)	Targeted value in 2016	Targeted value in 2020
% of the unemployed aged 50 or more in the total number of the registered unemployed	22.8%	25.7%	21.0%	15%

Source: Own study.

Another priority is the introduction of instruments to facilitate the reconciliation of family and work responsibilities and creating incentives for employers to hire people returning to the labour market after a break connected with caring of a child or a dependent. The fertility rate in Poland is relatively low and there is no indication that this trend could be altered. At the same time, as a result of high levels of unemployment, the traditionally understood role of women as carers of children and other family members and the relatively poor development of care facilities, Poland has a lot of catching up to do that in the field of work organisation that would facilitate the reconciliation of work and family duties. Moreover, a relatively low popularity of flexible forms of employ-

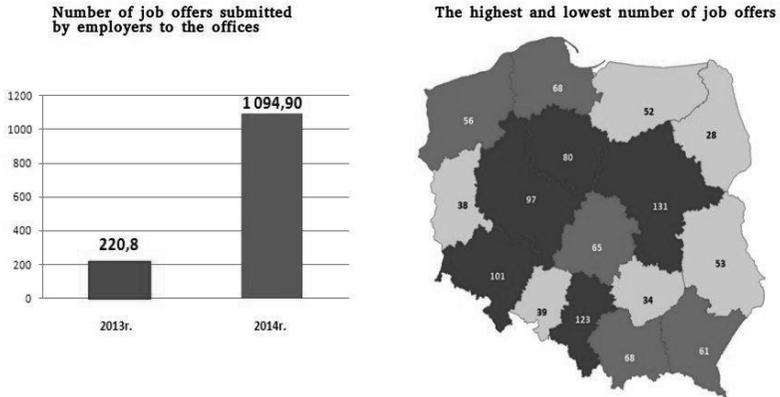
ment, and a low use of teleworking magnify the problem. All these obstacles result in the fact that many women, despite the statutory guarantee of return to the same job, have problems with returning to their former jobs and maintaining them. The newly introduced instruments – grants for teleworking and activation benefits (which will be further discussed in the next chapter) are aimed at facilitating the entry of young mothers into the labour market and encouraging employers to hire individuals who have an experience of long-term care of a dependent person.

### **5.5. The Role of Employment Offices as Employment Agents**

Another aim of the reform is to strengthen the potential of district labour offices as institutions providing assistance to both unemployed persons and employers. Labour offices are expected to operate in a manner similar to that of British *Job Centres*, where a jobseeker receives an offer, and an employer can receive recommendations for employment of a person meeting his expectations. This requires changes in their organisation and approach to institutional clients. In the scope of basic employment services, every employer will be serviced by one client advisor who, according to the employer's needs, will support him in obtaining assistance from other staff members specialising in labour market instruments (training courses, subsidizing the furnishings of a workplace, etc.). The system of e-cooperation and efforts to reduce bureaucracy in the terms of cooperation will also be developed. One of the indicators of the employment offices' efficiency in finding job offers is the number of unemployed individuals per one job offer. If there are enough job offers, the unemployed have a real chance to benefit from the employment placement services. Employers are not required to report information about vacant jobs to labour offices. Therefore, the offices should work for their image of an efficient and trustworthy agent between jobseekers and their potential employers.

In addition, the Ministry of Family, Labour, and Social Policy endeavours to constantly increase the number of job offers published

Figure 8. Job offers



Source: Own study.

Table 7. Baseline and targeted monitoring indicator values

Indicator/ Calculating method	Baseline value in 2012 (before the amended employment promotion act)	Value in 2014/2015 (introduction of the reform)	Targeted value in 2016	Targeted value in 2020
Number of the unemployed per one job offer in a district labour office	24 persons per one job offer	9 persons per one job offer	7 persons per one job offer	4 persons per one job offer

Source: Own study.

in the Central Database of Vacancies (CBOP) on [www.praca.gov.pl](http://www.praca.gov.pl). The website is a tool that allows jobseekers to analyse vacancy offers in a convenient place and time, and the reach of the offers can be – upon the employers’ consent – international. In the number of offers and its interface the website should emulate non-public websites (e.g. [pracuj.pl](http://pracuj.pl)) in terms of standards. The Ministry’s efforts in disseminating this tool start to yield results, which can be gauged by the number of job offers posted on the site. In March 2013, 89,000 vacancies were posted on the site, as compared to

107,000 one year later. The simple indicator of the number of job offers posted on the pracuj.pl website cannot be considered as a measure of the effectiveness of the labour offices' efforts in acquiring offers, as the number also depends on the labour demand in the economy. From this year on the pracuj.pl website also offers work practices. In the following years, their number should grow steadily. Offers for both subsidized and non-subsidized jobs are available in district employment offices. The number of subsidized jobs is largely determined by the financial resources of the Labour Fund and the amount of funds from this source assigned to the subsidizing of employment. The number of non-subsidized jobs is determined by a number of factors, in particular, by the economic situation and the characteristics of the local labour market. These factors certainly include the demand of the economy for employees, labour costs, but also the confidence of employers in district labour offices as institutions that work efficiently as agents between employers who want to hire workers and job seekers. The analysis of the situation from the point of view of the employment policy suggests that as many non-subsidised job offers should be available in district labour offices as possible (in order for the demand for workers to be reported to the offices), and that the subsidized jobs should only supplement the market job offers. For this reason, the ratio of non-subsidized to subsidized jobs has been adopted as an indicator:

$$W = \frac{\text{No. of non-subsidised job offers in a reporting period}}{\text{No. of subsidised job offers in a reporting period}}$$

The desirable value of the indicator is more than one (the higher the value, the better), while the undesirable value of the indicator is one or less. It should be noted, however, that the value of the indicator may not be treated as an absolute measure of the effectiveness in acquiring job offers by PUPs, since the number of available non-subsidised jobs depends on such factors as a business cycle, therefore this indicator should be used for the comparison of individual PUPs and for examining trends.

Table 8. Baseline and targeted monitoring indicator values

Indicator/Calculating method	Baseline value in 2012	Value in 2014/2015 (introduction of the reform)	Targeted value in 2016	Targeted value in 2020
Non-subsidised offers/ subsidised offers ratio	1.45	1.81	2.2	4

Source: Own study.

## 5.6. Improving the Effectiveness of the Public Employment Services

An increase in effectiveness results not only in an increase in the employment effect, but also in the rationalisation of the Labour Fund expenditures. The fact that the increase in cost and employment effectiveness has not been indicated among the objectives, is deliberate – a simple change in the value of an indicator is not the purpose of amending laws. In fact, a greater rationality and effectiveness of expenditures a good solution leading to offering a more efficient support to a greater number of unemployed persons. As early as in the first year of the reform’s implementation there has been a significant progress: every third unemployed person received support from an employment office, although this was not only due to the instruments financed from the Labour Fund, but also due to the increased number of jobs available in the labour offices. Importantly, throughout the entire labour market policy reform it has been repeatedly stressed that the purpose of the public employment services should be to place unemployed persons **permanently on the open labour market**. This means that the final effect of the activation process is to find and maintain a long-time, non-subsidised job. The Labour Fund is an earmarked fund in the discretion of the Minister of Labour. It is made up of contributions paid by employers in the amounts relative to the employees’ salaries. Its primary purpose is to mitigate the effects of unemployment. The Fund finances unemployment benefits and active labour market instruments. The specific nature of the Labour Fund lies in the fact that the essential part of its tasks is performed by local government bodies, and the funding of these tasks

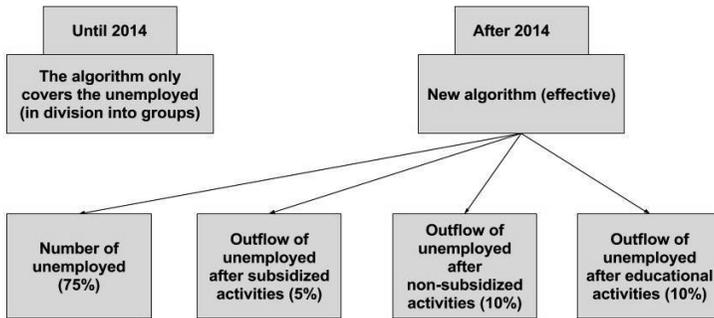
is not performed through subsidies to local government units, but through entrusting the functions of administrators of the Fund's resources – the responsibility to transfer funds for the implementation of tasks – to the provincial and voivodeship labour offices' managers<sup>12</sup>. The method of calculating the amounts to be transferred to local government units is determined by the ordinance of the Council of Ministers on the algorithm for determining the amounts of the Labour Fund resources allocated to the financing of administrative tasks, issued pursuant to the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions. The ordinance sets out three separate algorithms: the voivodeship-directed allocation of funds to districts for funding programs which promote employment, for mitigating the effects of unemployment and for occupational activation; the voivodeship-directed allocation of funds to districts for performing optional Labour Fund tasks; and the allocation of funds to voivodeship self-government bodies. The Labour Fund resources for active forms of fighting unemployment are allocated to voivodeships based on an algorithm set forth in the ordinance. Based on the algorithm, the first allocation of resources to voivodeships is performed, and then voivodeships marshals allocate the obtained resources to districts relatively to the situation in their local labour markets. The effect of the reform is that the allocation of the Labour Fund's resources takes labour market indicators into account. The diagram below shows the impact of the indicators.

The currently used algorithm is rather complex. It is not linked to the employment effectiveness of the labour offices. It contains main indices that link the amounts of the funds allocated to a voivodeship with the level of unemployment, such as the number of unemployed individuals aged 50+, the number of unemployed individuals aged 30-, the number of other unemployed individuals, the correction ratios of the unemployment rate, inflow and outflow of the unemployed. The amounts (limits), which can be

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<sup>12</sup> K. Nagel, *Polityka rynku...*, op.cit., Chapter. VI: *Fundusz pracy jako podstawowy instrument finansowania polityki rynku pracy w Polsce w okresie transformacji*.

Figure 9. Pro-effective allocation of Labour Fund resources for activation



Source: Own study.

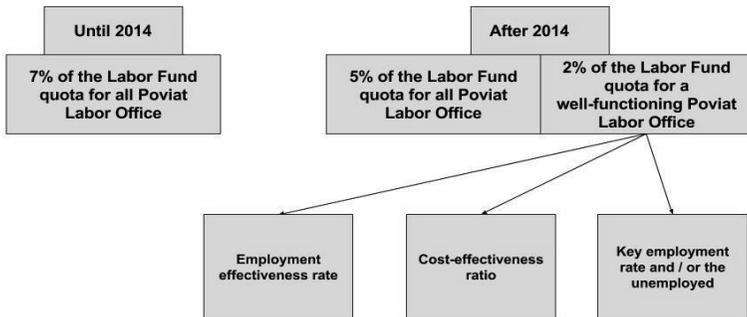
spent in a financial year on the implementation of programmes, promotion of employment, mitigation of unemployment effects and occupational activation in a voivodeship are determined the Minister of Labour according to the algorithm.

Along with the introduction of changes in labour market policy, the method of financing key staff and executives has also changed. The calculation base should remain unchanged, i.e. district governments would receive 7% of the Labour Fund resources assigned in the preceding year for the implementation of programmes of promotion employment, mitigation of unemployment effects and occupational activation in the voivodeship, with the exception of amounts allocated from the Fund administrator's reserve fund. A limit should be granted and the allocated funds of the Labour Fund should be transferred upon a starosta's motion submitted by the end of July each year – on the condition that the employment office met at least two out of four conditions: the percentage of the key staff<sup>13</sup> in the total number of the district employment office

<sup>13</sup> Key staff are the employees referred to in Articles 91.1–6 of the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions (Dz.U. of 2008 No 69, item. 415, as amended), i.e. job placement officers, vocational counsellors, professional development specialists, experts on programmes, job club leaders, EURES advisers and EURES assistants. See: Chapter II.2 *Improvement of labour offices' operating standards*.

## 5.7. The National Training Fund

Figure 10. Motivating reward system for the staff of public employment services



Source: Own study.

staff is above the national average; the number of unemployed per one key employee is above the national average; the effectiveness of the employment placement in the previous year was above the national average; the cost effectiveness in the previous year was above the national average.

All the funds not spent by the employment offices which have not met at least two of the above mentioned conditions may be used to finance other statutory tasks or for additional bonuses for employees of those public employment services which have demonstrated a higher efficiency.

## 5.7. The National Training Fund

Contrary to other instruments, the National Training Fund is a preventive instrument, rather than an intervention one. Labour market analysis shows that Polish employees participate in continuing education far less frequently than employees in other EU countries. In order to prevent the loss and outdated of qualifications, as well as to respond to the structural changes in the economy, even at the stage of employment, the National Training Fund (KFS) has been set up. It is a separate part of the Labour Fund, responsible for the financing of employed individuals' continuing

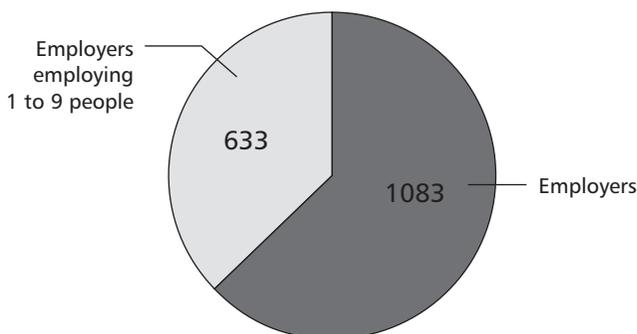
education. It has been determined that in the years 2014-2015 KFS's funds will be spent exclusively for continuing education of persons at the age of 45 and more. In relation to 80% of KFS resources, their spending priorities, the resource allocation formula and the spending plan are determined by the Minister of Labour after obtaining an opinion of the Labour Market Council, while the spending priorities for about 20% of the so-called reserves are decided upon by the Labour Market Council, composed of representatives of employers and trade unions. KFS funds can be used for continuous education of workers and employers, including the identification of employer's needs in the field of continuous education, training courses and postgraduate studies carried out at the initiative of the employer or with his consent, exams for obtaining proof of acquired skills, qualification or vocational/professional licences, medical and psychological examinations, personal accident insurance in connection with the undertaken training. A principle has been adopted for KFS funds to cover 80% of the expenditures of companies employing staff of more than 10, and in the case of training courses organised by micro-enterprises, the Fund covers 100% of the costs. Studies show that thanks to the financing of training, the unemployment rate among 50+ employees should be reduced by up to 50%.

Apart from investing in the qualifications of older employees, the important effects of the National Training Fund's operations should also include the support for the SME sector, especially for micro-enterprises, which have pointed to a huge financial barrier in investing in staff training.

The implemented labour market policy reform introduced new instruments, changed its financing mechanisms, affected the structure of employment in the public employment services. It should be noted, however, that these changes were a response to problems in the field of activation of unemployed persons resulting from the multiannual lack of matching structures and mechanisms to the changing needs of the labour environment. This, however, does not solve all the problems of the employment policy. The public employment services are facing the task of shaping the labour

## 5.7. The National Training Fund

Figure 11. The use of the National Training Fund in its first year of operation according to enterprises' business structures (2014)



Source: The Ministry of Family, Labour, and Social Policy (MPiPS) data.

market, rather than merely responding to the existing tensions and imbalances. The most important problems that require solutions include the limiting of non-standard forms of employment, encouraging employers to invest into enhancing work quality and counteracting informal employment. The enhancement of work quality would translate not only into changes for employees, but also into the increased innovativeness of Polish products and services, which would help them compete on international markets not only in the scope of labour costs, but also in the quality of human resources. The quality of work includes such factors as salaries and stability in the labour market. A high regional diversity in unemployment, but also in the economic potential, including the quality of employment and salaries, results in the emergence of the '*working poor*' in Poland, who are unable to meet their basic needs without the support of social welfare.

Another problem of the Polish labour market is the excessive use of non-standard forms of employment, such as civil-law contracts and self-employment. This trend, accompanied by a relatively high level of unemployment, results in an employment instability for many people, especially young ones, who live 'from a project to a project' without an adequate level of social pro-

tection resulting from the provision of work. A new word in Polish has been coined, describing such people working within the framework of the non-standard, unstable forms of employment – ‘prekariusze’. This neologism is a combination of two words: ‘precarious’ and ‘proletarian’<sup>14</sup>. New tools are necessary to change this situation, which go beyond the labour market policy. Instruments to combat this negative phenomena belong to the employment policy supported by fiscal, family and economic policies. An important issue here is the flexibility of the Polish labour market, necessary due to the competitiveness of the economy, but also involving many risks. In this context, the importance of a reliable analysis of non-standard workplace in the Polish labour relations and of actions in favour of young people employment promotion – the group most vulnerable to labour market instability – is huge. As underlined in the ILO Declaration on Social Justice for Fair Globalization adopted during the 97<sup>th</sup> Session of the ILO, member states, apart from implementing a policy of full and productive employment, should aim to ensure the effectiveness of labour law and its institutions. In this framework they should promote formal employment, positive industrial relations and build effective systems of labour inspection which contribute to safer work of higher quality<sup>15</sup>. In Poland some of these tasks can be carried out by public employment services.

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<sup>14</sup> Standing, G., *The Precariat. The New Dangerous Class*, translated by P. Kaczmarek, M. Karolak, Praktyka Teoretyczna. The Polish translation of Chapters 1 and 2: [www.praktykateoretyczna.pl/index.php/rozdzial-1-prekariat](http://www.praktykateoretyczna.pl/index.php/rozdzial-1-prekariat) and.../[rozdzial-2-prekariat](http://www.praktykateoretyczna.pl/index.php/rozdzial-2-prekariat). The translation is available under a *Creative Commons* license.

<sup>15</sup> ILO Declaration on Social Justice for Fair Globalization adopted during the 97<sup>th</sup> Session of the ILO; D. Gallie, D., *The Quality of Working Life in Welfare Strategy* [in:] G. Esping Andersen (ed.) *Why We Need Welfare State*, Oxford University Press 2002, pp. 96-129.

## 5.8. The Situation of Young People on the European Labour Markets and the Youth Guarantee

As already mentioned in Chapter II, young people constitute a group that has probably suffered the effects of the financial crisis most. Three European summits were devoted to this issue, and it was also widely discussed at the ILO sessions<sup>16</sup>. The economic recession and the implementation of financial rescue plans of budget cuts in southern Europe resulted in a significant increase in the percentage of young unemployed people, however the situation of the young on the labour market has deteriorated throughout the EU and requires a special mobilization of the Member States and labour market policies aimed at a rapid intervention in the labour market.

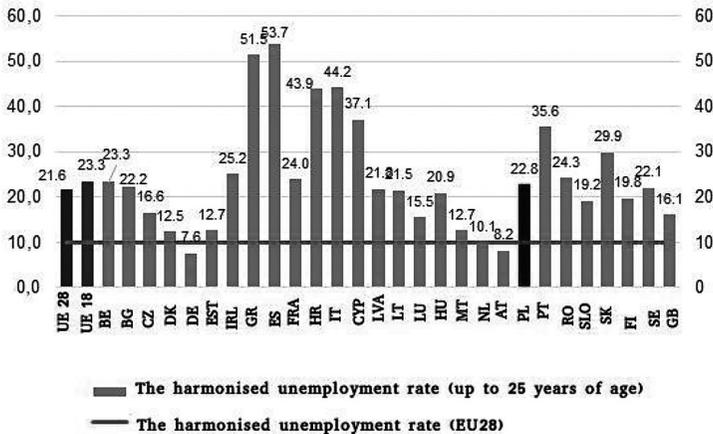
Joblessness in this age group is particularly important for the European Union's policy due to its very far-reaching adverse consequences in other areas. The lack of employment, and hence the lack of material and professional stability, have a negative impact on the processes of nuptiality and fertility. Subsequent decisions about giving birth to a child and the low fertility rate are the challenges which Europe is facing due to the advanced processes of ageing (see the theory of the second demographic transition). Lack of work also translates into lower consumption in this group, limited independence and the risk of radical social movements' development. It is equally important to take advantage of the young people's potential; they often have good university education, speak foreign languages and are experts in virtual reality<sup>17</sup>. Aware of the fact that the problem of employment among young people is not limited to one nation only, the European Union launched the Youth Guarantee initiative (YG).

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<sup>16</sup> *NEETs Young people not in employment, education or training: Characteristics, costs and policy responses in Europe*, Mascherini [ed.], Eurofound 2012, *The youth employment crisis: A call for action*, Resolution and conclusions of the 101<sup>st</sup> Session of the International Labour Conference, Geneva, 2012.

<sup>17</sup> *Better Skills. Better Jobs. Better Lives. A Strategic Approach to Skills Policies* (2012), OECD, <http://skills.oecd.org/documents/OECDskillsStrategyFINALENG.pdf> [access:5 August 2014].

Figure 12. The harmonised unemployment rate according to Eurostat - end of August 2014.



Source: The Eurostat data.

Guarantees for young people contain a call addressed to the EU Member States for providing all young people aged between 15 and 24 years old who neither have jobs, nor participate in education or training (NEETs), with good quality employment offers, further education, apprenticeship or traineeship within 4 months of them leaving formal education or becoming unemployed.

The Recommendation on Establishing a Youth Guarantee (COM (2012) 729), along with: the Communication from the Commission ‘Moving Youth into Employment’ (COM (2012) 727 final) and the Communication from the Commission ‘Towards a Quality Framework on Traineeships’ (COM (2012) 728 final) form the Youth Employment Package (YEP). The three essential elements of the establishment of guarantees for young people are:

- Involving other labour market stakeholders in actions for the sake of the youth (i.e., strengthening cooperation between employment services, providers of vocational guidance, education and training entities, and support services for young people; ensuring partnership between public and private employment services,

- vocational guidance and other specialised services for young people; active participation of the social partners and the youth representatives or youth organisations at all levels in the development and implementation of policies aimed at young people);
- ensuring a high standard of public employment services' activities, activity of schools, systems of recognition of qualifications, adequate monitoring of the youth programs' implementation;
  - financial support for measures to reduce unemployment among young people: the Commission intends 'in accordance with the relevant investment priorities of the European Social Fund for the 2014-2020 programming period ... to encourage Member States to make the best use of the European Social Fund ...'.

In early 2013 the European Commission (EC) supplemented its proposal for the YG with the *Youth Employment Initiative*<sup>18</sup>. Its purpose is to:

- provide a financial supplement to the Youth Guarantee project;
- strengthen the support provided through the existing EU structural funds.

The *Initiative* is addressed to the regions where the unemployment rate among people aged 15-24 exceeds 25%. The support foreseen for the 2014-2020 period is at the level of EUR 6 billion. The programmes for young people, within the framework of the Youth Guarantee (COM (2012) 729), while remaining in accord with national, regional and local conditions, are based on the following guidelines:

- Developing partnership approach:
  - assigning a public authority responsible for the establishment and management of the Youth Guarantee Programme and for the coordination of partnership at all levels and in all sectors;

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<sup>18</sup> Communication of the European Commission: Youth Employment Initiative (COM(2013) 144) including the accompanying documents - Proposals for an Amendment to the Commission Proposals on the Council Regulation No 1081/2006, and 1083/2006 (COM(2013) 145, and COM((2013) 146).

- full information about available services and support through the strengthening of cooperation between employment services, vocational counselling providers, education and training providers, and providers of support services for young people, as well as through the full use of all relevant information channels;
- developing partnerships between public and private employment services, vocational counselling and other specialised services for young people (NGOs, youth centres and associations);
- the participation of the representatives of the young people or youth organisations in the development and implementation of the Youth Guarantee Programme.
- Early response and activation
  - effective information strategies to encourage young people to register with employment offices, with a particular focus on particularly vulnerable young people struggling with a number of issues (such as social exclusion, poverty or discrimination) and NEETs;
  - consideration of the establishment of a contact points' network, for the coordination of all interested institutions and organizations;
  - providing personalised counselling and individual planning of activities, including individually selected support programmes, based, at the early stage, on the principle of mutual obligations.

Support measures for the integration on the labour market:

- Improving qualifications:
  - providing a path to return to education and training or second chance education programs;
  - improving qualifications, including any action for the sake of young people aimed at improving skills and competences, in particular with regard to the sectors of the green economy, ICT and health care;
  - improving the levels of qualifications and competencies in ICT and digital skills;

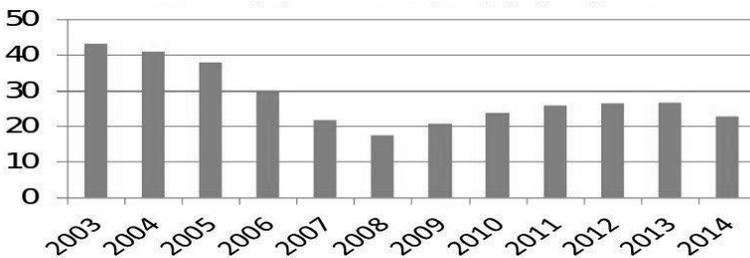
- promoting and providing an ongoing guidance on youth entrepreneurship and self-employment, including organisation of entrepreneurship courses;
- providing for a formal recognition of skills, knowledge and competences acquired through non-formal and informal learning experiences.
- Measures relating to the labour market:
  - reducing non-wage labour costs, in order to enhance the prospects for recruitment among young people;
  - the use of targeted and well-developed systems of subsidies to salaries and for hiring new employees, in order to encourage employers to create new opportunities for young people, such as apprenticeships or traineeships, in particular for those detached from the labour market, in accordance with the state aid principles;
  - promoting labour force mobility through advising young people on job vacancies, traineeships and vocational training opportunities, as well as about available assistance in various areas, regions and countries;
  - providing more services supporting new businesses, also through a closer cooperation between employment services, entrepreneurship support services and institutions involved in micro-financing;
  - reinforcing mechanisms to support young people who interrupt their participation in activation programmes and lose access to support.

In Poland, the situation of young people in the labour market is slightly better than in the countries of southern Europe, however, far from desired. Poland actively participates in the implementation of the YG. Ten voivodeships (out of 16) meet the requirement of the unemployment rate among people aged 15-24 exceeding 25%, nevertheless, in view of the need to provide equal access, the Ministry of Family, Labour, and Social Policy have decided to involve significant LF funds in order to provide the same support offer to all jobless young people, regardless of their place of residence.

In Poland, in comparison to other age groups, the situation of young people on the labour market is unfavourable. It is a group of a low economic activity (34.2%<sup>19</sup> of young people are economically active) and a low employment rate (only one in four individuals aged 15-24 has work - 26.3%)<sup>20</sup>. Moreover, young people are the ones most prone to be unemployed. According to Eurostat data, the harmonized unemployment rate among young people as of November 2014 amounted to 23.2% in Poland, or 2.5 times higher than the total harmonized unemployment rate (8.2%).

As of the end of 2014, 302,000 individuals aged up to 25 were registered with labour offices (i.e. 16.5% of the total number of the registered individuals). One year before the percentage was 18,6%. The decline over 12 months amounted to 24.7%, or 99,100 individuals, which can be considered a successful result of the changes introduced in the framework of the YG implementation.

Figure 13. The unemployment rate of young people up to 25, 2003-2014



Source: MPiPS data.

In 2014 305,000 persons aged up to 25 found jobs (as many as in the previous year). The largest numbers of the unemployed commenced work in September (30,600), October (31,200) and December (34,400) and the smallest number in January (20,700).

<sup>19</sup> *Kwartalna informacja o rynku pracy w III kwartale 2014 r.*, the Central Statistical Office (GUS), Warsaw, 28 November 2014.

<sup>20</sup> J. Męcina, *Niewykorzystane zasoby. Nowa polityka rynku pracy*, IPS UW, Warsaw 2013.

Young people have been the dominant group among the activated unemployed persons for many years. 177,300 young people benefited from active forms of counteracting unemployment in 2014, representing 35.1% of the total number of the unemployed who have benefited from these forms of aid, and as compared to 2013, an increase by 21,700 individuals (about 13.9%) has been reported (with a 6.1% increase in the total number of the unemployed.) The largest number of the unemployed joined the active forms in March (26,200) and April (24,100), and the smallest in January (5,200).

The reduction of unemployment among young people has been one of the priorities of the labour market policy in Poland for many years. The Act of 20 April 2004 assigned individuals at the age of 25 and less to one of the social categories in a specific situation on the labour market, and thus entitled them to special assistance, e.g. through preparing individual plans of action by the public employment services and a range of activation programmes dedicated to young people. In a certain way, the implementation of the Youth Guarantee fits into the labour market policy implemented by the Ministry of Labour, the central authorities and local governments. It was preceded by the implementation of the *Young People in the Labour Market* programme (launched in 2012,) which was complementary to the standard services offered to the unemployed at the age of up to 30, and which commenced the *Your Career – Your Choice* pilot project, which – through the introduction of new solutions in the labour market policy – was an attempt to remove any barriers that prevent young people from leaving the ranks of the unemployed. Young people participating in this project have received support in the following two areas:

- 1) education: vouchers for education, which can be used for vocational training, post-secondary or postgraduate education, and thus for acquiring desired skills;
- 2) employment: creating the opportunities that allow for gaining work experience in the form of apprenticeship or work training combined with subsequent employment (vouchers for training), subsidized employment (vouchers received by

employers for employing university graduates) and increased mobility (vouchers for relocation).

Implementation of the pilot projects allowed to test new support instruments aimed at young people, which were used in the amended law on employment promotion and labour market institutions. According to the *Youth Guarantee Implementation Plan in Poland, actions under the Youth Guarantee implementation create value added towards the executed labour market policy with regard to counteracting youth unemployment. Additional intervention from ESF and YEI funds<sup>21</sup> will permit intensification of national actions, and thereby increase final effects of granting support for young people<sup>22</sup>.*

The development and implementation of the Youth Guarantee system required close cooperation between all stakeholders: the various branches of the public administration, public authorities, employment services, providers of vocational counselling, education and training institutions, youth support services, entrepreneurs, employers, trade unions, etc.<sup>23</sup>. The recommendations of the Council of 22 April 2013 on the Youth Guarantee (2013/C 120/01), strongly insisted on the establishment of a partnership of various institutions and entities to support young people. The issues of complexity and scope of the partnership in the development and implementation of the Youth Guarantee in Poland result from a specific self-governing and decentralized model of public employment services, requiring relevant legislation to enable the implementation of the Youth Guarantee. Four strategic partners for the implementation of the Youth Guarantee exist at the central level.

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<sup>21</sup> Funds of the European Social Fund and the Youth Employment Initiative.

<sup>22</sup> *Plan realizacji Gwarancji dla młodzieży w Polsce*, MPIPS, MliR, Warsaw, April 2014, p. 12.

<sup>23</sup> While developing the implementation concept for the Youth Guarantee in Poland, the Ministry of Family, Labour, and Social Policy (MPIPS), as a body coordinating the implementation of this initiative, consulted it with social partners interested in actions in favour of young people. On 12 December 2013 the main guidelines to the implementation of the Youth Guarantee in Poland were accepted by representatives of the social partners participating in the forum of the Chief Employment Council.

One of the important pillars for the implementation of the Youth Guarantee were the amendments to the act on employment promotion and labour market institutions, which entered into force on 27 May 2014. One of the objectives of the amendment was the occupational activation of the disadvantaged groups on the labour market, especially young people, which is manifested in such actions as the promotion of work mobility, the reduction of costs associated with hiring people without work experience or the support of competences' development among young employees<sup>24</sup>. The act, in accordance with the European Commission's recommendations, shortened time period, in which an employment office must offer a vacancy, activation or training to a young unemployed person, to four months<sup>25</sup>, but also extended the status of people 'in a specific situation on the labour market' to the age of 30 (rather than 25, as before). It also increased the age limit to 29 in respect to the support for young persons' entrepreneurship, for example, in respect to start-up loans. The result of this change is the adjustment of offers to four subgroups – the recipients of the Youth Guarantee in Poland. The subgroups in question and the logic behind the interventions aimed at improvement of the situation on the labour market focusing on the needs of young people are presented in Table 9.

The extending of the 29 age limit in the case of the fourth subgroup of beneficiaries of Youth Guarantee results from the process of the increasing age of education completion, which is the effect of a growing population of higher education (educational boom). According to OECD statistics, the average age of Polish graduates was 26 in 2011, therefore the increase in the age limit for people who require assistance on the labour market in the case of professional start barriers is justified. Moreover, the possibility to take advantage of the preferential loan system is supposed to prevent

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<sup>24</sup> *Młodzi 2011* (2011), scientific editing and recommendations for public policies: M. Boni, K. Szafraniec, P. Arak, Chancellery of the Prime Minister of Poland, Warsaw 2011.

<sup>25</sup> It will be calculated from the day of registration of a young person at the age of up to 25 as an unemployed individual (or a job seeker in the case of a disabled person not in employment) with a district employment office.

Table 9. The main lines of intervention envisaged in the framework of the Youth Guarantee implementation, by recipient groups

Recipient subgroups	Main lines of intervention
Individuals aged 15–17 who leave education – individuals neglecting the schooling obligation (up to the age of 16) or education obligation (up to the age of 18)	support aimed at starting education or training, or acquiring vocational qualifications by taking part in vocational qualification courses and acquiring elementary social competencies; supplementing shortages of language and digital skills
Individuals aged 18–24 not in employment, education or training (NEETs) – among them individuals requiring particular support, e.g. distant from labour market, from unprivileged social groups, from rural areas or small towns*	<ul style="list-style-type: none"> <li>• standard support – diagnosis of a professional and personal situation of a young person as a basis for a standard intervention including:                             <ul style="list-style-type: none"> <li>a) employment services, aid in organisation of work practices apprenticeships</li> <li>b) vocational counselling and occupational information</li> <li>c) learning active job-seeking.</li> </ul> </li> <li>• deepened/comprehensive support, i.e. a support in learning occupation, changing occupation or improving vocational qualifications, gaining work experience and taking up employment.</li> </ul>
Individuals aged 18–24 registered as unemployed, including registered part-time students not eligible for NEET status	<ul style="list-style-type: none"> <li>• work counselling and employment services, support in active job-seeking                             <ul style="list-style-type: none"> <li>• vouchers for the most active individuals</li> </ul> </li> <li>• work practice, training courses</li> <li>• co-funding of further education</li> </ul>
Unemployed youth and job-seeking graduates of schools and universities within 48 months of graduation or receiving a degree, aged 18–29	Support for entrepreneurship of young people through a system of preferential loans

\* In the case of persons at the age of 15-24 from NEET group (not in employment, education or training) eligible to be covered by the Voluntary Labour Corps support, the four-month period starts on the day on which such persons declare readiness to participate in a vocational or social activation project, i.e. on the day of signing a declaration to participate in a project by a young person at the age of up to 25 (in the case of minors, signatures of a parent or a guardian are necessary.)

Source: Own study, based on the Youth Guarantee Implementation Plan in Poland, the Ministry of Family, Labour, and Social Policy (MPIPS), Warsaw 2014.

emigration of highly educated people, that is, the phenomenon of the 'brain drain'. Interestingly, the support offer is dedicated not only to graduates, but also to university upperclassmen. Cooperation between the financial operator and universities in a given region is obligatory in order for information about opportunities and lending rules was widely available to students.

In line with the amended law, the vocational and social activation of young people should be preceded by a diagnosis of their knowledge, skills and potential (profiling of support for the unemployed), which will allow for the selection of appropriate forms of support and for the developing of an individual action plan<sup>26</sup>. People living in rural areas and small towns, where, as a rule, the number of vacancies is smaller, may receive geographic mobility support (vouchers for relocation) In the framework of the Youth Guarantee implementation, following the development of the individual action, young unemployed persons will benefit from the labour market instruments. The actions reinforcing the activation of young people are set forth in the amended law on employment promotion and labour market institutions (e.g. training, professional training, employment and relocation vouchers). Some provisions of the Act apply to wider groups of unemployed persons, however, they can affect the effectiveness of the measures taken in relation to the young unemployed. These undoubtedly include: the possibility to commission activation services for young individuals classified as 'long-term unemployed' from external entities<sup>27</sup>, the collaboration between Information and Professional Career Plan-

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<sup>26</sup> Profiling of each unemployed person will be performed immediately after registering, taking into account his/her current situation on the labour market, i.e. distance from the labour market and readiness to enter/return to the labour market. Thanks to the profiling, staff of the employment offices will know the young unemployed persons' expectations and what assistance to offer them.

<sup>27</sup> Marshal of a voivodeship will be able to use the funds of the Labour Fund to commission activation services for unemployed persons from activation service providers selected in public procurement contests. The remuneration of the service provider depends from obtaining and maintaining employment by relevant unemployed persons and from the following indices: the employment efficiency and maintenance of employment.

ning Centres and Academic Career Offices in the scope of developing professional information, the possibility to conclude trilateral agreements between starostas, employers and training institutions<sup>28</sup>, grants for teleworking, activation benefits<sup>29</sup>, support for efforts to receive vocational training by reimbursement of social security contributions for the unemployed under 30 who take up their first jobs<sup>30</sup>, loans from the Labour Fund for establishing new workplaces or launching businesses<sup>31</sup>, reimbursement of social security contributions for the unemployed under 30 who take up their first jobs.

Reaching all the addressees of the activation offer will be a very difficult element of the Youth Guarantee implementation. It will be particularly challenging in the case of persons who are most distant from the labour market, i.e. those from families that are dysfunctional, neglected, pathological, criminogenic and in which unemployment is inherited. However, this group also includes discouraged individuals who remain economically inactive or operate in the grey economy. These people generally have limited contact with both educational or training institutions and public employment services. A significant part of them may be classified as NEETs. Therefore, it is necessary to work closely with local communities.

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<sup>28</sup> In particular the agreements will include skills and vocational competences required from candidates for the job by the employer. Such requirements will be addressed in training programmes financed by employment offices from the Labour Fund. Thanks to that the unemployed individuals will obtain skills required by employers.

<sup>29</sup> This benefit is to be paid to the employer for 12 months (1/2 minimum wage) or 18 months (1/3 of the minimum wage) for the employment of an unemployed parent returning to labour market after a period of raising a child or for the employment of an unemployed person returning to labour market after a period of caring over a dependant.

<sup>30</sup> This reimbursement, in the monthly amount not greater than 1/2 of minimum wage established by separate legislation, may be paid out to an employer for a period of up to 12 months. An employer is obliged – under pain of repayment of the reimbursement - to continue to employ the person in question for a period of at least 6 additional months.

<sup>31</sup> The following natural persons will be entitled to apply for a loan to start a business: unemployed persons registered, students of final years at university or college.

According to the authors of the Youth Guarantee, Voluntary Labour Corps are able to reach this group best. They have a network of more than 900 organizational units (educational care facilities, training facilities and units providing labour market services) deployed throughout the country, particularly in smaller towns. These units work closely with the majority of social and labour market partners, local authorities, but also with schools, education authorities, churches of various denominations, psychological and pedagogical counselling centres. In order to effectively reach young people not in employment, education or training, a promotional action will be necessary, providing all the interested with the necessary information about the project. Such actions should also take into account the media which are most important for young people today, such as the Internet or various social networking sites. For the sake of the effectiveness of the Youth Guarantee implementation, competitions are to be organised at both local and central levels, with the aim of providing additional forms of support to young people on the labour market. Competitions planned at the central level will be based on two factors: (a) an innovative approach to the support of young people activation, and (b) support for partnerships and their actions designed to improve the labour market situation of young people. The support for young people within the framework of the regional competitions will be targeted to: (a) diagnosing barriers of economic activity as well as factors conditioning the participation of unemployed young people in activation, (b) specialized services, vocational guidance or support; (c) classes and workshops designed to motivate the unemployed to become economically active. The aim of the competition offer is to complement and broaden the services and tools offered today by public employment services.

The Youth Guarantee project is carried out using domestic funds as well as the EU funds from the ESF and the Youth Employment Initiative<sup>32</sup>.

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<sup>32</sup> *Program „Młodzi na rynku pracy”. Działania na rzecz zmniejszenia bezrobocia Młodzieży (2012)*, the Ministry of Family, Labour, and Social Policy (MPiPS), Warsaw.

## 5.9. New Instruments Available for Young People

One characteristic feature of the new labour market instruments dedicated to young people is the intention to use the type of activity and informal networking specific to young people. Within the framework of the improvement of young persons' situation on the labour market, the amended act focuses on supporting the employment of young persons and creating opportunities for them to start their own businesses. The following instruments have been developed for the implementation of the first objective:

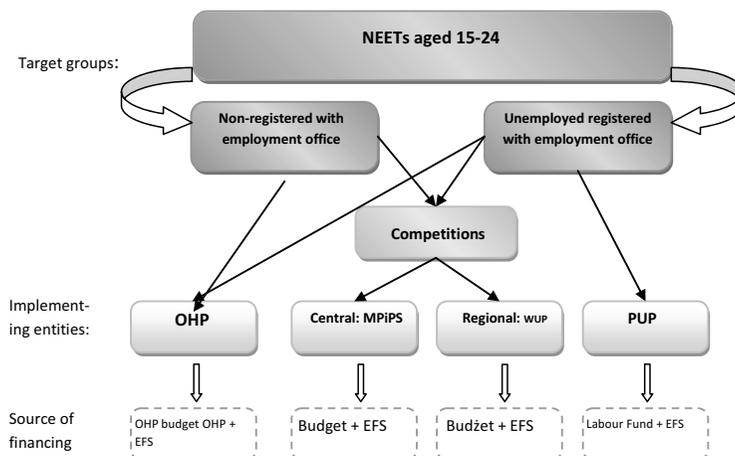
- vouchers (for training, work practice, employment or relocation);
- reimbursement of social security contributions for the unemployed under 30 who take up their first jobs;
- exempting employers who hire unemployed persons at the age of up to 30 from payment of contributions to the Labour Fund and the Guaranteed Employee Benefits Fund for these persons.

For the sake of the implementation of the second goal, a 'Pierwszy biznes – Wsparcie w starcie' ['First Business – Support for the Start'] programme of low-interest loans for starting business and support for the hiring of the first employee has been launched.

At the same time, due to the fact that young people are often parents, new tools to support the creation of new jobs and the unemployed persons' return to employment, including those returning to the labour market after a period of raising a child, have been addressed to them, such as grants for teleworking and activation benefits.

Training voucher is a form of support that will guarantee the unemployed person a possibility to cover, in the amount of up to 100% of the average salary, the costs of one or several trainings, including costs of a vocational qualification course and a professional licence course, costs of necessary medical or psychological examinations, as well as travel and accommodation costs – if the classes are held outside of the place of residence – in the form of a lump sum.

Figure 14. The diagram of support for NEETs aged 15-24.



Source: *The Ministry of Family, Labour, and Social Policy paper*, Warsaw 2013.

Work practice voucher is a form of support which represents a guarantee for an unemployed person to participate in a work practice at an employer selected by the unemployed, if the employer undertakes to hire the unemployed person for a period of six months following the training. The employer who has hired the unemployed person for a period of six months will receive a bonus in the amount of PLN 1,500. The work practice voucher will also cover the cost of travel to the location where the practice is held – in the form of a lump sum – as well as the costs of the necessary medical and psychological examinations.

Employment voucher is a form of support addressed to unemployed persons aged up to 30, constituting a guarantee for the employer to obtain partial refund (in the amount of unemployment benefit) of the salary and social security contributions of an unemployed person granted an employment voucher by a district employment office, for a period of 12 months. The employer will be obligated to continue employment of the unemployed person for a period of at least 6 months following the end of the refund period.

Relocation voucher is a form of support addressed to unemployed persons taking up a job, other gainful employment or economic activity outside of the place of current residence. In order for the financial support (in the amount of twice the average salary) to cover the costs of accommodation associated with taking up work to be used, three conditions need to be met:

- the employment is subject to social insurance and the employed person receives a gross monthly salary or a monthly income for performing the job, in the amount of at least minimum wages;
- the activated person remains in employment or continues to run the business for at least six months, and
- the distance from the place of current residence to the place to which the unemployed person is relocating in relation to the new job, must be at least 80 km or the time of travelling to this location and returning to the place of residence exceeds a total of 3 hours a day.

Another form of support is the refund of social security contributions for unemployed persons at the age of up to 30 taking a first job. This tool implements the goal of the Youth Guarantee programme to increase the demand for work performed by young people. The refund will cover the period up to six months and its monthly amount must not exceed  $\frac{1}{2}$  of the minimum wages set forth in separate regulations. The employer is obligated to continue the employment for the period of six months, under the pain of the refund's repayment. Other new solutions include the exemption from payment of the Labour Fund and Guaranteed Employee Benefits Fund contributions for employed persons at the age of up to 30.

The 'First Business – Support for the Start' is a new loan programme launched to promote young persons' entrepreneurship. Start-up loans will be primarily available to young people, since this instrument will be directed to the following groups of natural persons: job-seeking graduates of high schools and universities within 24 months of receiving diplomas; unemployed persons registered with district labour offices; final-year university students. A start-

up loan will cover up to 100% of the costs of the project (it will be granted in the amount of up to 20-fold of the average salary) and will bear preferential interest. The Minister of Labour and Social Policy, in cooperation with Bank Gospodarstwa Krajowego, has reactivated the Pierwszy Biznes [First Business] programme, under the name of PIERWSZY BIZNES-START UP [First Business-START UP]. It is a nationwide programme and it will be implemented in stages. The launch of the first, pilot phase of the programme's implementation will take place in 2013, covering the Lesser Poland, Masovian and Świętokrzyskie Voivodeships. The program will cover the remaining voivodeships in the second phase, realised from 2014 on. The programme will be implemented on the basis of the funds transferred by the Ministry to BGK, derived from the proceeds from the sale of the Treasury stocks and shares, in accordance with article 56.3 of the Act of 30 August 1996 on Commercialisation and Privatisation (Dz.U. of 2013. item 216, uniform text). The aim of the proposed new programme, which will be managed by the BGK, is the support – in the form of preferential loans – of the establishing of new companies and new jobs. BGK will manage the programme and run promotional and information activities on a national scale. The loans will be preferential and granted under the *de minimis* aid. The beneficiaries of the new programme include job seekers, graduates of high schools and universities within 48 months of obtaining diploma, unemployed persons, final year university students. The participants of the programme will also be able to take advantage of an additional loan for establishing new jobs for unemployed persons, including unemployed persons directed by a district employment office. As projected, the amount of one loan will be about PLN 60,000 in the pilot programme, with interest rate of 0.25 of the rediscount rate for bills of exchange (currently approx. 1.25% p.a.) and a seven-year loan repayment period with a 12-month grace period for capital repayment. The amount of a single loan for establishing a new job is expected to be about PLN 20,000 in the pilot programme. The beneficiaries of the programme will be able to take advantage of a partial write-off of the loan for creating a new job for an unemployed person

directed by a district employment office, if the newly created job is maintained for a minimum of one year.

Additional solutions introduced in the framework of the reform are teleworking grants and activation benefits. On the basis of an agreement concluded with a district employment office, an employer or entrepreneur will be able to receive a grant from the Labour Fund, in the maximum amount of six-fold the gross minimum wages, for establishing a job for an unemployed parent or other unemployed person providing care to a dependant, who during three years preceding the registration with a labour office resigned from employment or other gainful form of work due to the necessity to raise a child or provide care to a dependant. In the agreement, the employer will guarantee the maintenance of full-time employment for 12 months or part-time employment for 18 months, under the pain of returning the grant along with statutory interest calculated from the date of receiving the grant. Activation benefits, in turn, are paid to the employer over 12 months (in the amount of 1/2 of the minimum wage) or 18 months (in the amount of 1/3 of the minimum wage) for the employment of an unemployed parent or an unemployed person providing care to a dependant, who, within three years prior to registration with a labour office, resigned from employment or other gainful work due to the need to raise the child or provide care to a dependant. In the framework of this tool the employer will guarantee the employment of the labour office-directed unemployed person over the next six or nine months. In the case of failure to meet this condition, the employer will be obligated to return the obtained benefits along with statutory interest.

### **5.10. The Use of Available Instruments in the First Year of Youth Guarantee Plan Implementation**

According to data collected in the first year of implementation of the Guarantee in Poland, from January to December 2014, the number of persons aged up to 25 in Poland eligible for being covered by the Youth Guarantee was 640,900. In the process of

nation-wide implementation of the Guarantee, activation offers provided for by the Youth Guarantee were extended to 355,900 individuals aged up to 25 within four months of registration. This means that 55.5% of individuals aged up to 25 registered with labour offices in the above mentioned period received, within four months, a good quality offer of employment, vocational training, traineeship or further education adjusted to the individual needs and situation of a PUP client. In comparison with the monitoring study carried out in September 2014 for the period of January-August 2014, the percentage of people who have received a support offer under the Youth Guarantee increased by 10.8 pp. The largest increase was in the West Pomeranian Voivodeship (by 50.3pp.) and the Lesser Poland Voivodeship (by about 30.1pp.) In turn, a decline took place in three voivodeships: Warmian-Masurian (by 6.1pp.), Subcarpathian (by about 1.9pp.), and Lublin (by 0.3pp.).

The Youth Guarantee Plan implementation was financed mainly from domestic funds in the first year, therefore the scope of impact, while already apparent in its results, has not met the forecasted standard of covering all the young individuals with activation measures within 4 months of joining the programme. Although much larger state budget funds were allocated to the activation of young people, the effect achieved by labour offices, although apparent, has not reached the optimal level. As among those aged 15-64, among young people aged 15-24 Poland has most notably narrowed the gap in the scope of unemployment rate (according to BAEL [LFS]), which was nearly 40% among young people in 2004, over 20pp higher than the EU rate; today the difference is merely 0.3pp. In Q4 2014 the unemployment rate in the EU (28) among those aged 15-24 was 21.6%, as compared to 21.9% in Poland. The comparison of the current unemployment rate with that of 2004 shows a formidable improvement, and the value of the indicator is almost twice lower.

Young people constitute a group which is the most vulnerable to labour market problems. In times of the recession, in 2009, when the overall unemployment increased by more than 28%, the number of young unemployed persons increased by nearly 40%

Table 10. Economic activity rate, employment-population ratio and unemployment rate among young people, 2003-2014

Scope	Economic Activity Rate (age 15-24) in %			Employment-Population Ratio (age 15-24) in %			Unemployment Rate (age 15-24) in %		
	Poland	EU(28)	Variance (pp)	Poland	EU(28)	Variance (pp)	Poland	EU(28)	Variance (pp)
2003	36.4	44.3	-7.9	21.2	36.0	-14.8	41.4	18.3	23.1
2004	35.9	44.3	-8.4	21.7	36.0	-14.3	40.1	18.7	21.4
2005	35.7	44.1	-8.4	22.5	35.9	-13.4	36.9	18.7	18.2
2006	34.2	44.1	-9.9	24.0	36.4	-12.4	29.8	17.4	12.4
2007	33.0	44.1	-11.1	25.8	37.2	-11.4	21.7	15.5	6.2
2008	33.1	44.2	-11.1	27.3	37.3	-10.0	17.3	15.6	1.7
2009	33.8	43.6	-9.8	26.8	34.9	-8.1	20.6	19.1	1.5
2010	34.6	42.9	-8.3	26.4	33.9	-7.5	23.7	21.0	2.7
2011	33.5	42.5	-9.0	24.9	33.4	-8.5	25.8	21.5	4.3
2012	33.6	42.4	-8.8	24.7	32.6	-7.9	26.5	23.1	3.4
2013	33.3	42.1	-8.8	24.2	32.2	-8.0	27.3	23.5	3.8
Q1 2014	34.0	41.0	-7.0	24.8	31.4	-6.6	25.7	23.0	2.7
Q2 2014	34.0	41.1	-7.1	26.2	32.2	-6.0	24.2	22.2	2.0
Q3 2014	34.2	43.1	-8.9	26.3	33.9	-7.6	23.5	21.9	1.6
Q4 2014	-	-	-	-	-	-	21.9	21.6	0.3

Source: Own study, based on the Eurostat data.

and the share of young people in the number of registered unemployed individuals grew to 22.5%. However, in the following years, the situation has begun to stabilize, and a systematic decline in the registration of this group of unemployed persons and in their share in the total number of the unemployed has been recorded from 2013 on. As of the end of 2014, 302,000 unemployed persons aged up to 25 were registered with labour offices (i.e. 16.5% of the total registered number). A year earlier the share amounted to 18.6%. The decline over one year was by 24.7%, i.e. 99,100 individuals.

## 5.10. The Use of Available Instruments in the First Year...

Table 11. Variations in unemployment, 2003-2014

Year	Total No. of the unemployed	including				
		Increase/decrease vs. previous year		Aged up to 25	Increase/decrease vs. previous year	
		In thousands	%		In thousands	In thousands
2003	3,175.7	-41.3	-1.3	825.4	-70.2	-7.8
2004	2,999.6	-176.1	-5.5	728.2	-97.2	-11.8
2005	2,773.0	-226.6	-7.6	626.1	-102.1	-14
2006	2,309.4	-463.6	-16.7	476.7	-149.4	-23.9
2007	1,746.6	-562.8	-24.4	332.7	-144	-30.2
2008	1,473.8	-272.8	-15.6	304.6	-28.1	-8.5
2009	1,892.7	418.9	28.4	425.9	121.3	39.8
2010	1,954.7	62	3.3	428.3	2.4	0.6
2011	1,982.7	28	1.4	416.1	-12.2	-2.9
2012	2,136.8	154.1	7.8	424.2	8.1	2
2013	2,157.9	21.1	1.0	401.0	-23.2	-5.5
2014	1,825.2	-332.7	-15.4	302.0	-99.1	-24.7

Source: Own study, based on the Ministry of Family, Labour, and Social Policy (MPiPS) data about the Labour Market Report.

The decline in the number of unemployed persons, including the young ones, resulted from the drop in the inflow to unemployment, accompanied by the increase in the outflow. The increase in the number of registrations was due to the apparent boom on the labour market, which was primarily manifested in a larger number of vacancies listed with labour offices. **For years, young people have been the dominant group among the activated unemployed.** As many as 177,300 young people benefited from active forms of counteracting unemployment in 2014, representing 35.1% of the total number of the unemployed who have benefited from such an aid. An increase by 21,700 individuals, or 13.9% vs. 2013 was recorded (with a 6.1% increase in the total number of unemployed persons).

The highest percentage of people granted support under the Youth Guarantee have been reported in Podlaskie Voivodeship



labour market policy solutions addressed to unemployed persons aged up to 30. 'Experiences from the implementation of the pilot projects were used in the design of new support instruments aimed at young people in the amended law on employment promotion and labour market institutions' (Youth Guarantee..., 2014, p. 11). The implementation of the Youth Guarantee coincided with the amendment of the law on employment and labour market institutions. The labour market policy reform implies a detailed diagnosis of the needs, a development of individual action plans, an introduction of new tools addressed to young people, such as work practice and employment vouchers, vouchers promoting labour and geographic mobility, start-up loans or exempting employers hiring young persons from the obligation to pay contributions to the Labour Fund and the Fund of Guaranteed Employee Benefits. Developing individual action plans for unemployed individuals will allow to properly diagnose young persons' needs (analysis of the situation and of the labour market opportunities) and to determine the optimal aid profile (selection of the right tools, instruments and labour market services), which, in turn, should lead to a better addressing of the aid and a more efficient use of resources.

As proposed, many entities will be involved in the implementation of the Youth Guarantee (district and provincial employment offices, Voluntary Labour Corps, labour market councils, private employment agencies, employers, NGOs, training institutions, banks, financial institutions, etc.). Thanks to the Guarantee, the period of young individuals' work activation in Poland will be reduced by 2 months (from 6 to 4 months). The implementation of the Youth Guarantee plan provides for the activation measures to cover not only young people registered with employment offices, but also non-registered individuals who often exclude themselves from the labour market as a result of discontinuing education, a breach of law, pathologies or operating in the grey economy.

The implementation of the tasks provided for in the Youth Guarantee can promote the improvement in operation of public employment services and in the better quality of services they provide, the greater involvement of social partners, particularly em-

ployers, in the activities carried out on the labour market and in cooperation with educational and training institutions, as well as strengthen the link between the education system and the economy. The Youth Guarantee Plan has been implemented since the beginning of this year and thanks to the labour market reform and the additional funds from the Labour Fund and the European Social Fund, the first results can be seen in statistical data for the end of 2014, thanks to such factors, as higher amounts assigned from the Labour Fund to young unemployed persons. However, it should be emphasised here that the complete implementation of the Guarantee will begin in Q2 2015 when, apart from efforts by employment offices, Voluntary Labour Corps and BGK, the implementation of competition programmes by other labour market institutions will commence on the central and regional levels. As a result of the actions in all of these areas of intervention, the unemployment among young people should be reduced by half. Other measures include the fundamental reduction of the long-term unemployment risk among young people, and the implementation of a new aid standard providing for a tangible support within four months of registering with an employment office. Other factors which improve the situation of young people include the growing economy and the lower unemployment rate which fell to 12.5% in late 2014. It should be stressed here that, as the recent data show, the number of registered young unemployed persons was smaller by nearly 100,000 in June 2014 (translating into 25% decrease in the unemployment among young people), and by the end of 2014 nearly 200,000 of the unemployed at the age of up to 30 will be covered by the support offered by employment offices. Thanks to the greater activity of employment offices and their collaboration with employers, the public employment services should be able to offer a larger number of vacancies. The active collaboration between high schools/universities and employers should translate into a shorter job-seeking time among young graduates planning their careers. It should be emphasised that a better collaboration between high schools/universities and labour market institutions and employers should also favour systemic changes in teaching

curricula and educational content, which should bring a lasting result of a better adjustment of educating structure and curricula to the labour market needs and the development of academic entrepreneurship. In this context, the Youth Guarantee implementation plan is an opportunity to not only improve the effectiveness of employment office's impact on the lasting improvement in young persons' position on the labour market, but also to initiate lasting systemic changes in the fields of education, vocational education and training, as well as labour market services and instruments. The development of a comprehensive action plan, preceded by evaluation of the new instruments, the involvement of multiple institutions and ensuring sustainable funding and monitoring of results in accordance with the scope of the indicators presented above will allow an ongoing assessment and management, including the possible revision of the programmes. The next challenges include the continued improvement in labour quality in Poland, the limitation of the grey economy, the greater availability of permanent forms of employment and the better working conditions, better pay and better vocational/professional development. As underlined in many ILO documents, the objective of placing the issue of full and productive employment as well as decent work at the centre of economic and social policy, should be based on the four strategic pillars of the ILO presented in the Decent Work Agenda; i.e. promoting employment through establishing sustainable institutional and economic environment, designing and extending social security measures – social security and labour protection – that are sustainable and adapted to domestic circumstances, promoting social dialogue and tripartism as most appropriate methods of adapting the attainment of strategic objectives to needs and conditions in each country, observing, promoting and implementing all strategic objectives, fundamental laws and rights pertaining to labour<sup>33</sup>. The European Union sets forth similar objectives for its member states as it promotes the European social model while

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<sup>33</sup> ILO Declaration on Social Justice for Fair Globalization adopted during 97th Session of the ILO.; F. Green, *Demanding Work: The Paradox of Job Quality in the Affluent Economy*, Princeton University Press 2006.

underlining the necessity to reconcile two fundamental objectives of the economic and social policy – competitiveness and social cohesion<sup>34</sup>. The factors which should make it easier for Poland to address these challenges include the economic growth, the lasting improvement in the labour market situation, but also the demographic changes which translate into the decrease in labour supply over the coming years. Without creating good conditions for the start of young persons' careers and reducing the problem of unemployment among them, the reduction in emigration processes and the incentives to return to the Polish labour market, Polish economy may, within the next few years, experience problems in access to human capital as a major barrier of development.

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<sup>34</sup> CEC (2001) Commission of the European Communities Employment and Social Policies: A framework for investing in quality. Communication from the Commission to the Council. Brussels. COM (2001) 313 final, 20.6.2001.

## The Most Pressing Problems in Employment and the Polish Labour Market, and the Possibility of a New Framework for Social Dialogue in Poland

The consequences of the international crisis were a severe blow to the economies and social systems all over the world. As indicated by the ILO data, within a brief period there was an increase in the number of unemployed - since 2008 for four consecutive years by 11 million, and experts estimate that by the end of 2012 there was an increase of another 40 million. The crisis had the greatest negative impact on the situation of women, migrants and young people entering the labour market. The financial, construction and automotive sectors suffered the most, and the number of working-poor people increased rapidly, with the greatest threat being the prolonged crisis that led to the increase in the number of long-term unemployed and the number of migrants from urban areas to rural areas. Social difficulties were most perceptible in developing countries where social security was low and most of the new unemployed people were not eligible for benefits. In many countries, pension funds suffered significantly. Private funds have lost an average of 20%, and some states have reduced benefits for current pensioners. Under these threatening conditions, the ILO has since 2009 taken action to coordinate the response of states to

the crisis. In the opinion of the ILO, the Decent Work Agenda is key in economic recovery, especially on the basis of the following attributes of the intervention: Global - because the crisis is global and establishment of poor regions must be prevented, Jobs - because research confirms that economic recovery is not possible without decent and productive employment and social rights, along with respect for workers' rights, Pact - because solutions should be based on social dialogue and at best coordinated at international level<sup>1</sup>. According to the ILO recommendations, states should offer at least a minimum level of benefits, implement appropriate employment policies, offer training and specific programs to the most vulnerable groups, industry should stick to strict social and environmental criteria and the response to national crisis should differ from answers known from history, because there is a chance of transforming the economy into a healthier one in order to prevent such crises in the future.

In spite of the fact that the effects of the crisis were less felt in Poland, there was also a great tension in the labour market, and the social effects of unemployment and the deterioration of the situation of households led to a crisis of dialogue.

In June 2013 the trade union contingent in the Tripartite Committee for Socio-Economic Affairs suspended participation in the work of the Committee and maintained this position throughout 2014 and half of 2015. The unions' condition for re-engaging in the tripartite dialogue was the government meeting the demands they had tabled. At the same time the trade unions announced work together with the employer contingent and through discussion autonomous of the government. This was to derive a new form of structured social dialogue, which would be an alternative to the Tripartite Committee for Socio-Economic Affairs which had been operating in Poland until that point. The government was seeking for essential socio-economic debate to be conducted in a forum of pertinent institutions as tripartite social dialogue. Its

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<sup>1</sup> ILO Declaration on Social Justice for Fair Globalization adopted during the 97th Session of the ILO.

intention was that such a formula enable all parties to the dialogue to participate, present and exchange views and arrive at the best solutions, which truly took the current domestic socio-economic state into account. However only the government and the representatives of the employers participated in the subsequent sessions of the Tripartite Committee until mid-2015. The trade unions were absent. Their demands, accession to which by the government was the condition for re-engaging in the tripartite dialogue, referred to previously formulated trade union demands and focused on:

- 1) shortening the working week to 38 hours, reducing the use of 'junk' employment contracts and the repeal of the changes to the Labour Code, including abandonment of the regulations on flexible working hours;
- 2) the rapid increase in the minimum wage to 50% of the national average wage and the introduction of a minimum hourly rate;
- 3) the reversal of the raise of retirement age to 67 and the granting of pension entitlement to women who have paid contributions for 35 years and to men who have paid for 40 years, regardless of their age;
- 4) the full utilisation of funds allocated for proactively combating unemployment and conducting state policy in order to create new jobs effectively and quickly;
- 5) and the raise of the income thresholds below which recipients qualify for family and social benefits, allied to the development of an effective program to combat poverty and social exclusion.

In the Author's opinion these demands should be analysed from their broad perspective as a coherent raft of demands. They are to be weighed with due regard to the possibility and prospects of accommodating them and to the actions taken by the government. These demands reflect the social policy priorities which in the belief of the unionists should be embodied in government policy. The time of these demands' formulation coincided with the terminal phase of the crisis period, which despite failing to affect Poland particularly deeply manifested itself in the country in its damaging

consequences in the domains of public finances and the labour market, and in unemployment and shrinking household incomes, doing so most pronouncedly in 2012 and 2013. Unexpected to observe in this period is that the government began interventional initiatives with broad reach, to improve the state of the labour market and reform employment law and social insurance, which actually were at least in part a realisation of the unions' demands. As a consequence of favourable economic conditions, visible change in government socio-economic policy and the parallel consultations autonomous of the leadership on a new formula for social dialogue, the right conditions were created in Poland for the re-engagement of all parties in tripartite dialogue, including the trade unions. The mission of the International Labor Organization (ILO), which took place on 13-16 May 2014 at the invitation of the Ministry of Labour and Social Policy, was of great importance for the process of restoring confidence and returning to the tripartite social dialogue<sup>2</sup>. Thanks to the work of the ILO and discussions with representatives of government, trade unions and employers' organizations, the framework of changes in coalition law was outlined. This mission created a possibility to talk about rebuilding confidence and the conditions for returning to the tripartite dialogue. The mission was an important signal of the possibility of returning to the institutional dialogue on the new principles developed by all parties.

## **6.1. Employment Law and the Issue of Work without an Employment Contract (Non-Standard Forms of Employment)**

In raising their demand for the repeal of changes to the Labour Code, the trade unions were principally referring to the amendment to the Code enacted on August 23, 2013. The Labour Code

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<sup>2</sup> A request for the ILO Mission was made by the Polish government in early 2014, and as soon as 13 May the mission took place with participation Ms Karen Curtis, Head of the Freedom of Association Section at the International Labor Standards Department, and Ms Christine Bader, Legal Counsel.

received legislated flexibility measures by which employers could adapt working hours to actual labour requirement although it also preserved all the standards up to that time for employee protection. It should not fail to be noted that a resolution of the Tripartite Committee for Socio-Economic Affairs had already introduced regulations in March 2009 to be in force for two years, as part of a crisis mitigation agreement concluded between trade unions, employers and the government. That agreement was implemented in the 2009 Crisis Measures Bill. These measures, which were in force for over two years, had a beneficial effect on the labour market and gave rise to no reports of their use in unfitting or excessive ways by employers. Consultations and negotiations in the task groups of the Tripartite Committee took place from 2011 on legislating these rules into the Labour Code permanently, after the encouraging observations of their effect between 2009 and 2011 under the Crisis Measures Bill. Left little choice by the worsening economic situation, the government decided to write measures of the kind into statute at the end of 2012, despite the fiasco of the trade union contingent's<sup>3</sup> absence from the Committee table. The leadership's decision facilitated setting of more rational patterns of working time for their enterprises, boosted firms' competitiveness, and in this relieved the difficulty of avoiding redundancies and creating new jobs. Workers in turn found reconciling professional responsibilities and private life less problematic. This act of law did not instigate any change whatsoever in the specified duty lengths. In the case where the workplace adheres to the most ubiquitous pattern, where work is carried out for 8 hours a day and an average of 40 hours a week, the employer may not impose work on an employee for a greater duration than eight hours a day. Additional hours over the eighth may only be allocated to a worker as overtime after meeting the conditions laid down in article 151 of the Labour Code and prescribed in the general principles. The exten-

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<sup>3</sup> Ustawa z dnia 12 lipca 2013 r. o zmianie ustawy – Kodeks pracy oraz ustawy o związkach zawodowych [Act of July 12 2013 Amending the Labour Code and Trade Union Regulations] (DzU z 2013 r. poz. 896 [Journal of Laws of the Republic of Poland 2013, item 896]).

sion of the working hours in a day has permissibility controlled by articles 135–138, 143, and 144, dealing with prolongation to 12 and even 16 or 24 hours. In duty patterns in the purview of these articles, Labour Code article 148 proscribes the working day from being longer than eight hours without the consent of:

- employees in positions where there may be exposure to elements injurious to health exceeding permitted concentrations or intensities;
- pregnant employees;
- and employees who are care-givers for a child under the age of four.

The employee is not deprived of the entitlement to remuneration for working time scheduled but not worked, where that employee's factual working time is shortened as a result of these consent requirements.

In addition, article 129, paragraph 2 of the Labour Code provides that the period within which worked hours are to be reconciled with statutory hours or additionally compensated (the 'working time reckoning period') may be extended, but to no longer than twelve months. This applies to every type of work schedule. The extension must be justified on objective or technical grounds or causes lying in the working pattern, and may take place only under observance of general conditions for health and safety at work. In accordance with paragraph 5 of this article, if in any given month an employee is under no obligation to perform any work by reason of the duty schedule in the agreed working time reckoning period, that employee is still entitled to remuneration no lower than the minimum established in individual regulations. Consequently, even in a month scheduled for no work an employee does not fail to receive remuneration. Article 1401 however grants employers the right to apply a flexitime regime. Paragraphs 1 and 2 of this article legislate that variable start times may inhere to the duty schedule on days designated in that schedule as work days, as may time assignment in which the employee also chooses the start.

Where used, the duty schedules described above may not breach the employee's right to a daily and weekly rest period, which is treated of in articles 132 and 133 of the Labour Code. It should be made expressly clear that of these two solutions, neither the one of flexitime nor the other of extended reckoning periods for working time may be introduced without the consent of workers given at pan-organisational level, which is written into law in article 150, paragraph 3. Extension of the working time reckoning period or application of a flexitime regime as per the specific legislation mentioned above may follow from collective labour agreements or agreements with the union organisations of the relevant workplaces. Where consensus cannot be reached on the content of the agreement with all the union organisations in the workplace, the employer seeks it for that content with union organisations serving as representatives of the body, as defined by article 241 25a 1. Where no workplace union organisations operate, reckoning period extension or flexitime is set into place in an agreement with employee representatives having been selected in the standard way for that place of employment. Article 150, paragraph 4 of the Labour Code mandates the employer forwarding a copy of the agreement on extension of the reckoning period to the district labour inspector within five working days of the agreement being concluded. This control mechanism ensures not only oversight of changes by society but also institutional superintendence by the appointed body<sup>4</sup>.

A group tasked with evaluating the impact of flexible working time regulations on economic growth and the competitiveness of Polish enterprises as well as on respecting workers' rights was appointed by the Ministry of Economy on November 7, 2013. The social partners were also members of the group, with trade union representatives among them. The purpose of the group's work was the appraisal of the effect of new flexible working time regulations on the economic situation, the assessment of the requirement for

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<sup>4</sup> Cf. J. Męcina *Elastyczność czasu pracy* [Flexible working time], w: *Czas pracy w Polsce* pod red. H. Strzezińskiej [in:] *Working hours in Poland*, Ed. H. Strzezińska].

legislative reform or tools other than legislative ones in the regulation of flexible working time, and the formulation of recommendations. The Institute for Structural Research carried out a study in November and December 2014 commissioned by this group termed 'Flexible working time: an evaluation of the impact of regulation on economic growth and Polish industrial competitiveness'<sup>5</sup>. It was drawn up on two groups of enterprises: those which had extended reckoning periods and had notified the National Labour Inspectorate, totalling 1,050, and a representative sample of Polish enterprises of 9 or more employees randomly selected from the National Official Business Register database, totalling 11,335. The study incorporated employees as well as employers. Owing to the rather short timespan between the introduction of the new flexibility tools and the conducting of the study, in a number of companies where employers had extended the reckoning period a full cycle of that period had yet to finish at the time of their inclusion in the study. Neither the employer nor the employees were in a position to gauge completely the gains, the losses, or the scale of possible abuse of the arrangements after implementation of the new solution, in this interim situation. In order to accurately evaluate the advantages and disadvantages of regulation implementation around flexible working time, it is necessary to repeat the study. The most salient results of the study are:

- Entities from the private enterprise sector opted for change in their working hours scheme more frequently, whereas public-sector institutions did so far less frequently.
- Most often, the extension of the reckoning period to the maximum was decided upon, which is twelve months. Flexitime schedules were inaugurated in 38% of enterprises and 25% of public-sector institutions.
- Flexitime schedules are most strongly taken up in small firms: in the hospitality industry, healthcare and social services, administrative services and the energy industry.

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<sup>5</sup> <http://www.mg.gov.pl/files/upload/22613/Wnioski%20plynace%20z%20badania%20ankietowego%20dot.%20elastycznego%20czasu%20pracy.doc>.

- In the commercial entities where flexitime schedules and an extended reckoning period were instated, there was a self-declared improvement in competitiveness and the general state of the company, regarding employment nevertheless, 60% of entities declared that the instigated changes had no impact.
- These flexibility solutions bear little effect on the daily working experience, in employees' evaluation. Such effect as there is, is manifested in a worsening of such undesirable phenomena as difficulty in combining professional and private life, excessive stress and breaches of labour law.
- Employers and employees likewise do not regard flexible working time as a current high-profile issue in Poland. According to employers, the availability of qualified workers and taxation are more significant, while according to employees the non monetary costs of work are of greater matter. The formative effect of competition from foreign firms was perceived by both sides.
- The study revealed that automated hard recording of actual working hours was unpopular in Poland, but more discretionary methods of recording time are in common use. This is linked to the quite extensive parcelling-out of working hours by discrete tasks. Thanks to this arrangement employers are able to keep formalities to a minimum when calculating overtime pay<sup>6</sup>.

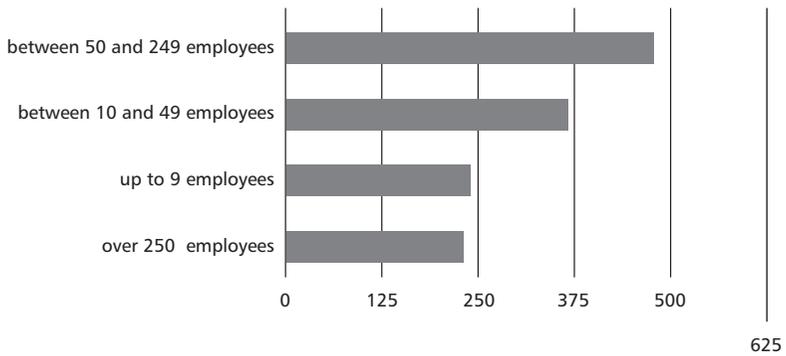
National Labour Inspectorate data enumerate that 1,319 employers had introduced flexible working time by January 15, 2015. These employers were mainly larger medium and large enterprises employing between 50 and 249 people, of which there were 481. Somewhat fewer among the flexible working time adopters were smaller medium enterprises where up to 49 people work, the data returning 366 such. Firms employing a maximum of nine people, being the smallest size division, totalled 241.

The most eager take-up of the new flexibility tools has been in enterprises in the sectors of industrial processing, with a 38% proportion; trade and machine maintenance, where 16% of firms

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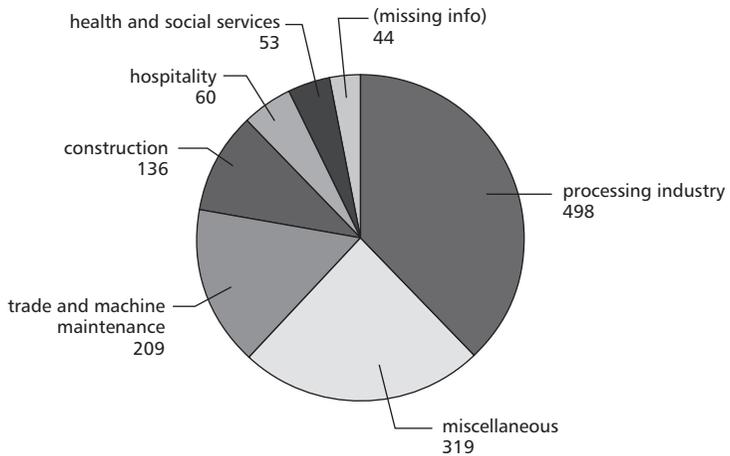
<sup>6</sup> Ibidem.

Figure 1. Adoption of flexible working time (in 2014)



Source: Own study, based on the National Labour Inspectorate data.

Figure 2. Internal flexibility - new tools (in 2014)



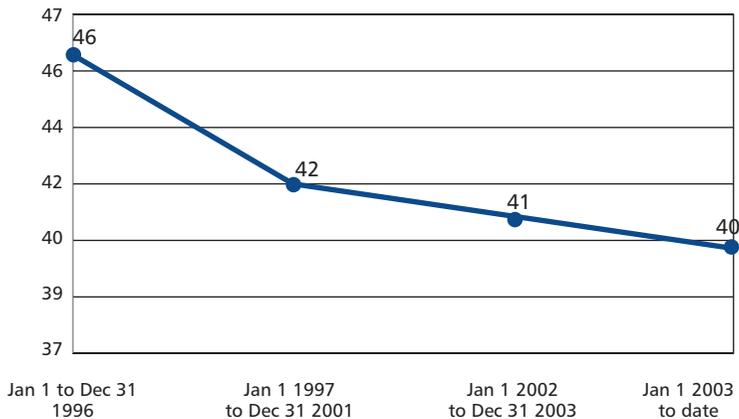
Source: Own study, based on the National Labour Inspectorate data.

## 6.1. Employment Law and the Issue of Work Without an Employment...

have taken advantage; and construction, the percentage being over 10. With hospitality, healthcare and social services and [missing information] together they comprise over 75% of the commercial entities using these flexibility tools.

One proposal for new labour law legislation besides flexible working time was the shortening of the working week to 38 hours. Concerning this proposal, it is paramount to bear in mind that the quota of hours in the Polish working week had however already been reduced several times, as figure 3 shows.

Figure 3. Average quota of hours in the working week



Source: Own study, based on the Polish Labour Code.

The consideration of this proposal makes apt an evaluation of the financial consequences of a weekly working hours reduction, of its impact on the labour market and labour efficiency, as well as on the competitiveness of the economy and the all-round functionality of enterprise. In this context it is valid to underscore that Poland still features among the EU countries with low productivity, despite there having been meaningful progress in the country in the realm of labour efficiency. In the Union there are both high GDP, high labour-efficiency countries and countries whose economic development attainment is relatively low. This state above all describes

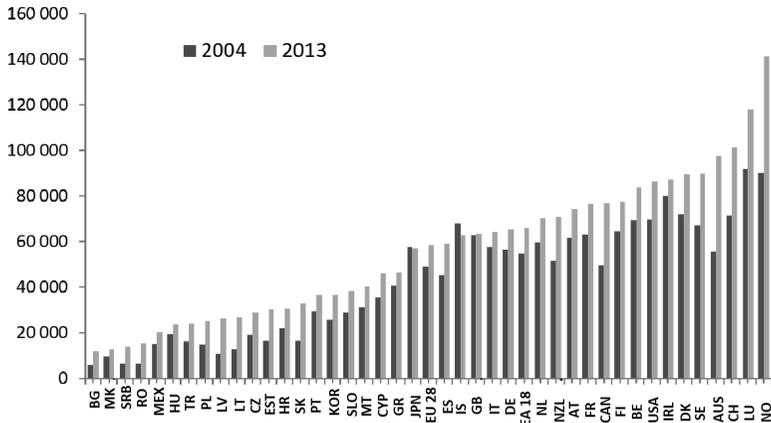
the new member states welcomed into the EU after 2004. The correlation of GDP with size of workforce shows major differences between Union states. In 2004 the highest GDPs per employee were seen in Luxembourg at €91,757 and Ireland at €80,208. Denmark also came above the ninth percentile. The lowest GDPs per employee were recorded in the Eastern European countries of Bulgaria (€5,990), Lithuania (€11,020), Latvia (€12,800), and Poland (€14,842). Such large differences in productivity arise mostly from the technological advancement and capacity for innovation of the individual countries. In the last ten-year period of 2004–2013 most countries experienced real growth in productivity per employee, despite the crisis in financial markets, and this growth occurred particularly in the more economically underdeveloped countries of Romania, Latvia, and Lithuania. Here the productivity gains over the period were 139%, 139%, and 109% respectively. The pace of Poland's productivity rise, while lower than that of the greatest gainers, was also relatively high. The cumulative increase in labour productivity in the Polish economy between 2004 and 2013 was 64% and was almost three times higher than the average for all EU member states. The fall in productivity, which was experienced with varying severity in different countries, coincided with the financial crisis at the end of the first decade of the century, which brought with it a fall in demand for labour. The drop in demand caused a rise in unemployment and a slowdown in the pace of increase in labour productivity.

However, even at the end of 2009 the increase in productivity was accelerating in many EU countries. In 2013 a number of European states nevertheless had negative productivity growth. Those states appealed for financial aid to international financial institutions and were consequently obliged to carry out significant pruning of public spending. A comparison of the capital product of an hour's<sup>7</sup> labour in euro preserves Luxembourg and Denmark in leading positions for productivity. The list of states with the lowest pro-

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<sup>7</sup> The International Monetary Fund, the European Commission, and the European Central Bank.

Figure 4. GDP per employee between 2004 and 2013 (thousands of euro)

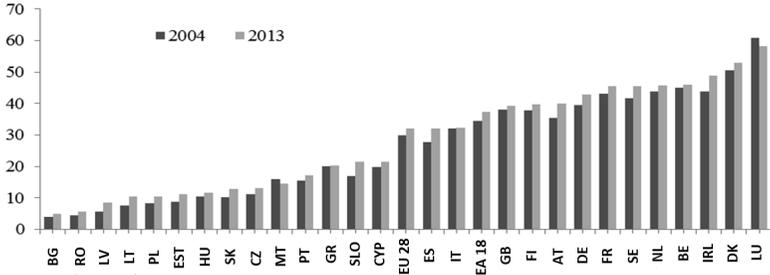


Source: Own study, based on the AMECO database.

ductivity, expressed as GDP per employee, also remains unchanged and includes 'new' member states, placing Bulgaria at the top with output in 2013 of no more than 4.9 euro per hour of employment. As a country among those where appreciable increase in labour productivity has been seen since accession to the European Union, Poland achieved GDP-per-employee productivity of 10.4 euro per hour in 2012. Cumulative productivity growth based on this index is 26.8% in Poland, which surpasses the percentage for the whole Union and the Eurozone by a factor better than three. A paradoxical aspect is that Poland emerges better in the period 2008–2012 than the period 2004–2007 for improvement in productivity, which is the converse of what is seen for the pace of growth of GDP. Capital product per hour of labour rose by 0.8 euro (9.8%) up until the time of the crisis, whereas it rose by 1.4 euro (15,6%) during the period 2008–2012.

The early years in the EU were pledged to the adaptation of the Polish economy. With time Polish enterprises learned how to better and better exploit the possibilities for increasing production, mostly

Figure 5. Real productivity of labour in 2004 and 2013 in EU states (euros per hour)



Data for Lithuania, Poland, Estonia, Slovakia, Malta, Cyprus, Italy, France, and Luxembourg are for 2012 because of unavailable data for other years.

Source: Own study, based on the Eurostat data.

through scaled-up export activity, which contributed to the rise in labour productivity. Optimising employment levels and controlling wage inflation in response to the international financial crisis were also crucial for the uplift in productivity. Poland however remains a low productivity country with many deficits of economic progress to make good. It is apparent that negotiating measures for shortening the working week through collective agreements with Polish enterprises would be better than legislative intervention to set down such measures, because productivity is not the sore challenge for enterprises that it is on average for the whole Polish economy. The fact that only in small proportion are employees covered by collective agreements is a problem for Polish labour relations.

The next demand lodged by the trade unions is a clampdown on what are termed 'junk' employment contracts. This notion of the 'junk contract' has become established in the public arena, but it is worthwhile to note that it is not a monovalent term, particularly in how the union movement interprets it. Trade union spokespeople on some occasions define 'junk contracts' as jobs without an employment contract and jobs characterised by their limited social insurance protection and duration, but on other occasions define them as fixed-term and temporary contracts. It stands emphasis-

ing that the labour law currently applying in Poland is attempting to hinder the long-evident shift away from the employment contract as traditionally understood. This shift is towards unconventional forms of employment, mainly under civil law contract forms such as contract of mandate, contract for specific work and self-employment, or the extension of impermanent employment arrangements through fixed-term contracts. Current labour law regulations provide for work having certain inherent features being treatable as work under a regular employment contract. Those features are: the authority of the party offering employment over the party undertaking work to assign that party with tasks in the nature of work, as they may arise; remuneration; the appointment of a defined place and defined times of work; and the bearing of the liability associated with the execution of the work by the employing party. Irrespective of how the parties name the contract, such work is legally work under a regular employment contract. However, in abidance by the principle of freedom of contract, the parties concerned may choose which jurisdiction, civil or labour, the work will be performed under. Where there is due regard to the applicable rules and a foundation upon the willingness of the concerned parties, entering a contract does not break the law, whether it is an employment contract or a civil contract. When work is performed under the defining conditions for regular employment contract work, the current Labour Code proscribes substituting a civil contract for an employment contract. Article 22, paragraph 1 of the Labour Code sets down that by entering an employment contract, a worker obligates himself to perform defined work for the benefit of the employer, under the employer's direction, and in a place and at a time of the employer's specifying, and the employer obligates himself to engage the worker for a monetary consideration. In keeping with the intention of paragraphs 11 and 12 of the article previously cited, employment which adheres to the above principles is employment on the basis of a regular employment contract, regardless of how the parties to it name the contract. This provision is to prevent circumvention of the rules around employment protection by employing natural persons under civil

law contracts. Article 281, point 1 of the Labour Code treats making out a civil law contract in circumstances where a regular employment contract should be drawn up (as per article 22 of the Code) as an infringement of worker's rights punishable with a fine of between 1,000 and 30,000 Polish zloty. This being noted, the rules of article 22 paragraph 11 do not however create a legal presumption of the existence of a regular employment contract, as a Supreme Court verdict confirms. It is therefore necessary to go to an employment tribunal to establish the existence of an employer-employee relationship deemed a regular employment contract. Where the matter resolves to be one of a civil law contract having been made out in circumstances only appropriate to a regular employment contract, and the contract having been so made against the will of one of the parties, it will be possible to make resort to the rule in article 189 of the Civil Procedure Code. According to this article, a plaintiff, for example a person hitherto employed under a civil law contract, may demand the court establish the existence of a relationship of employer and employee within the jurisdiction of labour law, such as a regular employment contract, if the plaintiff has a legal advantage thereby. A labour inspector may also bring an action for the legal establishment of a regular employment contract on behalf of a specific individual. The labour inspector also carries out checks on compliance with the rules obligating the use of regular employment contracts. In 2013, they inspected a total of around 44,000 civil law contracts enacted in almost 9,000 firms. One in five employers or entrepreneurs (19.7%) who were inspected did not comply with the proscription on drawing up civil law contracts in employment circumstances bearing traits which need a labour law contractual relationship. Overall in 2013 more than 1,900 employer breaches of article 22, paragraph 1 of the Labour Code were proven, affecting 9,500 people performing work. If these numbers are compared to those yielded in previous years<sup>89'</sup>

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<sup>8</sup> Cf. Verdict of June 29, 2010, case reference number I PK 44/10, M.P.Pr. 2010/10/535-537.

<sup>9</sup> Zgodnie z art. 10 pkt 11 ustawy z dnia 13 kwietnia 2007 r. o Państwowej Inspekcji Pracy, DzU.. z 2012 r. poz. 404, z późn. zm.[In accordance with article 10,

inspections, a clearly growing tendency can be seen for the total of civil law contracts made out in circumstances matching a labour law contract. Nearly one in five civil contracts inspected (19.4%) were implied. The labour inspectors also revealed non-compliance with article 22, paragraph 1 in over 200 inspections prompted by various unrelated labour law issues such as workplace health and safety.

Recently Poland has felt some effect from efforts to entrench regular employment contracts anew, and attempts have been made to establish the statutory environment to eliminate employers' excessive use of working arrangements without an employment contract. In addition, Polish public procurement law has seen new regulations applying since October 19, 2014 which enable the institution inviting tenders to state explicitly in the tender description how regular employment contracts are to be used. Institutions may require that in the course of fulfilling the tender, the contractor or subcontractors are to recruit the people undertaking construction work or providing related services on regular employment contracts. This stipulation adheres only when conventionally-contracted employment is justified by the execution of the work itself or aspects of it, as per article 29, section 4, point 4 of the legislation. These changes in the law may contribute to reducing the practice of substituting civil law contracts for regular employment contracts. Another example of action for employment contracts is the bill to amend the Labour Code changing the legal regulations for fixed-term contracts, which was adopted in 2015. The main aim of these amendments is to reduce the illegitimate use of fixed-term contracts by introducing more effective limitations on them. This bill was also the subject of sessions on November 4 and 25 2014 of the Labour Law and Collective Agreement Team of the Tripartite Committee for Socio-Economic Affairs.

Work also began on proposals for reform to the rules for impermanent employment in 2014 with a Ministry of Labour and Social

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point 11 of the National Labour Inspectorate Act of April 13, 2007] (DzU. z 2012 r. poz. 404, z późn. zm. [Journal of Laws of the Republic of Poland 2012, item 404, with amendments]).

Policy initiative. Parts of the change manifesto were put forward by the Solidarity trade union footnote 9, the National Labour Inspectorate, the Polish HR Forum, the Federation of Recruitment Agencies and the All-Polish Convention of Labour Agencies with cooperation by employer organisations from the Polish Confederation of Private Employers Leviathan, Employers of Poland and the Business Centre Club. Together these bodies published<sup>10</sup>. 'Recommendations for raising standards in the Polish temporary labour market'. The recommendations concerned amendments not only to the legislation on recruitment of temporary workers limiting the potential for abuse of the rules therein, but also to the rules controlling the operation of temporary recruitment agencies, to rules shaped to encourage recruitment and guide labour market institutions in particular, to rules on insurance, and to rules legislating the National Labour Inspectorate. On account of the thematic breadth of the proposals put forward, at the behest of the Ministry of Labour and Social Policy a panel of experts was appointed on which the originators of the proposals served. The purpose of their work is to provide a fundamental analysis of the proposals put forward, a recommendation of roundly-backed propositions and the pursuit of compromise solutions which would be acceptable to all parties invested in bringing change to the legal control of temporary work. On the basis of this work propositions were framed for change to the provisions of the legislation on recruitment of temporary workers and to other provisions implicated in the temporary employment issue.

Meriting note however is that on October 23, 2014 the government-tabled bill on 'Reform of the provisions in the social insurance system and sundry other provisions' <sup>11</sup>was passed, which introduced new rules on how certain workers are subject to paying social insurance contributions. The workers are those working on contracts of mandate and doing so on more than one such

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<sup>10</sup> In the draft Act to Amend the Act on Recruitment of Temporary Workers and other Acts.

<sup>11</sup> DzU z dnia 18 grudnia 2014 r., poz. 1831 [Journal of Laws of the Republic of Poland, December 18, 2014, item 1831].

contract or having other preconditions for social insurance contributions. The primary aim of the bill is to spread the net wider for compulsory insurance contributions, to catch incidences of a contract of mandate concurrent with other paid employment or concurrent contracts of mandate. Under the amended rules from January 2016, an accumulation mechanism will be applied to calculate liability for insurance contributions from earnings under contracts of mandate. This will count when in a given month all current contract earnings sum to a contribution calculation base which is less than the legal minimum wage. The accumulation of the contribution calculation bases from each contract will also occur to obtain a net base for contribution which is at least equal to the minimum wage. Maintaining contributions over many years, of at least the amount due from earning the minimum wage, confers upon the holder of contracts of mandate the entitlement to the minimum pension. This legislation is a response to, among other prompts, the manifesto published by the Solidarity trade union in the third quarter of 2012 for reform of social insurance. As a previously-concluded evaluation attests, the majority of actions towards improvement in the quality of jobs have been carried out or at least begun since the trade unionists tabled their demands for such, and these actions have entailed cooperation between the government, the trade unions and employer organisations. A new impetus for changes in labour law, which includes, on the one hand, the protection of the employment relationship and, on the other, the adaptation of labour law to the changes associated with globalization and digitization, including the reform of collective labour law, may be given by the work of the Commission for the Codification of Labour Law, set up in 2016.

### **6.2. The Increase in Minimum Wage**

The rapid increase in minimum wage to 50% of the national average and the introduction of a minimum hourly rate of 11 zloty is another trade union demand. In Poland the minimum wage was set by legislation in 2002. The wage setting mechanism proposed

was an annual increase to the minimum wage no less than the consumer price index forecast for a given year. The amendment to the act in 2005 introduced a guaranteed annual increase in the minimum wage if it was lower than half of the average wage. The indicator for the minimum wage indexation is <sup>12</sup>  $\frac{2}{3}$  of the amount of the predicted real GDP growth. The minimum wage legislation set down a negotiation protocol for the Tripartite Committee for Socio-Economic Affairs and provincial social dialogue committees. Under the protocol, the trade unions and the employers' organizations together with the government were to decide the minimum wage, and only when the parties could not agree was the government to rule on it, having regard to the indexation rate as the minimum permissible to set. Precisely because no common position on the minimum wage could be reached in certain years, principally the government set it.

In the period 2004–2014 the rate of increase of the minimum wage varied significantly by year from 103% to 120.3%. The minimum wage rise was generally higher than average wage rise in the economy, except 2007. The rate of increase of the minimum wage was also much higher than that of the cost of living as measured by the consumer price index, except 2004. In real terms the minimum wage dynamic in 2004<sup>13</sup>–2013 varied from -0.5% to 16.1% footnote 13. Over the same period the minimum wage rose from 824 zloty in 2004 to 1680 zloty in 2014 (unadjusted), an increase of 856 zloty, which represents 103%. From January 1, 2015 the gross minimum wage has risen to 1,750 zloty (approx. 420 euros). The size of the minimum wage in Poland is significantly different from other EU countries. At the end of 2014 the average minimum wage for all the EU Member States amounted to 735 euros, however in

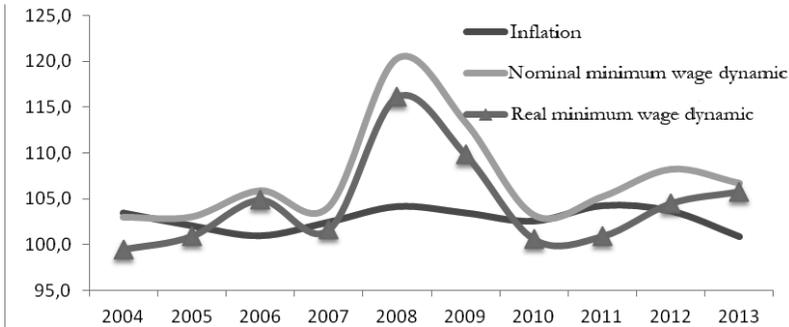
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<sup>12</sup> Ustawa z dnia 10 października 2002 r. o minimalnym wynagrodzeniu za pracę [Act of October 10, 2002 on the Minimum Wage] (DzU 2002 nr 200, poz.1679, z późn. zm. [Journal of the Laws of the Republic of Poland 2002, No 200, item 1679 with amendments]).

<sup>13</sup> The cause of such a high CPI dynamic was the signing of the Treaty of Accession to the EU, which brought in its train a convergence process of prices and services.

## 6.2. The Increase in Minimum Wage

Figure 6. Inflation and nominal and real minimum wage dynamics in Poland in 2004–2013



Source: Own study, based on the Central Statistical Office (GUS) data.

the Netherlands, the UK, Ireland, France, and Belgium it exceeded 1,000 euros. The minimum wage in Poland was the highest among all countries of the region (Central and Eastern Europe)<sup>14</sup>.

The matter of setting the minimum wage should be the leit-motif of a broad social dialogue concerned among other subjects with evaluating the legislatively-defined rules by which the wage is fixed. The existing law does not set a boundary to the negotiatory possibilities for the minimum wage so that it may not be higher than the minimum guaranteed by law, especially in favourable socio-economic conditions. However, in times of economic slow-down and imminent crisis, the statutory guarantee of minimum wage increase reduces the chance of a detrimental tendency developing for employees. In recent years the minimum wage has maintained a steady proportional relationship to the average national working wage of over 40%. The increase of the minimum wage to 1,750 zloty (a 4.2% rise) from January 1, 2015 means that this proportion will stand at around 44.2%. In fact, it is even higher because the halves of the proportional relationship, the minimum wage and the average national working wage, are not defined by the same ambit. The average national working wage takes into

<sup>14</sup> In a 12-year span, that is between January 1, 2003 and January 1, 2015, the minimum wage rose by approximately 119%.

account all the remuneration, considerations, and benefits stated in the contract while the minimum wage does not encompass overtime payments, long service awards, retirement gratuities or gratuities for redundancy or on medical grounds, profit shares or budget surplus dividends in cooperatives nor thirteenth salaries for workers paid from the central budget. Table 1 below presents the data on the increase in the minimum Polish wage and its relation to the average national working wage during the jurisdiction term of the current regulations.

Table 1. Minimum wage 2004–2015, nominal change y/y, and percentages of change and average wage

Year	Monthly (zloty)	Growth (zloty)	Dynamic (%)	Relationship to the average national working wage (%)
2003	800.00	40.00	105.3	36.3
2004	824.00	24.00	103.0	36.0
2005	849.00	25.00	103.0	35.7
2006	899.10	50.10	105.9	36.3
2007	936.00	36.90	104.1	34.8
2008	1,126.00	190.00	120.3	38.2
2009	1,276.00	150.00	113.3	41.1
2010	1,317.00	41.00	103.2	40.8
2011	1,386.00	69.00	105.2	40.8
2012	1,500.00	114.00	108.2	42.6
2013	1,600.00	100.00	106.7	43.8
2014	1,680.00	80.00	105.0	44.4
2015	1,750.00	70.00	104.2	projected 44.2

Source: Own study, based on the directives of the Ministry of Family, Labour, and Social Policy (MPiPS), and the Central Statistical Office (GUS) data.

The proportionality of the minimum wage to the average national gross wage is the principal metric for judging the where the minimum is and its impact on employment. This measure, known as the Kaitz index, indicates how the minimum wage potentially affects employment depending on the proportion the minimum wage will acquire in relationship to the average wage. In Poland such an analysis was carried out by M. Fic and her publication

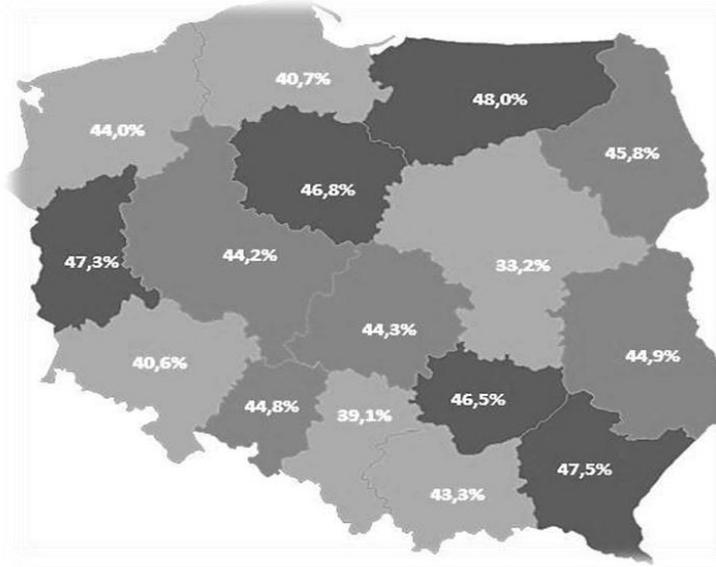
confirmed the hypothesis of the relationship between the proportionality of the minimum wage to the average wage and the level of employment in Poland. Research shows that increasing of the minimum wage up to the level of 41% of the average wage bears no negative consequences for employment. When it is higher, employment begins to fall because employers are less willing to employ new labour, preferring to invest in automation or opting for non-standard forms of employment. The figures in the ten-year period analysed show an upward trend in the relationship of the minimum wage to the average wage. In 2015 the metric exceeds 44% in respect of the projected average wage. This means that in Poland changes in the minimum wage take place faster than changes in the average wage. The relationship between the minimum wage and the average is an imperfect measure because the value of the average wage can be significantly distorted by extreme values. The phenomenon of wage differences dependent on regional and local labour market conditions may also make its presence felt. In 2013 the pay gap between the provinces of Mazovia and Warmia-Masuria was nearly 1,500 zloty gross and it has not fluctuated very much since 2008. Such significant disparities may heighten the effects of the substantial rise in the minimum wage. It may result in a region where the Kaitz index is high losing its competitiveness. Nationally, in 2013 the gap between provinces at the low and high extremes of the index reached 14 percentage points, as Mazovia<sup>15</sup>'s index was 33.2% and Warmia-Masuria's was 48%. It is noticeable however that wage disparities between individual provinces shrink from year to year.

Also, worth mentioning is that the Kaitz index comes to approximate the average recorded for the whole country only in highly-developed Polish regions. This could mean that raising the minimum wage would cause radically different consequences depending on the place of residence of the wage-earner. Setting different minimum wages by region would seem to be a reliable solu-

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<sup>15</sup> M.Fic, *Wpływ płacy minimalnej na bezrobocie i zatrudnienie* [The impact of the minimum wage on unemployment and recruitment], Uniwersytet Łódzki, Łódź 2008.

Map 1. The values of the Kaitz index in 2013 by province



Source: Own study, based on the Central Statistical Office (GUS) data.

tion. Unfortunately the proportionality of the minimum wage to the average also varies starkly within the provinces. The greatest difference nationally between districts in 2012 in the proportionality of the minimum wage to the average was over 42 percentage points. Substantial differences in average earnings, and in consequence in the proportionality of minimum wage to average wage, are manifest also across different core business activities. In 2013 the disparity between the largest fraction of the average wage which the minimum wage was and the smallest fraction was 37 percentage points. This difference was between the information and communication technology sector, where the average monthly wage was 6,685.25 zloty and the minimum wage was 23.9% of that sum, and the administration and technical support sector, where the average pay was 2,621.04 zloty and the minimum wage was 61% of that amount. In the six sectors where together

nearly 50% of the whole national working population were employed, the average monthly salary was lower than the average for the whole economy. Setting a different minimum wage sector by sector may actually reduce productivity in those sectors where the minimum is disproportionately low against the average. This is because the Kaitz index is low in the industry sectors with high productivity. A central decision on the minimum wage in sectors where productivity is low may result in the transition of employees into work at least partially in the black economy footnote 15 or lead to job losses in extreme cases. Sector-specific minimum wage determination may also worsen a society<sup>16</sup>'s wage inequality. Here Germany can serve as an example, where until 2015 the minimum wage was fixed sector by sector. The practice was abandoned in favour of a universal minimum wage due to the deepening stratification of German society attributable to those ranged sectoral minima. In Poland, it seems impossible to determine the minimum wage sector by sector, mainly because of the low level of unionisation and even the lack of worker representation in some sectors of the economy, abetted by poor representation of employers. Consequences of raising the minimum wage which are primarily negative may arise in local labour markets or in specific sectors of economic activity. This is borne of the significant differences in average wage, from both the regional and sectoral perspectives. It may be taken from reading papers published around the world and making a preliminary analysis of the Polish labour market that the way to increase the earnings of low-skilled workers should not only be to raise the minimum wage. Also, and in the first rank, the way should be to improve the qualifications and the human capital value of the workforce or to draft regulations which would reduce the tax wedge for those on low incomes.

It should be noted that under the existing law there are no legal obstacles to setting higher minimum wages in individual industries

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<sup>16</sup> According to the Central Statistical Office study on unregistered employment conducted in 2010, the highest proportion of people working illegally without being registered at their employer were found in the automotive repair, service, and catering industries.

and businesses, stipulated either as a monthly salary or an hourly rate. Amounts can be appointed through multi-establishment and single-establishment collective agreements or the terms and conditions of compensation, as particularly appropriate ways. Careful consideration is due in sizing increases to the minimum wage, because to be weighed are not only the welcome effects on the income of people whose salaries rise. Also, essential not to overlook is the effect of trapping in poverty those jeopardised by poor qualifications or low productivity, who cannot find employment or lose it, or suffer a deterioration in their situation as waged individuals because their working week is scaled back, or they have to move into the black economy. The annual increase in minimum wage imposes additional mandatory costs on an employer including in Poland higher contributions to social insurance and the Labour Fund and Guaranteed Employee Benefits Fund as state-run hardship funds. Not being foreseen in employers' operating capital allocation for the cost of labour, minimum wage raises may consequently affect the labour market detrimentally, specifically causing a rise in unemployment among young people or those with low skills. Upward changes in the minimum wage also affect the self-employed because social insurance contributions are linked to the minimum wage applicable in any given year. The criteria to determine the minimum wage should therefore include both the needs of the employees with the lowest incomes and economic and financial factors as well. In this light it needs to be emphasised that the minimum wage in the period assessed here has increased reliably, especially in recent years, and this while all social partners' involvement in the decision-making process through the social dialogue mechanism is statutorily guaranteed.

### **6.3. Controversy Surrounding the Raise in the Retirement Age**

Another key demand lodged by the trade unions is that the government reverse the raise of retirement age and grant pension entitlement to women who have paid contributions for 35 years

at to men who have paid for 40 years – irrespective of age. The debate about the effectiveness of changes to the pension system made in 1999 has been going on at least for 15 years. There is no doubt that the gradual raise of retirement age to 67 for men as well as women was warranted on demographic and economic grounds. Transformations in demographics observable in Poland indicate a dire situation. Unfavourable changes visible in birth rate will have negative influence on fertility, particularly considering the stability of Poland's high migration rate, mainly temporary migration of young people. Low fertility indicators (i.e. fertility levels not ensuring simple generational progression) together with – otherwise quite desirable – growing life expectancy will produce an advanced effect of ageing in Polish society: the number of people entering the labour market will fall, the number of the elderly will rise. The increase in life expectancy may be observed in Poland particularly with regard to the male population; female life expectancy has stabilised at around 80. From the point of view of demography this is of course a positive development, one caused by improved health- and living standards and falling mortality. Decreasing fertility has been observed in Poland for almost 30 years, with a record low of 1,4 in 2010. For comparison, the figure for 1980 was 2,3. Many economists and demographers believe that falling fertility is linked to job insecurity in a market economy, difficulties in reconciling parenthood with work, but also to a lack of effective family-oriented policies. However, the decline in fertility has many more causes, and both cultural and psychosocial factors must be mentioned alongside economic and social ones. Data presented in table 1 show an increase in the above-working-age population and a significant decline in before- and at-working-age population. Although Poland's present demographic structuring is relatively sound, low indicators of professional activity in the working-age population have already started to generate considerable problems. In these circumstances, demographers speak of degenerating social structure: a falling fertility rate and population ageing contribute to the ever faster growth of what is called the demographic burden, i.e. the ratio of the at-working-age popu-

lation to the before- and particularly above-working age population<sup>17</sup>. According to OECD estimates the indicator of demographic burden in its member states calculated for those aged 65 and over and those in the 15-64 age group will practically double within the first half of the 21st century<sup>18</sup>.

Table 2. Breakdown of member states' and EU27 population according to age group (shown as percentage of total population)

	those aged 0–14	those aged 15–64	those aged 65 and above
UE 27	15,6	67,0	17,4
Ireland	21,3	67,3	11,3
France <sup>a</sup>	18,5	64,8	16,6
Denmark	18,1	65,6	16,3
Luxembourg	17,7	68,3	14,0
the Netherlands	17,6	67,1	15,3
Great Britain	17,5	66,1	16,5
Belgium	16,9	65,9	17,2
Cyprus	16,9	70,1	13,1
Finland	16,6	66,4	17,0
Sweden	16,6	65,3	18,1
Malta	15,6	69,6	14,8
Slovakia	15,3	72,4	12,3
Poland	15,2	71,3	13,5
Portugal	15,2	66,9	17,9
Romania	15,2	69,9	14,9
Estonia <sup>b</sup>	15,1	67,8	17,1
Lithuania	15,0	68,9	16,1
Spain	14,9	68,2	16,8
Austria	14,9	67,5	17,6

<sup>17</sup> Population at working age: men aged 18-64 and women aged 18-59; population above-working age: man aged 65 and above, women aged 60 and above. These divisions are dictated by statutory law and pension entitlement.

<sup>18</sup> *Society at a Glance*, OECD, OECD Publishing, Paris 2006.

### 6.3. Controversy Surrounding the Raise in the Retirement Age

Hungary	14,7	68,6	16,6
Greece	14,4	66,7	18,9
Czech Republic	14,2	70,6	15,2
Italy	14,1	65,7	20,2
Slovenia	14,0	69,4	16,5
Latvia	13,8	68,9	17,4
Bulgaria	13,6	68,9	17,5
Germany	13,5	65,9	20,7

<sup>a</sup> Comprising overseas territories

<sup>b</sup> Population of undetermined age was distributed according to overall age structure

Source: The Eurostat data (the access code to online resources: demo\_pjanind).

In Poland the process of demographic population ageing resulted in a 40-percent decline in before-working-age population within the last two decades. A 12-percent increase in at-production-age population and an above 30-percent increase in above-working-age population were observed in the same period. The significant fall in before-working-age population that occurred in the last 20 years, as well as the unfavourable ratio of age groups foreseeable in the future will result in a decline in the at-production-age population and significant growth of the above-working-age population; in consequence, there will be an increase in the overall ratio of not-at-working age population to the at-working-age population. According to demographical forecasts, the proportion of those above-working age to those at-working age will be 378 to 1000 in 2020. The figure forecasted for 2030 is 462 to 1000, and for 2050 – 750 to 1000. In 2010 65% of the population was at working age, and 17% was not; according to forecasts, in 2020 the proportion will be 60,8% to 22,9%, and in 2050 – 50,3% to 38,1%<sup>19</sup>.

<sup>19</sup> Szumlicz, *Demografia emerytalna' w zmianie polityki zabezpieczenia emerytalnego*, [in:] *Współczesne problemy demograficzne. Rzeczywistość i mity. Ujęcie krajowe, regionalne i globalne*, J. Osiński [ed.], Oficyna Wydawnicza SGH, Warsaw 2011, s. 89.

Table 3. Population according to age group in Poland, 1989-2009 (thousands)

	population below production age			population at production age			population above production age		
	Total	Men	Women	Total	Men	Women	Total	Men	Women
1989	11350,1	5804,3	5545,8	21889,6	11316,0	10573,6	4798,7	1420,2	3378,5
1990	11318,7	5788,6	5530,1	21961,8	11363,5	10598,3	4902,7	1453,9	3448,8
1995	10644,8	5445,7	5199,1	22647,4	11702,6	10944,8	5317,2	1637,7	3679,5
2005	7863,8	4028,6	3835,2	24405,0	12506,0	11899,0	5888,2	1919,2	3969,0
2009	7231,3	3707,6	3523,7	24624,4	12776,7	11847,7	6311,6	1944,4	4367,2
2012	7066,8	3624,4	3442,4	24605,6	12929,8	11675,8	6861,0	2095,2	4765,8
2009 year 1989=100	63,7	63,9	63,5	112,5	112,9	112,0	131,5	139,9	129,3
2012 year 1989=100	62,3	62,4	62,1	112,4	114,3	110,4	143,0	147,5	141,1

Source: The 2010 Yearbook of Labour Statistics, Warsaw; the 2012 Yearbook of Labour Statistics, Warsaw.

The demographic burden ratio<sup>20</sup> does not give full justice to the negative effects of current demographic trends. An area requiring analysis is the influence changes in demography have on the national budget. The ratio of the cost of pensions to income from contributions and taxes paid by those active in the labour market is particularly important. Here as well negative tendencies of paramount importance to the finances of the social insurance system may be observed. This is a highly disturbing state of affairs that may in the future undermine the liquidity of the social insurance system. Growing life expectancy means longer retirement and, in consequence, greater burdens to the financial system of social insurance.

This is why action take to prolong professional activity is welcome not only from the perspective of social security, but also from the point of view of the economy. Economic growth and, in consequence, quality of life throughout society as well as the national budget (increased income from levies) will all profit from maximal employment in the at-working-age population.

<sup>20</sup> Ratio of persons at a non-working age to persons at working age.

Good employment indicators are also needed to ensure the stability of the „pay as you go‘ pension system, i.e. a system in which retirees receive pensions paid for from contributions made by those in employment. However, the question of raising the retirement age should be considered not only from the point of view of public finances (where it is a matter of stabilising the pension system and of economic growth, which in consequence lead to higher demand for work and lower unemployment), but also from the point of view of the individual. According to statistical data, today’s 60-year-olds may expect to live almost 24 years (women) or over 18 years (men); life expectancy is rising. This means that should the retirement age have been left unaltered (60 for women and 65 for men, for those retiring before the end of 2012), growing life expectancy would have made the pensions of future retirees relatively smaller in comparison to pensions received by those retiring earlier, though with comparable incomes and contribution history.

It must also be noted that the reformed system includes a new formula for determining pension amount. Under the new system, pensions are tied to the amount of accumulated capital and life expectancy. Capital grows with contributions paid, which means that the longer one works, the larger it gets. On the other hand, life expectancy decreases the later one retires, and, with the new formula, pensions are higher. Later retirement will mean relatively higher pensions.

Calculations show that middle-earners with 40 to 47 years of work experience in the case of women, or 45 to 47 years in the case of men, would get pensions higher by over 70 (women) or about 20 (men) percent.

Legislation currently applicable allows for early retirement. The right to partial pension is given to women at least 62 years old, who have participated in insurance for at least 35 years and to men at least 65 years old who have participated for at least 40. Contribution periods (eg. when working with an employment contract or receiving maternity benefits) as well as non-contribution periods (eg. when receiving sick pay, illness benefits, care allow-

ances or during tertiary education at one faculty, under the condition that education is completed in accordance with the study programme) both add to the general period of participating in insurance. The amount of partial pension equals 50 percent (as of the day in which the entitlement to partial pension is determined). Disbursement is guaranteed irrespective of income and does not require the termination of an existing employment contract. With regard to the possibility of granting pension entitlement regardless of age, only on the grounds of working for a very long period (35 years for women, 40 years for men) – this demand put forward by the trade unions was partially realised by the introduction of a partial retirement pension. It should be indicated that reverting to a more insurance-oriented system was one of the basic assumptions of the 1999 pension reform. This meant bringing about a state of affairs wherein pensions are granted when a claim arises on the occurrence of a specified event, i.e. the insured reaching a certain age or becoming unfit for further work because of bad health. This aim was met, as legislation allowing for early retirement without sufficient coverage in paid contributions is being phased out. A rule of equal treatment was applied when pension insurance was being put to order. In order to abide by this rule, the terms of granting pensions had to be standardised. This is why pension right for those born after 1948, i.e. falling under the new pension system, is conditioned by reaching the statutory retirement age.

There is a scheme of supplementary, additional insurance that finances bridging pensions granted on the grounds of work in particular conditions or particular kinds of work. It was assumed that all supplementary entitlements will be financed from sources other than the common contributions to pension and hardship funds and shall be regulated by a separate act, not the act regulating pensions from the Social Insurance Fund. The introduction of new legislation granting pension entitlement regardless of age could go against the basic assumption of not creating new preferential entitlements not covered by capital accumulated through past contributions. This would amount to unequal treatment of the in-

ured. Events preventing one from working – such as disability or reaching a certain age – are the premise here. This is why the reformed pension system provides hardship pensions and pensions for those above production age. Introducing legislation that would give people at working-age an incentive to retire early would also be irrational with regard to the interests of those already in retirement, who often rely solely on their pensions and for whom the amount of the pension remains an important matter. One needs to remember that the Social Insurance Fund, which finances pensions and hardship pensions, requires annual subsidisation from the government budget, as incoming contributions are not enough to pay for the pensions being disbursed.

The demand of introducing the possibility of early retirement in cases when contribution have been maintained for a sufficiently long time needs to be considered in light of the relationship between the social insurance system and the overall demographic and economic outlook of the country. The amount of capital accumulated on an individual savings account must also be taken into account, particularly with regard to growing life expectancy. The decision whether to grant this demand requires serious consideration and analysis, as it could lead to an increase in the number of people receiving pension. This in turn would constitute an additional burden for everyone paying contributions, as well as for the government budget (which subsidises the Social Insurance Fund).

The issue of moderating the rules of conferring pension entitlement does not itself solve the problem of the amount of the pensions themselves. This problem is tied to the amount of accumulated capital as well as to continually growing life expectancy. It is also worth stressing that raising the retirement age was not the only action undertaken by the government in the fields of demography and insurances. Examples include the extension of maternal and parental leave as well as increasing child benefits for persons not covered by social insurance. These actions are to help reverse a number of disadvantageous demographic tendencies, particularly the fertility rate. This will have beneficial influence on the retirement system and in the labour market.

## 6.4. Demands for Improving the Labour Market

Yet another demand made by the labour unions is concerned with improving the situation in the labour market by means of active labour market policy; the demand certainly corresponds with the deterioration observed in the labour market in the period from late 2012 to 2013. The Labour Funds' expenditures on counter-measuring unemployment made in 2008-2014 and forecasted for 2015 are shown in table 4. Data analysis points to an increase, since 2013, of expenditures on labour market instruments.

Table 4. Market policy, 2008-15 (in thousand)

specification	2008	2009	2010	2011	2012	2013	2014	2015
Budget Act	3 128 100,0	4 339 683,0	6 536 745,0	3 235 080,0	3 435 080,0	4 655 080,0	4 958 030,0	5 540 030,0
Expenditures	3 362 409,0	6 204 800,0	6 747 900,0	3 327 606,0	3 889 667,3	4 632 954,8	5 052 127,0	5 294 327,0

Source: The 2008-2015 Ministry of Family, Labour, and Social Policy data.

The financial plan for 2015 anticipated that labour offices across the country will have greater funds than forecasted in the budget act of 2014. The government constantly monitors developments and continuously implements initiatives aimed at particular groups of unemployed; particular attention is given to youth unemployment. Examples of such action include the programme *Youth in the labour market* and *Your career – your choice*, a pilot project.

Experiences gained during the implementation of these projects made it possible to devise new ideas in labour policy aimed at youth unemployment. These experiences were reflected in the reforms described in length in the preceding chapters. Yearly analyses show an increase in the number of unemployed participating in programmes stimulating to activity – over half a million people participated in 2014. At the same time recommendations made by the European Commission concerning Youth guarantees are being implemented since January 1, 2014; these guarantees have also been subject to analysis. One of the activities undertaken within the framework of national labour market policy is supporting en-

trepreneurship and job creation, in accordance with the labour unions' calls for effective policies focused on job creation.

It must be emphasised that the act of April 20, 2004 concerning the promoting of employment and labour market institutions<sup>21</sup> contains labour market instruments that support the creation of new jobs.

Under art. 46 par. 1 pt 2 of said act the labour office may grant start-up funding from the Labour Fund to an unemployed person, a graduate of the centre for social integration and a graduate of the social integration club. The amount of the grant cannot exceed six average salaries. However, in cases when the start-up is opened within the legal ramifications set up for social cooperatives, funding cannot exceed four average salaries of a funding member of the cooperative and three average salaries of a regular member. The labour office can also reimburse entrepreneurs' costs associated with the creation of jobs for unemployed passed on from the labour office; these reimbursements cannot amount to more than six average salaries per job created.

The effectiveness of the current legislation is analysed by the labour ministry, which, meeting expectations of future businesses and those now in operation, passes regulation that promotes job growth. In addition, those currently applying for either reimbursement of costs related to the creation of a job or a start-up grant are only required to present statements (instead of certification) to confirm their eligibility. This makes preparing an application faster without generating additional costs and does not burden other institutions. The table shows the Labour Office expenditures on job creation.

The reform here discussed introduced a new instrument, i.e. loans to businesses, the unemployed, graduates (within 48 months of graduating or obtaining a professional title) and students at their final year of studies. These will be concessionary loans, with an interest rate equal to 25 interest on promissory notes received by the Polish National Bank; there are no other costs to the debtor

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<sup>21</sup> Journal of Law 2013 , item 674, amended.

Table 5. Labour Office expenditures, 2008-2015

		Expenditures, 2008	Expenditures, 2009	Expenditures, 2010	Expenditures, 2011	Expenditures, 2012	Expenditures, 2013	Expenditures, 2014	Expenditures planned for 2015
1	grant for starting new businesses	698 961,9	1 093 888,0	1 389 123,5	419 864,7	686 037,8	880 191,2	828 036,3	614 655,0
	number of people	52 155	63 964	77 017	26 108	39 410	44 997	42 144	no data
2	reimbursements to existing businesses for investments in new jobs	383 410,9	514 550,5	819 800,3	172 213,9	389 771,1	455 208,0	405 671,6	517 500,0
	posts of employment	28 017	28 360	44 603	10 657	22 458	23 345	20 590	no data

Source: The 2009 Ministry of Family, Labour, and Social Policy data.

except this minimal interest. Loans for start-ups can amount to 20 average salaries, and the repayment period is seven years, with an optional one-year grace period. Loans for the creation of employment posts, on the other hand, can equal no more than six average salaries; the repayment period is three years.

Debtors taking both loans – i.e. for starting a business and, subsequently, for the creation of an employment post for an unemployed person passed on from the Labour Office – can benefit, though only once, from debt relief: the remainder of the loan take out to create an employment post may be cancelled, but only in cases where the post created is maintained for at least a year.

This debt relief will constitute an incentive for job creation. The loans are financed from funds transferred by the Ministry of Labour and Social Policy to BGK; the funds come from the Labour Fund and from assets sold by the Ministry of Treasury, mentioned in art. 56 par. 36 pt. 2, of the act on commercialisation and privatisation of August 30, 1996<sup>22</sup>.

A programme called *First business – start-up assistance II* has been in operation since the end of 2013. Funds to the amount of

<sup>22</sup> Journal of Law 2013 item 216, amended.

180m Polish zloty have been made available for the programme as of January 2015. The loans financed from this programme are a repayable instrument, i.e. the money paid back (with minimal interest) is reused. It is anticipated that around 1500 loans will be granted this year, and 8000 within the next few years.

The analysis of the new labour market policy, and of actions undertaken by Poland within Youth Guarantees, presented in the preceding chapters indicates that labour market policy is one of the government's priorities. Results obtained with the help of the social partners may help rebuild trust among all parties participating in social dialogue and serve as an example of cooperation. The situation in the labour market, which has improved noticeably since 2014, is helpful: unemployment is anticipated to fall to 9,9% in 2015.

### **6.5. Raising of Social Benefits and a Fight Against Poverty Programme**

As it was mentioned at the beginning, the trade unions' reaction to the crisis, the deterioration of the economic situation, and the social fallout spurred the fight against poverty. The demand for income thresholds' increase entitling to family and social benefits was definitely the trade unions' reaction to the deteriorating situation of the households. It is worth mentioning that Poland, albeit modestly, adjusted in 2012 the income thresholds in family and social care. However, the difficult situation of the state's public finances and the EC-advised reduction of budget deficit limited the government's possibilities. According to art. 18, par 1 of the act of 28 November 2003 concerning family benefits, they are subject to adjustment every 3 years after having considered results of family income support threshold examinations. According to article 19 of the act on family benefits, in the year when adjustment is carried out. The government submits proposals of income criteria values to the Tripartite Committee for Social and Economic Affairs. In case where the Committee does not establish the income criteria values in the time provided, the government establishes them by ordinance. The latest adjustment took place in 2012, whereas the next

one will be in 2015. The current value of income criteria, which are referred to in art. 5 act 1 of family benefits law entitling to family benefits, is quoted in the ordinance of the government from 10 August 2012 on family income and the value of family benefits. From 1 November 2012 to 31 October 2014 the value of the income criterion, which is referred to in art. 5 act 1, was 539 Polish zloty calculated per family member, whereas the value of income criterion, referred to in art 5, act 2, was 623 Polish zloty if a family member is a disabled child (moderate or significant disability). However, as of 1 November 2014, the above quoted benefits equal 574 Polish zloty and 664 Polish Zloty, respectively.

At the same time, it is estimated that a 10 Polish Zloty increase of the income criterion would translate into a 100 million increase of the state's expenditure; the calculation is based on micro simulating Euromad G 1.0+ model. As to income thresholds raise that entitle to benefits, it is worth mentioning that the last adjustment of income criteria carried out in 2012 complied with the deadline and procedures stipulated in the act on social care taking into account the state's and the local governments' possibilities.

As a result of adjustment, the criteria were raised as of 1 October 2012 – for singles by 14%, and by 30% for a family member, which slowed down the unfavourable tendency of broadening the gap between the level of the criteria and the subsistence threshold for all households. The previous adjustments of the income criteria were carried out in 2006, the first one, while the second one of 2009 did not come into effect due to difficult situation of the state budget and the need to provide means for compulsory payouts of permanent and temporary benefits.

Against the background of income thresholds raise one has to realise that the Ministry of Family, Labour, and Social Policy prepared propositions to legal changes concerning social assistance in order to foster social security of the citizens and families while, at the same time, increasing their activity in problem solving and difficulty in dealings with social care institutions.

It was assumed that the objective would be achieved, among other means, by introducing a new notion of 'minimum social

income' together with a method of its verification. This solution would render possible a continuous, annual adjustment (verification) of the social minimum benefit, which would influence the increase of benefits and motivation allowances. However, due to the high cost of the suggested solutions, the project was not accepted by the government. In the beginning of 2015 the then current law on social care was being implemented. Relations between the subsistence minimum and the income criteria entitling to benefits were being examined annually. According to the accepted schedule, the Minister of Labour and Social Policy is to submit information on the subsistence minimum for the year 2014 to Tripartite Committee for Social and Economic Affairs by 15 April 2015. If in a given year the income criterion for a one-person household and the criterion for family member is equal or smaller than subsistence minimum, the Committee may come forward with a proposition to the government to verify (adjust) income criteria amounts (sums). In the year 2015 there will be a statutory adjustment of income criteria entitling to social care financial benefits. According to the accepted schedule the government will provide the Tripartite Committee for Social and Economic Affairs with income criteria amount proposals together with information on realisation of social help financial payouts for the period of previous verification (adjustment). In case the criteria are agreed on with Committee by 15 June they will be made public by 15 July, and be valid as of 1 October 2015.

Setting up an effective programme of fight against poverty and social exclusion is another proposition put forward by the trade unions. It is worth noticing that on 12 August 2014 the government adopted a resolution to accept the programme *National Programme of Fight against Poverty and Social Exclusion 2020. New Dimension of Active Integration*. It is an operation-implementation document prepared for a medium-range national development strategy – *National Development Strategy 2020*, *Human Capital Development Strategy*, *Social Capital Development Strategy*, *National Strategy of Regional Development* and other strategies of development. The strategic approach taken on in the National

Programme of Fight against Poverty and Social Exclusion complies with the idea of active integration and constitutes an endeavour of the most effective balancing of its three elements. The document was prepared by public administration representatives, NGO experts and scientists. The draft of the document was subjected to social consultations. The document presented the state's planned policies aimed at the fight against poverty and social exclusion. Implementation of the programme will consist in carrying out actions aimed at diminishing poverty and social exclusion by enhancing social activity and readiness to take on work thus contributing to raising employment level. It was ascertained that fight against poverty and exclusion must be based on economic growth and employment together with modern and effective social care. Innovative social care must be linked with a broad variety of social policies, purposeful education, social help, housing policy, health care, proper balance between private life and work and family policies, which are to contribute to achieving the main objective by the end of 2020.

Table 6. National Programme of Fight against Poverty and Social Exclusion 2020. New Dimension of Active Integration – aims and results

aims	Services for stimulating participation and unemployment prevention – limiting exclusion (children and youth)	Guarantees for the future of young people - creating opportunities for youth entering the labour market	Active people, an integrated family, a responsible local environment	Preventing housing insecurity	The elderly – safe, active and feeling needed
results expected	providing families with children with high quality social services	a coherent system for education, social- and employment action	developing a system of active integration for social and employment participation of families and communities at risk of exclusion	providing access to inexpensive flats to rent	providing the disabled elderly with friendly forms of care and active pastime, as well as inclusion into social life

## 6.5. Raising of Social Benefits and a Fight Against Poverty Programme

results expected	providing year-round food assistance to 1.1m children	covering all primary and secondary schools with integrated action for equal opportunities	implementing an integrated social service and social work system based on active integration instruments in all social welfare centres	preventing homelessness	implementing measures targeted at seniors' professional activity
	increasing support to large families and families with disabled children	providing systemic help to the 40% of communes that undertook to create and develop juvenile daycare centres	covering local government communities most vulnerable to marginalisation with measures for social revival and better organisation of social life	preparing and implementing measures covering the development of social housing and reorganising the responsibility of communes for social housing; deadline: 2015	implementing measures for improving workplace ergonomics in places where the elderly are employed
	increasing the number of families taken care for by family assistants	implementing the core curriculum until 2016, particularly in areas where social competences are really taught	providing at least 50% of social services by entities of the social economy	increasing financial support, i.a. for the creation of social housing and housing adapted to disabled persons	implementing measures for improving workplace ergonomics in places where the elderly are employed
	increasing the percentage of children aged 0-3 covered by institutional care to 33%	improving IT skills in children and juveniles	achieving social services and public labours services reform by 2016, together with new programme and financing	implementing measures to coordinate social services' actions towards persons at risk of eviction; measures focusing on prevention and participation, deadline: 2015	developing community-based daycare for the elderly
	increasing the percentage of children aged 3-5 covered by institutional care to 90%	integrating and developing juveniles' career counselling system	changing the system of disabled persons' participation after 2016	introducing issues of homelessness into all local social policy strategies	implementing standards of care for the elderly
	increasing the number of daycare centres	development of vocational training in cooperation with businesses	improving access to healthcare		development of educational action addressed to the elderly, including lifelong learning

results expected	covering all newborns with a screening and diagnostics programme	implementing innovative forms of youth participation based on public-private partnerships	creating leading centres for creating and implementing social policy at the voivodeship level and monitoring social integration		development of seniors' clubs, including clubs focusing on hobbies and interests
	securing the support of public employment services to all willing to return to work after a period of childcare or caregiving	providing housing for persons leaving foster care facilities			implementing a financing and organising system of care services based on a public-private partnership until 2016
	implementing flexible forms of employment and telework in all public institutions				

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

The programme is going to be financed by the state, local governments, private funds and European funds, especially by the European Social Fund within the national operational programme and regional operational programmes. The planned future negotiations on raise of threshold may constitute yet another agreement platform. The demands put forward by trade unions should be considered carefully with attention given to cumulated impact of crisis on households.

## 6.6. Initiatives for Reconstruction of Effective Mechanisms of Social Dialogue

The discussed butch of propositions put forward by representative trade organisations focuses on key issues of work quality improvement and protection of the poor. Trade unions related to these issues in the context of reaction to the consequences of the international financial crisis which did not affect Polish economy so violently as it did other European countries but it certainly had its share in increasing unemployment and the instances of work without an employment contract and temporary work in the employment struc-

ture. The crises contributed to lower income of households. The demands put forward by trade unions clearly coincided with the ILO's Decent Work Agenda<sup>23</sup>. The number of households threatened with poverty rose in the examined period hence the proposition of income thresholds adjustment in social help and family benefits. Two significant reforms for the Polish labour market were contested by the trade unions, it was changes in work time and raise and levelling of retirement age for women and men. These regulations caused controversies and opposition from the very beginning. Trade unions wanted their legal status checked and confirmed by the Constitutional Tribunal and European institutions. These important changes, especially from the perspective of labour market, public finances and retirement system, were subjected to severe criticism by workers. Together with other problems related to labour market and social policies they made the social dialogue fail.

It seems, however, that these problems may be viewed from a different perspective. Namely, from the perspective of common good and priorities of the state that, in the context of crisis, can't satisfy all the social expectations, while the undertaken actions must serve, first of all, the protection of the economy, of the labour market and public finances. The quick return of the economy and the labour market to steady GDP growth was a priority for the socio-economic policy of the government. However, social policy priorities were not given sufficient attention. This pertains in particular to the need to protect income and benefits of the poorest members of the society. In order to have a complete picture of the government's actions one has to recall the implemented reforms in the years 2012–2014; they dealt with employment protection and realisation of social policy priorities. It should be also stressed that, in spite of difficult situation in public finances, the government started bold pro-family reforms entailing considerable financial participation of public money in family help and fertility. Among the undertaken reforms, the following initiatives are worth mentioning:

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<sup>23</sup> ILO, Decent Work Agenda, Geneva 2011.

- institutional reform of the labour market, whose first effects show bigger effectiveness of the public employment services, in it a considerable decrease of unemployment rate - according to Eurostat, to the level of 7,6% at the end of 2015, and according to the Central Statistical Office to 9,9%.
- Implementation with public money of a European initiative Youth Guarantee which is to improve the youth's situation in the labour market and to ensure help for them within four months of leaving school, training or work - according to the data unemployment among the young fell by 7% to 21% at the end of 2014.
- Implementation of anti-crisis measures to preserve places of work; they were suggested by employer organisations, trade unions, and, to considerable extent agreed upon by the government
- implementation of the *Maluch* programme and consistent investment in creches for children under 3 years old as a key help proposition for parents who bring up children and work
- extending of maternity and parental leave to a total 12 months and application of these to workers employed based on non-standard forms of employment
- initiating works on new parental benefits for the unemployed and not employed
- implementation of new system of care benefits for care-givers of disabled children and adults
- implementation of Big Family Card act which introduces and promotes the system of reductions for families with three children or more
- adoption, according to trade unions' proposition, of a more generous pension and retirement valorisation in 2015, with special solutions for calculating pensions for people with the lowest provisions
- start of work on the previously discussed amendments to labour law aimed at limiting the number of fixed-term contracts
- start of work on new act on economic freedom, construction law and tax law as a form of realisation of entrepreneurs' propositions.

The presented range of accomplished and undertaken actions by the government created, in the Author's opinion, a new perspective for assessment of social and economic policies of the government by the trade unions. One has to keep in mind that the comeback to tripartite dialogue with employers and the government required a new strategy and space for dialogue on the part of trade unions. The elections held in 2015 did not contribute to the reinstatement of dialogue as campaigning politicians formulated demands and promises. A constructive dialogue is not easy to achieve in a dense electoral atmosphere. It has to be emphasised that there are issues over which a consensus between the government, the trade unions and employers is feasible. One of those issues is improving of work quality in Poland, development of professional training in dual form and in continuous education, pro-family actions including changes to tax. A draft of a legal act on new formula of social dialogue prepared by social partners became a basis for reconstruction of social dialogue in Poland. In the process of tripartite negotiations this draft was converted into a draft Law on Social Dialogue Council. The parties managed to work out a compromise formula of dialogue institution which will opened a possibility of a swift reconstruction of social dialogue in Poland. The project that was agreed on gave the Social Dialogue Council several new competences including the right to put forward to the government initiatives to adopt or amend law or to conclude bi- and tripartite agreements and to present annual reports on social dialogue to the parliament. The council is to be strengthened by experts and more autonomy; a government's representative is not going to be automatically its Chair, it will be managed by, alternately, a government representative, employers' and trade unions' representatives. Regional social dialogue councils, according to the project, are going to be equipped with new competences. This initiative is an opportunity to build up social capital around the Social Dialogue Council and to start talks not only on above mentioned subjects but also on issues concerning reforms of collective labour law, individual labour law, and finally working out a Polish policy of *flexicurity* and principles of support for devel-

opment and entrepreneurship. Reconstruction of social dialogue and new energy accumulated around solving relevant, social and economic problems may be an important stage in Poland's development; its young democracy, market economy are being shaped by globalisation, digitalisation, modernisation, innovation but also by need of new better quality jobs and stronger social coherence. Referring to values promoted by the ILO and the EU membership should help in addressing these challenges. One of them being the need for Poland to catch up with western countries' development in the economic and social sphere. Social dialogue as a condition for achieving these objectives has an opportunity of becoming a model of combining economic competitiveness with social coherence. Considering the experiences and analyses presented in this publication the effectiveness of democracy strengthened with social dialogue mechanism is hereby confirmed. Such democracy over long periods, regardless of crises and tensions, makes it possible to effectively solve problems and maintain the path of modernization, without forgetting the objectives of social policy.

## **6.7. Return to the Tripartite Dialogue and Initial Experiences of the New Formula of the Social Dialogue Council**

The Council for Social Dialogue (RDS) resumed trilateral dialogue in Poland following the crisis of talks with trade unions. RDS is based on the Law of July 24, 2015 on the Social Dialogue Council and other social dialogue institutions, published in Journal of Laws 2015, item 1240 of 24 July 2015, which entered into force on 11 September 2015. The Council replaced the Tripartite Committee for Socio-Economic Affairs, which operated on the basis of the Act of 6 July 2001 on the Tripartite Committee for Social and Economic Affairs and Regional Committees of social dialogue. The Social Dialogue Council is a new opening in the government-employer-employee relationship. It has more powers than the Tripartite Committee for Economic and Social Affairs and a broader spectrum of goals to achieve. Under Art. 27 of the Act, on 22

October 2015 the President of the Republic of Poland appointed 59 members of the Council: 11 representatives of the government, 8 representatives of trade unions, referred to in art. 23 section 1 of the act and 6 representatives of employers' organizations referred to in art. 24 paragraph 1 of the Act. The representative unions of the Council include the Independent Self-Governing Trade Union Solidarność, the National Trade Union Confederation, and the Trade Unions Forum. On the other hand, employers' organizations are represented by organizations deemed representative on the basis of the Act on the Social Dialogue Council: Lewiatan Confederation, Employers of the Republic of Poland, Business Center Club Employers Association and Polish Craft Association. The President also appointed his representative in the Council, the representative of the President of the National Bank of Poland and the President of the Central Statistical Office. The Social Dialogue Council is a basic forum for cooperation and tripartite dialogue between employees, employers' and the government. Employee organisations may invite to participate in the work of the Council, with advisory voice, representatives of trade unions and trade union organizations not meeting the criteria set for the social partners and representatives of social and professional organizations. The employers 'side may invite representatives of employers' organizations not meeting the criteria set for the social partners and representatives of social and professional organizations to participate in the work of the Council, in an advisory capacity. The number of representatives of each of the partners' organizations within the Council is set jointly by employees and employers. Each organization has an equal number of representatives. The number of members of the Council of Ministers who represent the government side in the Council is determined by the Prime Minister. The number of representatives of the various parties in the Council for Social Dialogue is approved by the Council by way of a resolution. The Chair convenes the plenary of the Council and the meetings of the Council Presidium. The Chair of the Board is the alternate representative of the employees, the employers or the government. His term lasts one year. The Chair is also responsible for presenting

annual reports on the Council's activities to the Parliament of Poland and the Senate of Poland. The work of the Council is managed by the Presidium, which is composed the Chair and deputy Chairs of the Council. The Council Presidium co-ordinates the work of the Council and its problem teams referred to in Art. 34 of the Act, in particular, establishes a timetable for the work of the Council, the agenda of the Council's sessions, and examines matters submitted by the Council. The Council's Presidium, when carrying out its tasks, is assisted by secretaries of the Council Presidium. The Chair and members of the Social Dialogue Council are appointed by the President of the Republic of Poland. The Chair convenes the plenary of the Council and the meetings of the Council Presidium. Meetings of the Council and its Presidium are held according to needs, but not less frequently than once every 2 months. The Council decides by way of a resolution at plenary sessions if more than one half of organizations, representatives of more than half of organizations or at least one representative of the Council of Ministers participate in the meeting. Adoption of a resolution of the Council requires the consent of each party. Employees 'and employers' positions are adopted by simple majority, with at least 2/3 of the Council members representing the party taking part in the vote. The position of the governmental side is adopted unanimously by the representatives of the Council of Ministers present at the meeting. Council meetings are public. A communication is prepared after each meeting of the Council. The Chair of the Council represents the Council outside. The Council Presidium may decide to hold a sitting in camera, provided there are important reasons to do so. The Council may adopt resolutions by mail vote. Adoption of a resolution by mail vote may take place using electronic means of communication. The resolution by correspondence vote is taken unanimously. Piotr Duda - Chairman of the Independent Self-Governing Trade Union Solidarność – was appointed as the first Chair of the Council. (For the second term, which began on October 23, 2016, Mrs Henryka Bochniarz, President of the Confederation of Lewiatan was elected). The Social Dialogue Council has adopted the following core objectives:

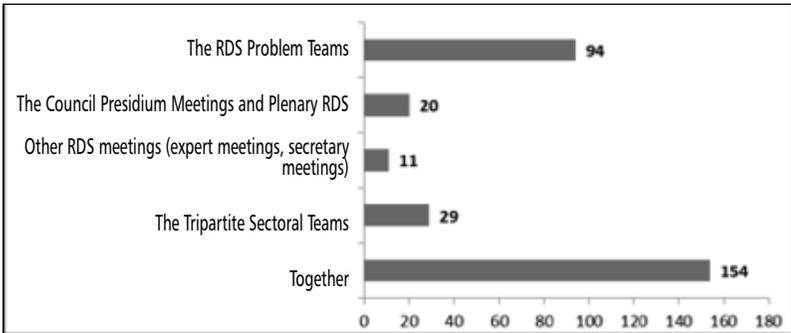
- to ensure social and economic development conditions and to enhance the competitiveness of the Polish economy as well as social cohesion;
- to work towards the enforcement of the rule of social participation and solidarity with regard to employment relations;
- to work for the improvement of the quality of formulating and implementing socio-economic policies and strategies and for the creation of social consensus with regard to these issues by holding transparent, substantive and regular dialogue between the employees and employers' organizations and the government party;
- to support social dialogue at all levels of territorial self-government entities.

As regards tasks of the Social Dialogue Council, the following were identified as separate: expressing opinions and taking positions; giving opinions on draft guidelines for draft legal acts and on draft legal acts; initiating, on the principles defined by the Act of 24 July 2015 on the Social Dialogue Council and other institutions of social dialogue, the legislative process. The implementation of basic tasks of the Social Dialogue Council is legally mandated by the following legal acts: the Act of 17 December 1998 on retirement and disability pensions from the Social Insurance Fund (Journal of Laws No 2015.748); Act of 23 December 1999 on the formation of salaries in institutions financed from state budget, and on the amendment of certain Acts (Journal of Laws 2011.79.431 J.t.); Law of October 10, 2002 on Minimum Remuneration for Work (Journal of Laws of 2002, No 200, item 1679, as amended), Family Benefit Act of 28 November 2003 (Journal of Laws 2003, No 228, item 2255, as amended), the Act of 12 March 2004 on social assistance (Journal of Laws of 2015.163).

The work of the Social Dialogue Council takes place according to well-defined schedules for particular legal acts and is conducted by way of consultation or negotiation. Between October 2015 and 30 October 2016 154 meetings connected with the Social Dialogue Council took place. A total number of 4509 people participated in

these meetings. A total of 1165 people took part in meetings of Tripartite Sectoral Teams in the same period. In total, the Social Dialogue Center *Dialog* hosted 5674 people. According to the provisions of the Act of 24 July 2015 on the Social Dialogue Council and other social dialogue institutions the Office of the Social Dialogue Council was established in the Center for Social Partnership *Dialog* named after Andrzej Bączkowski. This Office is a separate organizational unit of the state budgetary unit subordinate to the Minister for Labour. The Social Dialogue Council Office provides technical, organizational, office support, and expert support and services to the Council. The Office is managed by a director accountable to the Chair of the Council, appointed by the minister responsible for labour, at the request of the Council. The Director of the Office is obliged to co-ordinate the work of the Office in the scope specified in the Council's rules and regulations.

Figure 7. Number of meetings between October 2015 and October 2016.

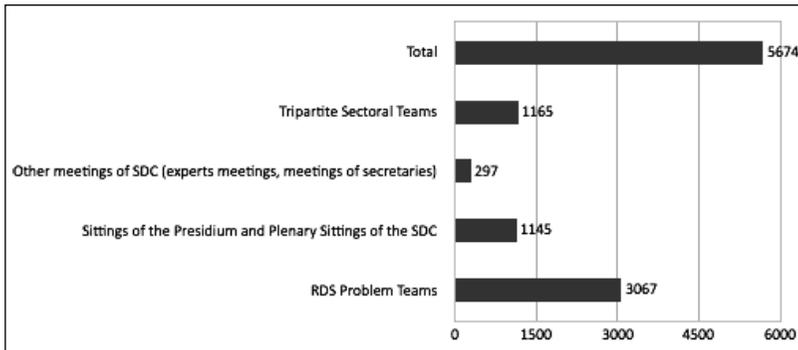


Source: Own study, based on the Social Partnership Centre ("*Dialog*") *Dialog* data.

As shown in the chart above, the RDS began intensive work which is an expression of the role and importance that Poland attaches to the mechanisms and principles of social dialogue and to the return to tripartite negotiations.

## 6.7. Return to the Tripartite Dialogue and Initial Experiences...

Figure 8. Summary of the number of participants in the dialogue between October 2015 and October 2016.



Source: Own study, based on the Social Partnership Centre ("*Dialog*") Dialog data.

In its first year of operation, the Council adopted the Work Program of the Social Dialogue Council for 2016, which envisaged the Council to tackle key issues in the area of labor law, social security, and socio-economic matters:

1. Reform of the social security system;
2. Review of remuneration policies in the national economy, including minimum remuneration for work;
3. Review of the tax system, including the functioning of fiscal administrations;
4. Conditions for conducting economic activity in Poland and competitiveness of Polish economy;
5. Poland's energy and energy sources policy, the EU climate policy and their impact on the economy;
6. Public procurement;
7. Changes in the health care system;
8. Vocational training system in Poland - review and recommendations;
9. Strengthening the role of social partners in the management of the Labor Fund and the Guaranteed Employee Benefits Fund;
10. Cash benefits in social policy - a review of the principles of distribution of social transfers;

11. Support system for innovation and R&D;
12. Review, evaluation and proposals for amendments to the provisions of individual labour law;
13. Review, evaluation and proposals for amendments to the provisions of collective labour law;
14. Review of the competencies of the Social Dialogue Council, stemming from other acts, and preparation of recommendations for changes as regards the following: the valorisation of retirement and disability pensions from the Social Insurance Fund; minimum wage; family benefits; salaries in institutions financed from the state budget; criteria and income thresholds for social assistance benefits;
15. The EU funds for entrepreneurs, in particular for small and medium enterprises;
16. Participation of social partners in the revision of the existing Strategies resulting from the new agenda of the government;
17. Systematic evaluation of the implementation of the partnership principle, analysis and modernization of the implementing law and documents resulting therefrom - on the basis of the *White Paper* developed by the social partners.

After a year of functioning of the Social Dialogue Council, we have both positive and negative examples – to give just two, we were able to negotiate a minimum hourly rate and partly affect the final shape of this regulation, but as for the education reform we can say that it is a government proposal presentation rather than a discussion or listening to opinions voiced by employees and employers. After the first experience, one can say that there were issues in which the government omitted consultation with the SDC. This is precisely the essence of dialogue - it can be treated as a facade and as a necessary stage of the legislative process, but it can also be used with more creativity drawing from experience of the employers' organizations or from the knowledge of trade unions in the field of social policy. The fact that social partners are responsible for the dialogue is an opportunity for it to develop even though things may not go well in the world of politics. Last

year was marked by investments in social policy and the realization of government's promises to improve the situation of Polish families, to lower the retirement age, to invest in quality of work and wages. However, employers' representatives say there is a lack of government activity and projects to improve the conditions for economic development and support for investment. First of all, the goal is for SDC not to react and be solely involved in government project consultations. SDC should also propose to the government its own initiatives and encourage the government to undertake reforms or initiatives proposed by the social partners. Secondly, 2017 is supposed to be a year of review of the SDC Act, i.e. of a possibility to amend or develop some regulations, above all strengthening the Council's autonomy, enhancing certain powers such as public hearings, and the inclusion of legislation proposed by members of parliament in consultations. SDCs, which today operate at the Marshal's favour, should be a real partner in the management of the region. The third goal is to build the SDC and VDSCs' authority and reach out to decision-makers, employers, and the public. To understand the mechanisms of dialogue and to build the conviction that in today's world it is the best way to manage change, to work out compromises, and above all to build confidence between all actors in economic and social life, is a chance for better law quality, better understanding of the needs of the economy and social needs. Such values are promoted by the ILO in its documents, and Poland should be even more involved in implementing the Decent Work Agenda.

In 2016, SDC prepared resolutions drafted by social partners of the Council, among others: on a draft law on the method of determining the lowest basic salary for medical workers employed in medical establishments; on systemic changes in the Labour Fund and the Guaranteed Employee Benefits Fund; on problems of functioning of the Polish cement industry due to unequal competition by cement producers from Russia and Belarus; on the government draft of the Act amending the Public Procurement Law Act. The Council has also developed projects initiated by social partners - the obligatory attempt at mediation before referring an employ-

ee's case to labour court. When referring to economic issues, it is worth mentioning the Strategy for Responsible Development - the document of the Minister of Development which diagnoses the challenges faced by Poland and indicates the direction of actions that should be taken to keep the economy growing dynamically. The restructuring of the economy and development related institutions proposed in the document is already taking place. It is important for the Strategy to set the path for the government - the decisions made by the Cabinet must be part of the implementation of the document. In addition to the national level dialogue, there is also regional dialogue, but also sectoral and professional. Regional dialogue - conducted in the area of a specific region or other unit, concerning the problems of a given area by Voivodship Social Dialogue Councils. The development of sectoral dialogue was supported by the SDC by way of establishment of teams for conducting sectoral dialogue.

The above analysis most clearly demonstrates the importance of social dialogue for building social cohesion and, despite the crisis of confidence, thanks to the determination and willingness of the social partners it is reborn and can play an important role. The Agenda of the New Social Dialogue Institutions in Poland, fits in perfectly into the Decent Work Agenda, the key document of the ILO. The role of the ILO, as shown in this study, cannot be overestimated, not only as a benchmark for the values and objectives of individual countries, but also as a form of intervention and assistance for this institution in times of crisis - the ILO mission in Poland in 2014 significantly contributed to rebuilding confidence in trilateral dialogue.

# Summary

Following the experience of the international crisis which in Poland meant also a collapse of tripartite dialogue, a return to the path of growth and development took place. While the *Act on the Social Dialogue Council and other institutions of social dialogue*, adopted on 24 July 2015, offered a chance of opening a new chapter in the social dialogue in Poland<sup>1</sup>. Two years after the suspension of the trilateral collaboration, towards the end of the cabinet's term, a new institution of social dialogue is being established in Poland, with wider competences, an entire spectrum of new mechanisms and a distinctly strengthened position of the social partners – trade unions and employers' organisations. The Council initiated its activities after the parliamentary elections and the new government quite consistently accepts to implement most postulates presented by trade unions. Will the new formula of dialogue help benefit more from the evident improvement in the economic situation of Poland and in the labour market situation? Or perhaps it will be easier for the representatives of employees and employers to reach compromises in the scope of better work quality, and therefore in the scope of adjusting the labour law provisions to the needs of modern economy? And last, but not least, will the new dialogue mechanisms help modernise Polish economy through necessary structural and sector reforms, promotion of innovativeness, investment in state-of-the-art sectors and broadly understood human capital? Only such changes guarantee lasting development, rapid

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<sup>1</sup> M. Pliszkiwicz, *The Social Dialogue Council in Poland*, [in:] *Festschrift or Liber Amicorum dedicated to Professor Stein Evju*, Oslo University 2016, p. 533-543.

narrowing of the civilisation development gap and improvement in the work and living standards as recommended in relevant ILO documents, in particular in the ILO Declaration on Social Justice for a Fair Globalization adopted during the ILO's 97th session.

The process of following several proven European solutions based on the idea of the European social model will undoubtedly improve the chances of the social dialogue's success. Such solutions include the *flexicurity* policy, the idea of sustainable development and the priorities of the Europe 2020 Strategy. The most important challenges include a comprehensive reform of the industrial policy and the collective labour relations, as well as an entirely new approach to the Polish labour law. From Polish and European perspective, a sound response to demographic challenges is necessary, including further investment in the pro-family policy and actions supporting longer economic activity of individuals. However, this set of social postulates, important in the context of both the social and economic policy, will be difficult to fulfil without new solutions in the scope of supporting the development of entrepreneurship, innovativeness and competitiveness of the Polish economy. New solutions in the economic policy need to take into account the growing position of SME, service sector and the new globalisation and digitalisation processes as well as their impact on the labour market.

Such a broad platform of discussion and necessary compromises requires identifying the real balance of interests and approaching these tasks in combination, with an active participation of the government which, by pointing to specific dilemmas and possible solutions, should increasingly play a role of a driver of change, involving social partners, both trade unions and employers' organizations, in the process of developing specific solutions in the broadest possible scope. In such discussions (negotiations, in practice,) international achievements as well as achievements of single countries or those of the European Union and the International Labour Organisation should be taken into account. International institutions point to a broad spectrum of new challenges, such as the pillars of the ILO Decent Work Agenda covered in this book:

directing investment towards improving labour quality, strategies aimed at improving young persons' professional/vocational start, including, in particular, actions aimed at the limitation of work under contracts on non-standard forms of employment, but also new problems connected with migration policies and the free flow of services and human resources.

Finally, Polish experiences, fairly exceptional over the last 25 years, should be better promoted in the international context. Poland has managed to build sound foundations of democracy, market economy and social dialogue, although encountering economic and social problems, as well as conflicts and crises of confidence, some of which still need to be resolved. The country successfully attained another milestone by entering a new phase of development, in which the issues of employment and job quality will play a key role as the basic platform of social dialogue. However, from the global and European perspective, many more challenges and problems lie ahead. Resolving or even confronting them will be easier for the state and the government if such problems are addressed within the public discourse by the representatives of not only governments, but also employers and trade unions. In such case it would be easier to avoid the traps of populism and national protectionism which in many countries, including Poland, were not completely avoided during following the crisis. A dialogue can serve as an important guarantor, helping to avoid such traps by ensuring wider involvement of citizens and their representation in the process of public governance.

The new Polish trilateral dialogue formula creates opportunities for a constructive dialogue which should replace conflicts and polarisation. Will these opportunities be better used than in the former years? Will the new social dialogue formula allow to activate the much-needed capital of social change? Will the often undoubtedly discordant interests and contradictory postulates be settled in the formula of compromise and social partners' consensus? In the Author's opinion the chances of such a favourable scenario still exist, although numerous threats are becoming apparent. A favourable scenario of a change – a sensible change respecting the cur-

rent achievements of reforms, the soundness of the public finance and the favourable position of the Polish economy; a change based on such values as a democratic state of law, justice and solidarity; a change which will replace the practice of putting economic interests against social policy with the idea of balancing the economic and the social development objectives.

# List of Abbreviations, Acronyms, Initials, and Symbols

BAEL	Study of Economic Activity of Population (pol. <i>Badanie Aktywności Ekonomicznej Ludności</i> )
BCC-ZP	Business Centre Club – Employers’ Union (pol. <i>Business Centre Club – Związek Pracodawców</i> )
BGK	Bank Gospodarstwa Krajowego
CBOP	Central Database of Vacancies (pol. <i>Centralna Baza Ofert Pracy</i> )
CEEP	European Centre of Employers and Enterprises providing Public services (fr. <i>Centre Européen des Entreprises à Participation Publique</i> )
CEC	Commission of the European Communities
CIS	Social Integration Centre (pol. <i>Centrum Integracji Społecznej</i> )
CPI	Consumer Price Index
CSR	Corporate Social Responsibility
EEC	European Economic Community
EESC	European Economic and Social Committee
ESF	European Social Fund
ESM	European Social Model
ETUC	European Trade Union Confederation
FZZ	Trade Union Forum (pol. <i>Forum Związków Zawodowych</i> )
GDP	Gross Domestic Product
GUS/CSO	Central Statistical Office (pol. <i>Główny Urząd Statystyczny</i> )
HICP	Harmonised Index of Consumer Prices

## List of Abbreviations, Acronyms, Initials, and Symbols

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ICT	Information and Communication Technologies IT Information Technology
KE/EC	European Commission (pol. <i>Komisja Europejska</i> )
KFS	National Training Fund (pol. <i>Krajowy Fundusz Szkoleniowy</i> )
KIS	Social Integration Club (pol. <i>Koło Integracji Społecznej</i> )
KP	Polish Confederation of Private Employers Lewiatan (pol. <i>Konfederacja Pracodawców Prywatnych Lewiatan</i> )
LC	Labour Code
LF/FP	Labour Fund (pol. <i>Fundusz Pracy</i> )
LTU	Long-Term Unemployment
MliR	Ministry of Development (pol. <i>Ministerstwo Infrastruktury i Rozwoju</i> )
MOP/ILO	International Labour Organisation (pol. <i>Międzynarodowa Organizacja Pracy</i> )
MPiPS	Ministry of Family, Labour and Social Policy (pol. <i>Ministerstwo Rodziny, Pracy i Polityki Społecznej</i> )
NBP	National Bank of Poland (pol. <i>Narodowy Bank Polski</i> )
NEET	„Not in Employment, Education or Training’ (acronym)
NGO	Non-Government Organization
NSZZ	Independent and Self-Governing Trade Union (pol. <i>Niezależny Samorządny Związek Zawodowy</i> )
OECD	Organisation for Economic Cooperation and Development
OHS	Occupational Health and Safety
OPS	Social Welfare Centre (pol. <i>Ośrodek Pomocy Społecznej</i> )
OPZZ	All-Polish Agreement of the Trade Unions (pol. <i>Ogólnopolskie Porozumienie Związków Zawodowych</i> )
PAI	Activation and Integration Programme (pol. <i>Program Aktywizacja i Integracja</i> )
PIP	National Labour Inspectorate (pol. <i>Państwowa Inspekcja Pracy</i> )
PIT	Personal Income Tax
PKD	Classification of Business Activities in Poland (pol. <i>Polska Klasyfikacja Działalności</i> )

## List of Abbreviations, Acronyms, Initials, and Symbols

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PLN	Polish zloty
PUP	District Labour Office (pol. <i>Powiatowy Urząd Pracy</i> )
RDS	Council for Social Dialogue (pol. <i>Rada Dialogu Społecznego</i> )
SDC	Social Dialogue Committee
SME	Small and Medium Enterprises
TEEC	Treaty establishing the European Economic Community
TEU	Treaty on European Union
TK	Tripartite Commission (pol. <i>Trójstronna Komisja</i> )
TKSG	Tripartite Commission for Socio-Economic Affairs (pol. <i>Trójstronna Komisja do Spraw Społeczno-Gospodarczych</i> )
TZB	Tripartite Branch Units (pol. <i>Trójstronne Zespoły Branżowe</i> )
UE	The European Union
UEAPME	European Association of Craft, Small, and Medium Sized Enterprises Public Services (fr. <i>Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises</i> )
UN	United Nations
UZZ	The Act on Trade Unions (pol. <i>Ustawa o Związkach Zawodowych</i> )
WKDS	Voivodeship [provincial] Social Dialogue Commission (pol. <i>Wojewódzka Komisja Dialogu Społecznego</i> )
WW II	The World War II
YEI	Youth Employment Initiative
YEP	Youth Employment Package
YG	Youth Guarantee
ZFŚS	Company Social Benefits Fund (pol. <i>Zakładowy fundusz Świadczeń Socjalnych</i> )
ZRP	Polish Artisan Association (pol. <i>Związek Rzemiosła Polskiego</i> )
ZUS	Social Insurance Institution (pol. <i>Zakład Ubezpieczeń Społecznych</i> )

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Professor Jacek P. Męcina (prof. UW dr hab.), is a lawyer and a political scientist, as well as a social policy expert on labour law, employment relations, employment policy, and social dialogue. His research interests are focused on employment and labour market policy, labour law, and collective labour relations, the conditions of functioning of social dialogue in Poland and in the European countries. Professor at the Institute of Social Policy, the Faculty of Political Science and International Studies at the University of Warsaw, since 2016 Director of the Institute of Social Policy. Scholar of the European Programme TEMPUS and the Alexander von Humboldt Foundation. A member of the Scientific Council of the academic journals — *Human Resource Management and Social Dialogue and Social Policy*. The Author of more than 100 books, articles, and papers on labour law, labour relations, social dialogue, employment and labour market issues. He cooperates with the European institutions, the ILO, and many academic and research centres in Poland, Germany and other European countries.

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Poland has been building its market economy for slightly more than a quarter of a century and has been a member of the European Union for thirteen years. Currently, Poland can feel the results of the international crisis, but with some delay compared to the other European countries. Despite its stable economic development and relatively low unemployment, a deterioration in the quality of labour relations is noticeable, and what is more Poland recorded a rapid increase in such forms of atypical employment and fixed-term employment, reaching the highest levels among the EU countries. The result of the crisis in Poland was accompanied by the crisis of social dialogue institutions. In effect of this crisis the new Social Dialogue Council was created with the aim to enable tripartite dialogue in view of new challenges. The International Labour Organization came as an inspiration for many countries and the ILO Decent Work Agenda became a point of reference for the crisis. New challenges of social and economic development require sound public management with participation of social partners, trade unions and employers' organisations.

Jacek P. Męcina

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The reviewed book addresses a very wide range of problems related to labour relations and the labour market in Poland, presenting the experience of social dialogue in these areas as methods of solving such problems in everyday and crisis conditions. The publication is a comprehensive elaboration of labour law and labour market issues, taking into account the role of social dialogue, which should comply with the legal regulations of the ILO and the EU, and finally Polish legislation to be an important element of public policy management. In addition to interesting theoretical considerations, professor J. Męcina undertakes a number of practical issues, easily moving from institutional issues to public management. An advantage of this work is the presentation of statistical summaries and review of legislation in a broader international and the European context. This allows us to understand the distance that Poland has travelled since 1989, with opportunities, but also threats, which social dialogue allows to mitigate.

Prof. dr hab. Marek Pliszkievicz

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