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Dialogue for Advancing Social Europe - Policy paper Poland

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1. Introduction

The analysed period, 2008-2015, has been a period of relative political stability with a floating interest of government in cooperation with social partners: quite effective in the first years, through total destruction of the tripartite institutional dialog in 2013 and a new legislative framework and opening in 2015. The global financial crisis had a limited impact on the Polish economy with only a few negative effects. Nevertheless public finances were not consolidated and in 2009 the European Council decided on the existence of an excessive deficit and recommended its correction by 2012. This deadline has been extended to ultimately 2015. Several measures were taken to counteract the excessive deficit, such as a pension reform, freezing salaries in the public administration and freezing the resources of the labour fund (aimed at counteracting unemployment). In June 2015 the excessive deficit procedure was closed. Although not directly motivated by the crisis, some changes in the labour market were made. Non-regular employment is a common feature of the Polish labour market leading to poor employment law protection for a large group of workers. This trend has led to special measures taken by the Chief Labour Inspectorate.

2. Main domestic labour and social law reforms

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

Before the crisis several decisions have been made to reduce tax wedge.

2.2. *Labour law measures to tackle the crisis*

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

In August 2009 the Anti-crisis law entered into force due to expire in 2011. It introduced provisions on working time arrangements and access to public aid. Measures that were addressed to all entrepreneurs:

- extending working hours settlement period to 12 months;
- Flexibility of daily working time;
- Fixed-time employment contract, and unlimited number of such contracts between the same parties, allowed for up to 24 months.

Measures that were open only for entrepreneurs in 'temporary economic difficulties':

- Working time reduction;
- Economic downtime, offering some forms of public aid for such entrepreneurs.

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

The Act on Protection of October 2013 also has the purpose to support employment in temporary economic difficulties. The Act opens up the possibility to apply a temporary halt in the operations of working time reductions, provided that consultation with Trade Unions took place (or with employee representatives in case trade unions lack). If these provisions apply, the employee is entitled to a salary finance by the Guaranteed Employee Benefits Fund and the employer.

2.2.3. Amendments of the Labour Code

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In July 2013 working time provisions were made more flexible. The possibility of extending working hours settlement period up to 12 months that has been introduced by the Anti-Crisis Act, is permanently introduced to the Labour Code as is the more flexible daily working time.

In July 2015 provisions have been adopted aiming at a limitation of unjustified use of temporary contracts. At the same time uniformity with respect to notice periods for fixed term contracts and permanent contracts is introduced.

2.3. Reform of the Public Employment Services

An amendment of the Act on employment promotion and labour market institutions in 2014 introduces a major reform of the PES that previously failed to adequately address the labour market performance.

3. Position and role of the social partners in reforms

3.1. Institutional structure

The Polish constitution is based on respect for social dialogue. Poland operates on a pluralistic model of union movement with a multitude of players and based both on the sector professional and territorial structure. There is, next to art. 58 of the Constitution, an Act on Trade Unions. 17% of the employees working on the basis of an employment contract is unionized. Union density within recent years has remained relatively stable and - compared to the previous period - relatively low. In 2015 the Constitutional Tribunal ruled that the provision according to which trade union membership is only open for those working on the basis of an employment contract is unconstitutional. Legislation is changed to make it possible for all people that provide paid labour (thus including self-employed) to unionize.

Employers organizations counted 16.3 thousand members in 2014. The principles of creation and functioning of these organizations are laid down in the Act on Organizations of Employers.

The most important national dialogue institution is the Tripartite Commission for Social and Economic Affairs. In the period 2001-2015 there have been periods of accelerated and intensive dialog, but also times of visible slowdown and even crisis. At the beginning of the crisis, the institutional social dialog was vibrant and autonomous dialog for the first time appeared to be efficient. Nevertheless social dialogue and its institutions are poorly known to Poles. There is a small role for social partners negotiations in the socio-economic system. Employers' organizations have little power to enforce the execution of decisions by their members and trade unions represent only as small number of employees.

3.2. Initiatives of national level social partners

The initiatives of the social partners during the research period can be divided into four periods:

- Activation of the social dialogue (late 2008 and 2009);
- Weakening impact of Social Partners, more unilateral decision making process within the government (late 2009-2013);

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- Suspension of the tripartite dialogue (late 2013- first half of 2015);
- Hope for revival (from mid-2015).

The anti-crisis strategy of the government, presented as Plan for Stability and Development, did not satisfy any of the social partners and therefore they took upon autonomous talks themselves. The social partners, although driven by different reasons, were able to reach consensus on the most significant issues. The social partners followed two main principles: the final result must reflect a balance in the interest of capital and labour, and once it is adopted, it could only be implemented in its entirety. In March 2009 the social partners presented a list of 13 proposals on which they have achieved consensus and submitted the list to the government. The proposals can be divided into three main themes:

1. Pay and social security
2. Labour market and employment relations
3. Economic Policy

The aforementioned Anti-crisis Law directly adopted 6 of the 13 proposals, being: 12 month working hours settlement period, the rationalization of the provision on employee day, flexible working hours, stabilization of employment by reducing the use of fixed term contracts, start-up capital fund training and subsidized employment as an alternative to redundancies.

After the completion of the package, the active involvement of the social partners has diminished. The government was criticized that it took over only initiatives of the social partners that were consistent with its own policy. The Anti-crisis Package was the last agreement signed in the tripartite commission. After that the dialogue was suspended. In 2013 on behalf of the three trade union centrals it was stated that they did not intend any longer 'to legitimize the social dialogue which actually does not exist, and is fake.'

4. Labour market effects of the reforms

Before describing the labour market effects of the reforms it should be brought into memory that Poland did not share the experience of many EU countries negatively impacted by the recession during 2008. The Polish economy has benefited from relatively low labour costs and medium level of labour market flexibility. The impact of anti-crisis policy measures were overall not satisfactory. Financial aid has been requested in a very limited number of cases. Furthermore, the amended provisions did not introduce significant changes in the practical functioning of employers. A relatively more successful measure was the extending of the working time settlement periods. It is also worth mentioning that one of the most important recommendations for the trade unions was to gradually increase the national minimum wage up to a level of 50% of the national average pay. Although this aim was not succeeded, significant progress has been made: the minimum wage between 2005 and 2014 has doubled and the relation of minimum wage to average monthly wage is moving towards the outcome much desired by the employees.

5. Concluding remarks

5.1. New formula of national social dialogue

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The withdrawal of the trade unions from the Tripartite Committee marks one of the most dramatic decisions within the social dialogue in Poland and has led to a serious crisis in the social dialogue. Mid-2015 a new Act on the Social Dialogue and other institutions of Social Dialogue is passed, repealing the Act on Tripartite Commission of 2001. The draft of the act was prepared in a bilateral dialogue of the social partners. The new act introduces the Council of Social Dialogue, differing from the previous tripartite commission in several ways:

1. More competences, such as expressing opinions and presenting its positions;
2. Inspire the legislative process by submitting drafts of legal acts;
3. Conclude agreements and present common positions;
4. The possibility to approach the supreme Court in case of discrepancies in judicial interpretation of the legislation;
5. Present a plan of its activities on a yearly basis;
6. The possibility to establish social dialogue structures on a regional level.

The establishment of the Council should be perceived as a great success of social partners; whether the Council will prove to be effective remains to be seen. Within two years after instalment an evaluation will take place.

5.2. Flexible employment, less security – labour market segmentation

Precariousness of employment in Poland is influenced by several factors, such as the variety of measures aimed at putting pressure on wages, security and making employment more flexible in order to maintain economic competitiveness and weakness of industrial relations and other factors.