



# „An attempt to revitalize social dialogue and national industrial relations systems in some of the CEECs” – lesson learnt and best practices in the way out of the crisis

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## Country Report Poland - 2015

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## EXECUTIVE SUMMARY

Polish Social Dialogue developed with the end of the communist rule. The starting point of discussion on this topic was the "Round Table" and the findings contained therein.

Later lives have unfolded very quickly, and they were specifically described in the first chapter. Moreover, the work presented a historical description of the rise of the Trilateral Commission, and the first of its successes.

In the next chapter, there are listed the most important acts in order to emphasize that in Poland this aspect has been described in detail, which also facilitated the conducted negotiations. Then, the study determined the structure of the Dialogue in Poland, where it is worth noting that it is not only at the national level, but also at the industry and provincial levels. In these areas, the institution of a social dialogue also had an impact on changes in public life. There are also descriptions of activities of the Trilateral Commission and its influence on the government. It is worth to emphasize that from the establishment of the Commission, sides were varied in number, because employers were represented by four organizations, while trade unions by three organizations, which often disagreed with each other, making it much difficult to reach an agreement.

The moment, which changed the social dialogue, was the year 2013, when the trade unions moved away from the table and returned in 2015 after the creation of a new form – i.e. the Council for Social Dialogue, where in assumptions, trade unions have more impact during the negotiations.

More specifically, the assumptions of the Dialogue Council were presented in the third chapter. This change has already been approved by the new government. What are the consequences of this change? We will see in the coming years. Now, we can observe actions that are carried out in order to support its building.

Important moments of the social dialogue in Poland - actions taken during the economic crisis in 2009 - were described in the chapter four. This was the moment, in

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which both trade unions and employers' organizations were able to achieve many common compromises.

Finally the most important conclusions are made on social dialogue in Poland. They are only hypotheses, since the change, which has occurred only in 2015, is implemented now.

## I. INTRODUCTION

### **The history of trade unions in Poland and the formation of the social dialogue**

It is important to show the change of trade unions in Poland, because they had a significant impact on the formation of social dialogue.

Similarly as in other Soviet bloc countries, also in Poland there was one trade union center – the Central Council of Trade Unions. It consisted of more than 20 industrial unions.

The events of August 1980 and later large strikes in the Gdansk Shipyard caused that this trade union movement transformed. The authorities agreed to the existence of independent trade unions in Poland. This situation provided the basis for the creation of NSZZ “Solidarność”. This trade union consisted of at least 7,000,000 employees (over 60% of all employed people). Whereas, so-called “industrial unions” (“class unions”) were established in the place of the Central Council of Trade Unions. These industrial unions were loyal to the government. About one million people (approx. 8% of employees) remained in these unions. The majority of them occupied managerial functions and belonged to the Communist party. Additionally, small “autonomic unions” presenting the political and ideological neutrality were founded. They united several tens of thousands of workers.

When in December 1981 the Martial Law was introduced in Poland, all unions were liquidated. One year later, a law opening the way for the creation of trade unions in Poland was passed. It assumed the existence of trade unions loyal to then government, but they may have and autonomous federal character. As a result, in January 1984 the new unions organized the center under the name the All-Poland Alliance of Trade Unions (APATU; Ogólnopolskie Porozumienie Związków Zawodowych-OPZZ), which included more than one hundred federations. According to data from the Polish Official Statistics, more than 5.6 million employees belonged to the APATU (45.5% of all employees). Next to this trade union, there was the underground “Solidarność” with difficult to estimate number of members.

The turning point was 1989. In January of that year, “Solidarność” was legalized, and in February there were “round table” discussions. These meetings proposed the introductions of the social market economy, privatization of large enterprises and strengthen of the powers of local government. In August 1989, the first non-communist government was formed. “Solidarność” has adopted the security program of reforms and it started to play the role of a “protective umbrella” for them. “Solidarność” as a social movement and simultaneously a trade union had an impact not only on the working class, but also on the majority of society. NSZZ “Solidarność” was authorized to political decisions in return for social peace, which enabled the exercise of authority. This situation resulted in the creation of the “August Agreements”.

In the years 1982-1989, the authority allowed for the existence of local government of workers, as well as independent local governments led by the underground “Solidarność”. The problem of self-governance appeared at the Round Table as one of postulates. There was the time for the formation of new companies, institutions, privatization and local governments in the country led by the first democratic government. It was a period without any social dialogue despite of the institutional breakthrough connected with the introduction of economic reforms.

In the middle of 1991, the Parliament adopted three important acts: on trade unions, on employers’ organizations and on the settlement of labor disputes. In 1992, the scale of protests related to the restructuring and privatization of state enterprises increased. In September of that year, the government incited all parties to the negotiations on the Pact on the state enterprise. One of the successes connected with the signing of the agreement by parties was a provision about the establishment of the Trilateral Commission. In February 1994, the Trilateral Commission for Social and Economic Issues was established by the resolution of the Council of Ministers. However, it could not begin the activity, because the government fell.

The first Trilateral Commission is the period from 1994 to 2001. The chairman of this Commission was Andrzej Bączkowski – the Minister of Labor for the first two years,

and then subsequent ministers. The whole period of this Commission does not have a lot of successes, because it was quickly absorbed by the political segment. His caused the suspension of activities in the final period. The most effective period of this Commission was observed in the first two years, when the president was the Minister Bączkowski.

It is worth noting that at this time there were continuous works on the Act on the Trilateral Commission for Social and Economic Issue and voivodeship social dialogue commissions. Finally, the Parliament adopted this Act on 6 July 2001. The President signed it and it entered into force on 18 October 2001.

In the years 2001-2005, the chairman of this Commission was Prof. Jerzy Hausner. At that time, the Commission was very active. Sectoral dialogue was disconnected from the Commission, but it had to focus on the same principles and regulations. Rules of the Social Dialogue were adopted by the Council of Ministers in October 2002.

Professor Hausner devoted a lot of time for partners and the dialogue. Meetings of the presidium have become very frequent. Therefore, members established themselves a kind of bond, some even became friends. The style of work became regulated, consistent and reliable. The chairman presented a lot of positive, although difficult situations. When trade unions or employers did not agree to a compromise, the chairman gave them time for the agreement, and when this action was ineffective, he presented the dismissal of the government.

In the years 2005-2007, the Commission worked systematically, but its influences were marginal, because the chairman was the Minister having a little impact on the government side.

Since 2007, the Chairman of the Trilateral Commission was Deputy Prime Minister and the Minister of Economy Waldemar Pawlak, and the members of the Commission were several ministers (including the Minister of Finance). Both the Deputy Prime Minister and the new Minister of Labour Jolanta Fedak, as well as

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representatives of key ministries regularly participated in works of the Trilateral Commission, its problem groups, plenary assemblies and branch groups working at the Trilateral Commission.

Further actions of the Commission are described in the following chapter.

## II. INITIAL INDUSTRIAL RELATIONS AND SOCIAL DIALOGUE SYSTEM OF THE COUNTRY

### **The structure of social dialogue in Poland**

This study will present the structure and legal documents applying in Poland and concerning the Social Dialogue.

The definition that can be accepted (used by the International Labor Organization (ILO) claims that the social dialogue includes all forms of negotiation, consultation and regular exchange of information between representatives of government, employers and employees in issues related to social and economic policy. At the same time, the social dialogue can be realized at central, regional, industrial or enterprise level. In Poland, it is also realized in all these areas.

In 1994, The Trilateral Commission for Social and Economic Issue was formed on the basis of the Resolution of the Council of Ministers. Furthermore, The Ministry of Labor and Social Policy created a special department – The Department of Social Dialogue, which mission is to support the social dialogue.

Voivodeship social dialogue committees have been sanctioned in 2001. There are also the Labor Market Council, the Council of Social Welfare, the Public Procurement Council, as well as the Joint Commission of Government and Local Government. On the basis of orders and decisions of the competent ministers and presidents of offices, there are councils, commissions and teams dealing with specific matters, which are within the jurisdiction of a given authority, for example: The Commission of Safety Labor for the Mining or Committees for the Regulation of Operational Programs. On the basis of internal resolution in dialogue institutions, there are, inter alia, working groups in the Trilateral Commission or Monitoring Sub-Committees.

Moreover, we can observe the work of Trilateral Branch Teams, dealing with problems of more than a dozen important sectors of the national economy. An

important document is the work regulations developed and adopted by the three parties within the framework of a mutual agreement.

From the government side, the Ministry of Labor and Social Policy (MLSC), and in particular its organizational units: Department of Social Partnership, Office of Social Dialogue Institutions and Social Partnership Centre “Dialog”, is responsible for the coordination of matters related to the social dialogue.

The most important institution of the social dialogue in Poland is the Trilateral Commission for Social and Economic Issue. In accordance with the Act of 6 July 2001 on the Trilateral Committee for Social and Economic Matters and Regional Committees for Social Dialogue, this Commission was established for conducting social dialogue aimed at the reconciliation of the interests of employers, employees and the public good. The main target of the Commission is to achieve and maintain the social peace. Dialogue and agreements concluded within its framework are intended to strengthen the position of proposed solutions in the legislative process, as well as they are an argument for the government in legislative works in the Sejm.

*Trade unions were represented in the Commission by three centrals:*

- All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych) - a confederation grouping federations and uniform associations,
- NSZZ “Solidarność” – a unified union with the territorial and industrial structure,
- Forum of Trade Unions (Forum Związków Zawodowych) – a confederation grouping federations and uniform unions.

*Each of them must meet three criteria:*

1. Unite (subject to point 3) more than 300,000 members, who are employees;
2. Operate in entities of the national economy, which main field of business activity is defined in more than a half section of the Polish Classification of Activities (PCA) referred to in the regulations on public statistics;
3. When determining the criterion of the number, there are no more than 100,000 members of trade union organizations, who are workers employed in the national economy entities and their primary type of business activity is defined in one section of the Polish Classification of Activities (PCA).

*Organizations that represent employers:*

- Lewiatan Confederation (Konfederacja Lewiatan),
- Employers of the Republic of Poland (Pracodawcy Rzeczypospolitej Polskiej)
- Business Centre Club
- Polish Craft Association (Związek Rzemiosła Polskiego)

*These organizations must also meet the following criteria in order to belong to the Commission:*

1. Unite employers employing (subject to point 4) more than 300,000 employees;
2. Have a nationwide character;
3. Operate in entities of the national economy, which main field of business activity is defined in more than a half section of the Polish Classification of Activities (PCA);
4. When determining the criterion of the number, there are no more than 100,000 employees employed by employers grouped in the employers' organization. Their primary type of business activity is defined in one section of the Polish Classification of Activities (PCA).

*The government side:*

- Representatives of the Council of Ministers appointed by the Prime Minister.

The first part presented the most important dates in the operation of the Commission. The turning point was the moment, when from the end of June 2013 meetings of the Trilateral Commission took place without the participation of the union, because all three centrals of trade unions: NSZZ „Solidarność”, APATU (OPZZ) and FTU (Forum Związków Zawodowych) suspended their participation in the Commission’s works.

They identified the dialogue as insufficient and dominated by the government side. Simultaneously, they demanded the establishment of an independent Council of Social Dialogue, which would operate to the Marshal of Sejm.

In January 2015, trade unions and employers prepared and presented to the government a joint draft of the act, which included new rules for the realization of social dialogue. In accordance with the proposed project, the Trilateral Commission would be replaced by the Council of Social Dialogue, which would have a direct impact on the regions in the form of Voivodeship Councils for Social Dialogue. The principle of equal parties in the dialogue proposed in the new act would be implemented through the rotational changes in the position of the Chairman of the Council by leaders of organizations for social partners, and not as far by nominating the Chairman by the Prime Minister from members of the Council of Ministers in the Commission. Furthermore, the social dialogue would be open for the general public. The further fate of this trade unions’ draft will be presented in the third part.

Other forms of the institutionalized social dialogue are Trilateral Branch Teams (TBT) operating outside the Commission. They have been appointed to conduct a trilateral sectoral dialogue aimed to solve the problems of a certain branch, mainly in the area of its restructuring, working and pay conditions. Currently, there are 15 branch teams. As in the case of the Trilateral Commission, from June 2013, the participation of representatives of trade union in meetings of TBT was suspended due to the lack of agreement with the government. Another institution of social dialogue at national

level is the Labor Market Council established on the basis of an amendment to the Act on employment promotion and labor market institutions of 2014. This Council replaced the Supreme Council of Employment. This change was aimed at increasing the role of social partners in the management of Labor Fund’s financial resources, programming and monitoring of the labor market policy.

Polish dialogue system, in addition to national social dialogue institutions, also includes the regional dialogue level, which among other things is accompanied by:

- Voivodeship social dialogue committees,
- Voivodeship and district councils of the labor market
- Boards of voivodeship branches of the National Health Fund
- Voivodeship and district social councils for people with disabilities

### **The most important legal acts concerning the Social Dialogue in Poland:**

The most important legal act emphasizing the importance and the role of social dialogue is the Polish Constitution of 2 April 1997, which notes in the Preamble that social dialogue is a basic principle of the Polish legislation: “(...)Hereby 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”.

An important role is played by Article 12 of the Constitution: “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”. Article 20 of the Constitution also guarantees the existence of social dialogue: “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”. Thus, the Polish Constitution ensures that the social dialogue became a constitutional duty of the public authority.

Principles of Social Dialogue are a programming document of the Government approved by the Council of Ministers on 22 October 2002. This document has been developed in order to determine the rules of conducting social dialogue. It determines, among others: aims and conditions of the effective social dialogue conducted by the government.

The Act of 6 July 2001 on the Trilateral Commission for Social and Economic Issues (Dz. U. of 2009, No. 219, item 1797 as amended)

This act defines the importance of the Trilateral Commission for Social and Economic Issue for the social dialogue conducted to reconcile interests of employees, employers and the public good.

The Act of 14 March 2014 amending the Act on employment promotion and labor market institutions and some other acts

This act defines the roles and responsibilities of the social dialogue and partnership in the labor market. There are many other legal documents that are indirectly related to the Social Dialogue, but they were not mentioned in this work.

### **Activities of the Trilateral Commission of their effects for the public life (selected aspects):**

#### *Between 2007 and 2008:*

In 2007, the Deputy Minister Adam Szejnfeld was preparing a broad package of laws that were to abolish barriers to the development of entrepreneurship for many months. These projects also included ideas related to the reduction of demands that the Labour Code imposed on small businesses (up to 10 employees).

This plan was presented to the working group of the Tripartite Commission in early 2008, but the trade unions strongly rejected it. Trade unions, distrustful against the

government, feared for the relaxation, once introduced in the sector of micro-enterprises, can be extended to workers in other sectors.

After disputes in the Trilateral Commission, the government withdrew a package of Adam Szejnfeld's proposals liberalizing labour relations in small businesses, but not abandoned the introduction of changes in the Code in the Sejm.

It was one of the successes of the Trilateral Commission, where the social side had the influence to negotiate important projects of early retirement schemes and pensions funds on the forum of the Constitutional Tribunal. The most serious action, ended with a relative success of the dialogue, was in the connected with the limitation of the number of professions that had rights to early retirement (men – 60 years, women – 55 years). The institution of early retirement scheme, introduced even during the reign of Gierek, was developed in the first period of reforms. Minister Kuroń used it to relieve growing tension on the labour market.

The Chairman of the team for pensions – prof. Jan Klimek skilfully led negotiations and after several months of discussions the government side accepted a number of exemptions proposed by trade unions. Finally, the government agreed that about 250 thousand of employees can retrain their authorities, while about one million of workers lost them. Moreover, the parties failed to solve the problem concerning the date of expiration of the right to early retirement. Trade unions officially protested the pension reform, but they did not organize any demonstrations and they recognized the legitimacy of implemented solutions in a large extent.

*2011:*

Michał Boni, the head of the Prime Minister's strategic advisors, after the meeting with the Trilateral Commission on February 17, informed that the Act on changes in OPF comes into effect from 1<sup>st</sup> May, and not 1<sup>st</sup> April as it was previously assumed by the government. On February 24, the government's consultations of the draft of amendments in the pension system were finished. The list of submitted comments is long. The government proposes 2.3% instead of 7.3% of contribution to the OPF. It is assumed that since 2017, this contribution will amount to 3.5 percent. Funds that will

not be passed to the OPF will be transferred to an individual account in the Social Insurance Institution (SII). The aim of changes is to reduce the growth of public debt and deficit. The project also includes changes in the investment policy of the OPF. The commitment of funds in shares is predicted to achieve the level of 62 percent of the value of their assets from current 40 percent in 2020.

An important debate in the Constitutional Tribunal concerned the reform of the Open Pension Funds. Proposals of the Minister of Labour were very extensive, including the liquidation of funds. The problem team in the Constitutional Tribunal was discussing about possible changes for 2 months. This team consisted of specialists from the boards of Funds as experts of employers. In the forum, social partners had the opportunity to meet with arguments in favour of the OPF, although with reservations (Minister Michał Boni), as well as arguments concerning a very radical reduction of the OPF system and a change of the pension system's philosophy (Minister Jolanta Fedak). Opinions of partners were divided: representatives of the organization of entrepreneurs were supporters of the maintenance of this system without significant changes, especially without lowering the rate of contribution to the OPF. On the other hand, “Solidarność” was a supporter of maintaining the OPF, although it postulated a number of limitations, especially a social control of all Funds. All-Poland Alliance of Trade Unions had a more critical opinion towards OPF. “Solidarność” put forward a proposal to reduce the contribution to a maximum of 5 percent. Finally, trade unions agreed to 4 percent (APATU - OPZZ) agreed to this limit. The government's proposal went further (2.7 percent) and it was accepted by the government. However, the debate in the Constitutional Tribunal was conducted professionally and led to the agreement of partners.

### **The reform of the retirement age and public consultations:**

In the reform concerning the rising of the retirement age, the government conducted hasty public consultations. They were quite limited compared to the gravity and consequences of its implementation for the public life. The draft of act introducing this reform was discussed within the framework of the Trilateral Commission for Social

and Economic Affairs in March and April 2012, but without reaching a consensus on its final shape.

Nevertheless, the government announced the completion of consultations. It sent the draft to the parliament, and on 11 May 2012, the Parliament adopted the proposal of the government. President of the Republic of Poland Bronisław Komorowski signed the act on 1 June 2012.

In the period from March to May 2012, there were many trade unions' demonstrations: in front of Prime Minister's Office, the Sejm, in front of the Presidential Palace - depending on the stage of work on the project.

### III. CURRENT INDUSTRIAL RELATIONS AND SOCIAL DIALOGUE SYSTEM OF THE COUNTRY

#### **Social Dialogue Council – a new body in the social dialogue in Poland**

After departure of the table of Trade Unions in June 2013 and a draft act concerning new principles of the social dialogue was jointly submitted by the parties in January 2015. From 24 July 2015 we have an act on the Council of Social Dialogue and other institutions of social dialogue. It is valid from 11 September 2015. This means the change of a social dialogue body's name on the Council of Social Dialogue (hereafter referred to as the Council).

*The most important powers of the Council:*

- Assessment of project assumptions and drafts of normative acts prepared by the Council of Ministers and its members – in case of rejection of the Council's opinion, the Council of Ministers is obliged to indicate the reasons of this decision;
- Initiation of the legislative process – the right of preparing drafts of acts by the Council concerning social and economic issues and submission of these drafts to the Council of Ministers; in case of rejection or substantial changes of these drafts, the Council of Ministers is obliged to explain in writing the reasons for this decision.
- The right to submit requests for a public hearing of draft regulations;
- The right to submit a request to the Supreme Court for the settlement of a legal issue, if in the jurisprudence of the Supreme Court or ordinary courts there are discrepancies in interpretation of the law;
- The right to take a position with respect to the assumptions of the state budget's draft and the budget bill's draft (there was also a lengthening of particular terms to take a position in relation to the currently functioning persons);

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- The obligation to present by the Minister of Finance and the Council of Ministers information about the implementation of the budget act respectively for the first half and for the full years;
- The right to conclude by the Council agreements (including supra-institutional collective labor agreements);
- The right to submit requests to the competent ministers;
- The promotion of a dialogue at the all levels of local government units;
- Supporting the sectoral dialogue – the right to apply to the Minister of Labor to appoint a branch team independent from the Council.
- Transparency of the Council’s deliberations.

*The composition and functioning of the Council:*

- The President of Poland appoints and dismisses representatives of the social partners to the Council at the request of this organization;
- The rule of equal number of parties’ representatives;
- Broad powers of the Chairman of the Council. The chairman is elected alternatively by trade unions, employers’ organizations and the government (among others, an annual report from the activity of the Council to the Parliament);
- Term of the Chairman of the Council – 1 year;

*Composition of the Council:*

Representative trade union organizations:

- NSZZ “Solidarność”,
- All-Poland Alliance of Trade Unions (OPZZ),
- Forum of Trade Unions (Forum Związków Zawodowych).

Representative employers' organizations:

- Employers of the Republic and Poland,
- “Leviathan” Confederation,
- Polish Craft Association,
- Employers' Association Business Centre Club.

Representatives of the Council of Minister appointed by the Prime Minister:

- Minister of Labor and Social Policy;
- Minister of Treasury,
- Minister of Education,
- Minister of Finance,
- Minister of Infrastructure and Development,
- Minister of Health.

Representatives of the government appointed by the Prime Minister:

- Undersecretary of State in the Ministry of Labor and Social Policy responsible for the social dialogue,
- Undersecretary of State in the Ministry of Finance responsible for the budget.

With an advisory capacity – representatives of:

- President of the Polish Republic,
- Polish National Bank,
- Central Statistical Office.

*The most important powers of the Provincial Council for Social Dialogue (Wojewódzkiej Rady Dialogu Społecznego – WRDS) (hereafter: PCSD):*

- Location of PCSD near the Marshall of Voivodeship – a change dictated by the fact that the most important issues connected with problems at the voivodeship level are decided by the Marshall of Voivodeship;

- Expression of opinions and positions on matters falling within the scope of activities of trade unions or employers’ organizations that are the responsibility of the central and local government from across the voivodeship;
- The right to provide opinions and projects of strategy for development of the voivodeship and programs relating to activities of trade unions and employers’ organizations;
- The right to conclude joint agreements on matter falling within the scope of PCSD’s activity;
- Consideration of social or economic issues causing conflicts between employers and employees;
- Appointing people with a mission of good will to resolve conflicts.

*Composition of the Provincial Council for Social Dialogue:*

- Marshall of Voivodeship and two persons indicated by the Marshall among representatives of other local government or organizations uniting local governments – as representatives of the local government;
- Representatives of trade union organizations;
- Representatives of employers’ organizations;
- Provincial governor and two persons indicated by the Provincial governor – as representatives of the government;
- Term of the PCSD Chairman lasts 1 year – the Chairman is elected alternatively by PCSD parties.

Changes, which were made, mainly include more democratic construction of the PCSD Chairman, because he or she was a representative of the government so far. Now, the Chairman is alternatively elected from all Council’s representatives every year. This is the beginning of the new body for social dialogue. Currently, it is still difficult to present the opinion about the Council’s activities. Vigorous actions concerning meetings with the President and the Prime Minister began. Moreover, the Council trains chairmen of PCSD.

#### IV. THE SOCIAL PARTNERS AND THE CRISIS

The year 2008 was a breakthrough for an approach to the economic crisis that emerged in Europe. In November 2008, the government prepared a draft of anti-crisis strategy for the stability and development and handed over to the Trilateral Commission. At the beginning, trade unions showed the scepticism, because they thought that actions concerning the protection of jobs are insufficient.

At the beginning of 2009, there was an impasse in negotiations, because employers pushed for more flexible working hours what met with hard resistance of trade unions.

In February 2009, the President of Polish Republic convened the Social Summit, on which the representatives of the government and local government, social partners, as well as many independent experts talked about the possible scenarios for the economy of the country about the prospect of possible recession in Poland.

In March, dissatisfied social parties began independent negotiations, and the government undertook to respect their results and include them in the process of preparing anti-crisis policy. Leaders of all seven representative social partners sitting on the Trilateral Commission decided to prepare its own alternative anti-crisis plan without government interference. As a result, trade unions agreed to the need for increased flexibility in the labor market, and employers were willing to make some concessions to the workers.

*These negotiations led to the definition of three courses of actions:*

- Extension of working time settlement periods up to twelve months and increasing the flexibility of working time accounts, among others, by re-aligning employee day and flexible working hours,
- Introduction of individual working time accounts as a new form of work organization,

- New instruments for financial support from public funds of employees, who participate in programs of reduction of working time – as an alternative for collective redundancies.

Although negotiations held their bilateral nature, they were carried out in the framework of the Trilateral Commission, but without the participation of representatives of the government. Technical details of each considered concepts were discussed in the following Problematic Teams of the Trilateral Commission: Team for the Labor Law and Collective Agreements, Teams for the Economic Policy and Labor Market, Team for the Structural Funds and Team for the Social Insurances.

Trade unions accepted (with some reservations) the extension of working time accounts to twelve months. In return, employers declared that they will limit the use of fixed-term contracts.

However, in other problems both sides did not reach any consensus. Autonomous negotiations began in February and ended in March 2009. Their effect was a list of thirteen postulates. This package covers three areas: remuneration and social benefits, labor market and labor relations, economic policy. It was transferred to the government to the end of March 2009 and it was the basis for drafting anti-crisis laws. This was the end of an active involvement of social partners in shaping the anti-crisis economic policy. The Act was adopted on 1 July 2009 and it had to expire at the end of 2011.

*The main provisions of the anti-crisis act:*

Working time:

- Extension of working time settlement period to twelve hours (under Art. 9, section 9 – an instrument for the utilization by all entrepreneurs), which meant: “If it is justified by objective reasons or technological reasons or reasons concerning the organization of working time, the settlement period may be extended, but not

more than 12 months, with maintaining common rules for safety and health of employees”.

- More flexible daily working time (under Art. 10 section 1 and Art. 11 section 1 – an instrument for the utilization by all entrepreneurs) – “Individual employee’s working time schedule determined by the employer may provide different starting and ending hours of work (work can be re-taken) during the day without the obligation of the employer to pay remuneration for overtime hours”.
- Reduction of working time (under Art. 12 section 1 and 5 – an instrument for the utilization only by entrepreneurs in temporary financial difficulties) – “It is permitted to limit the working time and proportionally reduce the salary for a period not longer than six months and no more than half of full-time work without the change of the work contract”.
- The possibility of concluding an unlimited number of employment contracts for a fixed term up to twenty-four months (under Art. 13 section 1 and 2 – an instrument for the utilization by all entrepreneurs) – “There is no limit in the number of concluded employment agreements for a specified period, provided that the total period of their duration does not exceed twenty-four months”.

Public assistance:

- Support for employees (Art. 14 section 1 item 1). Benefits that cover a part of employees’ salaries. It concerns employees, who do not work due to the economic downtime, are paid for up to six months (starting from the third month prior to the application until the end of the ninth month following the date of application) in a full amount of the unemployment benefit. Compensation payment for a part of lost earnings due to the reduced working hours is paid by a period of six months in the amount up to 70% of unemployment benefit, depending on the degree of reduction of working time.

- Grants available for entrepreneurs were introduced in order to pay compulsory social security contributions, benefits for the payment of owed social security contributions of employees for benefits provided on the basis of act on salaries of employees. The introduction of new conditions, under which outstanding payments to the Guaranteed Employee Benefits Fund may be regulated by employers, particularly by the possibility to postpone the payment of receivables for the fund, distribution of repayment in instalments and the suspension of enforcement proceedings and charge of interests on the outstanding amount of employee benefits for the fund.

Support for vocational trainings and human capital development:

- Professional training's costs for employees for a period not exceeding six months were founded from the Social Fund by the starost.
- During the period of training or post-graduate studies, the employee was entitled to a scholarship from the Labor Fund. This scholarship was paid by the employer in the amount of an unemployment benefits. Moreover, the Labor Fund was used to pay social security contributions connected with this scholarship.

As example of a company, that benefited from the opportunities of the anti-crisis act, was the Cooperative “Muszynianka”, a producer of mineral water “Muszynianka”. This water is distributed throughout the country. This cooperative operates in the Beskid Sadecki in the Małopolskie Voivodeship. Due to the flooding in Muszyna in 2010, the company had to temporarily suspend the work, which resulted that executives tried to take advantage of the solution contained in the anti-crisis act concerning the extended settlement period of work. For this purpose, the company organized a meeting with employees and communicated them its proposal to introduce a new method of settlement in accordance with the flooding in Muszyna. Employees recognized that this is an optimal solution. Meanwhile, the company was consulting with the National Labor Inspectorate about the details for the implementation of the new provisions. This advisory allowed performing the settlement very smoothly. The decision to extend the settlement period was taken

„An attempt to revitalize social dialogue and national industrial relations systems in some of the CEECs”

individually along with the agreement with individual employees. All employees had their individual working schedules. This prolonged period included months from September to December 2010. In total, 45 manual workers took advantage of this solution, and the company was able to deal with difficulties caused by the flood.

## V. BEST PRACTICES OF THE SOCIAL PARTNERS TO „MANAGE” CHANGES

The current crisis of the social dialogue began in the second half of 2010. In December 2011, the action of the anti-crisis act (implemented in August 2009), which allowed for far-reaching flexible working hours and reducing wages of workers, was terminated. Works concerning the extension flexible rules for working time in the Ministry of Labour, as well as the Team of the Labour Law of the Tripartite Commission and the informal team of experts were started in late 2011. Despite similar opinions in several issues, there was no agreement between the trade unions on the one hand and the Government and employers' organizations on the other. In this situation, in December 2012, the Ministry of Labour prepared its own draft for a more flexible working time that in a small extent took into account demands of the trade unions. On 13 June 2013, the Sejm passed an amendment to the Labour Code, which triggered trade unions' protests.

After the conference, which took place on 10 October, the trade unions' working group was established. It prepared the draft of “Council of Social Dialogue” within 3 weeks. This draft included a proposal for far-reaching political reforms (the most radical demands were raised by “Solidarność”). In the introduction of the project, the authors cited Art. 20 of the Polish Constitution that the basis for Polish economic system is a “social market economy based on ... solidarity, dialogue and cooperation between social partners”. The draft included the proposal to oblige the government to “strict negotiations” with the Council of Social Dialogue in six areas of draft laws or changes of acts. This concerned the Labour Code, provisions on occupational safety and health, employment, fight against unemployment, including vocational activation and the amount of unemployment benefits, Act on Trade Unions, Act on Employers' Organizations and Act on the Settlement of Collective Disputes. The content of this draft shows, among other things, that the trade unions would have a right of veto in the above-mentioned issues. Moreover, a large impact of the Council of Social Dialogue in the legislative process was proposed: “The Council of Ministers shall be required to consider socially important legislative projects reached by consensus by the Council of adopted by consensus by the sides of unions and employers”. The project includes the idea of change in the type of capitalism. If we refer to the above-

mentioned concept Varieties of Capitalism by Peter Hall and David Soskice, the project of “Council of Social Dialogue” includes a proposal to move away from the Polish capitalism and direct towards a model of liberal market economy and bring it closer to the model of coordinated market economy.

On 30 October 2013, President of the Republic of Poland undertook a mission to break the impasse in the dialogue and invited chairmen of all organizations participating in the Trilateral Commission. Trade unionists presented employers the draft to establish the “Council of Social Dialogue”, and the employers promised that they will give answer by mid-November. Finally, the meeting of trade unions’ chairmen and employers’ organizations was held on 12 December 2013. During this meeting, employers presented a written opinion about the demands of trade unions. They initially accepted the majority of demands that strengthen a trilateration, and rejected the proposal stated that the Council of Social Dialogue can have a decisive influence on employment matters. They indicated that this right would violate the constitutional order and a tripartition of power. After the meeting, it was laid down that after careful consideration of unions’ proposals by employers at the end of February 2014, the parties will organize a debate with chairmen of trade unions and employers’ organizations. If there would be agreements in terms of principles of operation of the new trilateral institution, works on a new law on social dialogue can be initiated. However, there is an opinion that such an agreement is not possible, especially that in 2014 there are local elections, elections to the European Parliament and elections of authorities in the “Solidarność” trade unions and APATU. The period of electoral campaigns is not the time to compromise. It should be emphasized that despite the suspension of participation in the Trilateral Commission by trade unions, the Commission and its teams continue they works, but these works are based only on two parties: governmental and employers’ organizations. However, social dialogue is not dead in Poland. There are various working meetings of social partners outside the Trilateral Commission. The Ministry of Labour organized a debate on insurances and there was a bilateral debate (without the government) dedicated to the implementation of the European framework agreement about the work-related stress. There was a meeting of some Voivodeship Commissions of Social Dialogue

(although without the “Solidarność”). There are industry meetings with the participation of representatives of employers and trade unions.

The study examined changes that entail a change of the Tripartite Commission on a new form of the Council of Social Dialogue.

*Paweł Galec (APATU's (OPZZ) lawyer) summed the above in the following way:*

First of all, the new act gives hope for a new era of social dialogue based on partnership in the spirit of social peace. The new law strengthens the position of trade unions and employers' organizations. They have a range of new powers that were not visible in the previous Act on the Tripartite Commission for Social and Economic Affairs. The previous act also gave a primacy to the government in terms of the permanent chairmanship of the Commission.

The powers of the social partners include:

- 1) giving opinions on the drafts and normative acts' drafts prepared by the Council of Ministers and its members - in case of rejection of the Council, the Council of Ministers must indicate the reasons for the decision;
- 2) initiating the legislative process - the right to prepare draft of acts on social and economic matters by the Council and submit them to the Council of Ministers; in case of rejection or a substantial change, the Council of Ministers is required to explain in writing the reasons for this decision;
- 3) the right to submit requests for a public hearing of regulations' drafts;
- 4) the right to apply to the Supreme Court with a request for settlement of a legal issue, if the jurisprudence of the Supreme Court or the ordinary courts revealed discrepancies in interpretation of the law;
- 5) the right to take a position with respect to the assumptions of the state budget's draft and budget bill's draft (there was also a lengthening of particular terms to take a position in relation to the currently functioning);
- 6) the obligation to present by the Minister of Finance and the Council of Ministers information about the implementation of the Budget, respectively for the first half and for the full year;

- 7) the right to conclude agreements by the Council (including multi-employer collective agreements);
- 8) the right to submit requests to the competent ministers;
- 9) promotion of the dialogue at all levels of local government units,
- 10) supporting the industrial dialogue - the right to apply to the Minister of Labour to appoint an independent branch team.

There are specific powers, which can significantly improve the quality of social dialogue in Poland.

*There were also questions about the example of a good dialogue:*

The best and most recent example of beneficial social dialogue is the Act on the Council for Social Dialogue and other institutions of social dialogue. It was developed by the social partners and this is their great success.

Additionally, Poland has been agreed through the dialogue provisions relating to the teleworking or work councils. At the regional level, they are mostly multi-employer collective agreements.

In-house legal acts, such as collective bargaining agreements or remuneration and work regulations, are often made on the basis of the dialogue in the place of employment.

## VI. CONCLUSIONS

1. The formula, which was created at the beginning of 1994, although trade unions and employers were invited to its creation, gave the possibility of a final decision of the government, even if the social parties agreed a common solution. The history shows that just before the change, the government introduced all reforms and public consultations were point a point that had to be carried out.
2. Negotiations concerning the reform of pensions were moments for trade unions, in which the government showed that regardless of the approach of the social side, it will introduce all changes. This gave an impulse to further changes.
3. In the case of the economic crisis, the parties were able to create together the act, but few entrepreneurs have benefited from it. Another change in 2013 has encouraged more business entities to take advantage of opportunities.
4. The trade's initiative was to organize the conference "Social dialogue - new opening" on 10 October 2013. Neither the government's representatives nor the employers' organizations, and invited representatives of the Office of the President were invited to this conference. During the conference, three draft amendments to the Act on the Trilateral Commission were presented. Trade Unions Forum presented the concept convergent with the proposals of the BCC in 2009, while projects of APATU (OPZZ) and "Solidarność" included demands of a significant increase in the influence of social partners on labour law. The furthest was the draft of APATU (OPZZ) concerning the creation of "Social and Economic Committee," in the Prime Minister and agree with the Committee 'bills concerning issues of a great socio-economic importance, prepared by the executive authority. "After the departure of trade union from negotiations, it was a watershed moment for the further development of social dialogue.

5. Change of the Tripartite Commission into the Council of Social Dialogue in 2015 is an important step in the development of public consultations. Once again, trade unions demonstrated that they can fight together against violations of the rules and have an important voice in building a democratic state.

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