The crisis and national labour law reforms: a mapping exercise

Country report: Poland

1. Introduction

Throughout the global recession and the ensuing sovereign debt crisis in the euro zone, Poland emerged as among the best-performing economies in a crisis-ridden EU.¹ In 2016 the Polish economy has continued to grow and the OECD has predicted that the rising employment and wages, higher social transfers and low energy prices will support faster consumption growth.² The country maintains close economic ties with the single currency area³ and still aspires to become a member. However, for the current Polish Government joining the euro zone – at least in the short term – is not a priority.⁴

By way of introduction, it is useful to provide a brief overview of the labour law system in Poland. It is built mainly on labour legislation, notably the Labour Code. However, the Polish industrial relations system, which is characterised by ‘a combination of national tripartite arrangements at one extreme and decentralised workplace relations at the other’,⁵ seems to be gradually gaining in importance. The Tripartite Commission on Social and Economic Affairs (Trójstronna Komisja ds Spraw Społeczno-Gospodarczych – hereafter, the ‘Tripartite Commission’) was established in 1994. It brings together representatives of government, the employers and the trade unions, and its principal goal is to maintain social peace during economic restructuring.⁶ As of 2010, three national-level union confederations were recognised as nationally representative and held seats in the Tripartite Commission: NSZZ Solidarność, OPZZ and Forum Związków Zawodowych (FZZ, the ‘Trade Unions Forum'). Alongside these, four employers’ organisations are recognised as representative at national level, including Pracodawcy RP ( Employers of Poland); Polska Konfederacja Pracodawców Prywatnych ‘Lewiatan’ (PKPP ‘Lewiatan’, the Polish Confederation of Private Employers ‘Lewiatan’); Związek Rzemiosła Polskiego (ZRP, the Polish Craft Association); and the Business Centre Club. The Polish trade union landscape is characterised by a high degree of decentralisation, which has been maintained by means of legislative incentives (for example, a

¹ Depreciation of the zloty against the euro has helped to boost exports and lower labour costs (Gebert 2012).
³ More than half of Poland’s exports go to the euro zone and half of that to Germany.
⁵ In reference to Pollert (1999: 146), see Gardawski et al. (2012) at 15.
threshold of ten eligible members for the establishment of a company-level union). The company remains the main locus for collective bargaining.7

It is noteworthy that since 2011, based on proposals made by the European Commission, the Council of the European Union has issued annual recommendations for Poland within the framework of the European Semester. Since 2012, these have included explicit recommendations to amend Polish employment protection legislation. It has been advised to combat labour market segmentation by ensuring ‘a better transition from fixed-term to permanent employment’ and by reducing ‘the excessive use of civil law contracts’ (CSRs 2012–2015).8 Between 2011 and 2014, the EU institutions furthermore commanded that national reform efforts be focused on improving the employability of older workers (accompanying pension reform) and reducing youth unemployment.9 In 2014, the EU institutions recommended that Poland should continue efforts to increase female labour market participation by, among other things, increasing the availability of affordable, good quality childcare.10 In 2015, the recommendations urged Poland to start the process of aligning the pension arrangements for farmers and miners with those for other workers, and to reduce the excessive use of temporary and civil law contracts.11 Finally, for 2016 Poland was asked to ensure the sustainability of the pension system, to remove obstacles to more permanent types of employment and to improve the labour market relevance of education and training.12

Poland managed to avoid a recession and maintain reasonable growth throughout the crisis. In part this could be ascribed to the reception of large sums of EU structural and cohesion funds since its EU accession in 2004.13 A number of explicit anti-crisis laws have been adopted in recent years, focusing mainly on boosting employment (creation) through wage subsidies and working time flexibilisation, but more important labour law reforms have been introduced, notably to tackle precarious work (through, for example, legislation on minimum wages and employment status), to reduce the excessive use of fixed-term contracts and to renovate the Polish system of social dialogue. To continue to keep public debt in check in the years to come, however, pension reform has been put on the agenda.14


Concerning explicit anti-crisis measures, on 1 July 2009 the Council of Ministers adopted two laws based partly on proposals negotiated with the social partners. One was aimed at ‘alleviating the impact of the economic crisis on workers and employers’ and included measures on labour law, such as reference periods for working time, limits on fixed-term contracts and partial unemployment schemes. The measures laid down the following:

– The reference period used to calculate working time can be extended to 12 months (instead of the current three), but must be laid down in a company agreement. The bill also provided that more rushed work periods may be compensated by slow periods or additional rest days. Individual work schedules could also be applied if the worker requests it to take care of a relative or a child under 14 years of age.

7 Despite the country’s socialist past, trade union activity in the private sector has traditionally been weak in Poland. This sector, however, experienced an upturn in union activity following the institutionalisation of the Tripartite Commission in 2001 and the country’s accession to the EU in 2004 (Gardawski et al. 2012) at 22.


9 Because of alarming figures on youth unemployment (27.7 percent of the active population), the Ministry of Labour and Social Policy has launched a program on youth employment, “Youth and the Labor Market”, which includes a series of actions and resources, for instance the introduction of individual support, “training checks”, “internship checks”, recruitment incentives or even mobility assistance. Planet Labor, June 11, 2012, No. 120376 – www.planetlabor.com.

10 Clauwaert S. The country-specific recommendations (CSRs) in the social field. An overview and comparison. Update including the CSRs 2016–2017, ETUI Background analysis 2016.01, Brussels: ETUI, at 54 (available at: https://www.etui.org/Publications2/Background-analysis), .

11 Ibid.

12 Ibid.

13 Rae (2013) at 59.

- **Fixed-term contracts** were limited to a maximum of 24 months. The new law also suspended until the end of 2011 a Labour Code clause stipulating that only two consecutive fixed-term contracts are allowed and that any subsequent contract is by law a permanent contract. There was no longer a limit on the number of consecutive fixed-term contracts.

- The law provided for specific measures for companies experiencing temporary financial difficulties. These included a possibility to reduce working time and pay for (maximum) six months and the introduction of ‘inactivity leave’, allowing employers who cannot offer their employees any work to suspend their contract for (maximum) six months as an alternative for collective redundancies.

- The bill also introduced special protection for employees receiving benefits due to decreased activity and for employees attending training, who cannot be laid off for 12 months.

This so-called ‘Anti-crisis Act’ came into force on 22 August 2009 (Journal of Laws 2009, No. 125, item 1035) and was supposed to expire on 31 December 2011. In June 2011, the government and the social partners, gathering under the aegis of the Tripartite Commission, opened talks with a view to extending some of the provisions of the Act. On the menu were the maximum duration of fixed-term contracts, the introduction of a ‘project contract’ and the extension of the reference period for calculating working time. Talks continued throughout 2012, with the envisaged changes to the law on working time being one of the main bones of contention on the government’s side and the issues relating to the regulation of collective bargaining and collective disputes on part of the unions and employers’ associations.

The already cumbersome negotiations were further hampered by the lack of goodwill of negotiating parties. The Tripartite Commission Act provides for at least one commission meeting every two months, including four meetings of the Presidency and three plenary meetings. But in 2011 only two such meetings took place. The three union confederations – NSZZ Solidarnosc, FZZ and OPZZ – announced in mid-January 2012 that they would suspend their involvement in the Tripartite Commission. Failure to take the consultation of social partners within the framework of this Commission seriously and presenting controversial draft reforms without consultation or debate were cited as proof of the government’s apparent reluctance to ensure the Commission’s smooth operation.

In June 2012, talks were still ongoing. On the agenda were: increasing working time flexibility, increasing the security of fixed-term contracts and eliminating rehiring in the event of unfair layoffs, in return for higher compensation. The Minister of Labor and Social Policy presented the draft amendments to the Labour Code provisions, which were supposed to ‘increase flexibility in the organization of working time and open more options to negotiate hours in order to reconcile work with training, another job or even family life’. The Labour Ministry suggested that the following points be determined at company level: the extension of the working day, respecting minimum rest periods; the introduction of ‘discontinuous’ work (breaks); the extension of the reference period for the calculation of working time up to 12 months (instead of three currently); and the definition of working time with the obligation to inform the worker at least two weeks in advance. The amendments would apply in the absence of an agreement between the social partners at company level. Whereas employers’ organisations were in favour of these proposals, the trade unions preferred the negotiations on working time to be transferred to the sectoral rather than the company level.

A new parliament was elected on 9 October 2012 and a new government was formed between the re-elected centre-right Platforma Obywatelska (‘Civic Platform’) and the Polish People’s Party (PSL) in mid-November. Early on, the new government announced that it planned labour law reforms, including the extension of maternity and paternity leave and the annualisation of working time, while declaring that it would not raise any additional social contributions for service contracts. Unsurprisingly, these announcements were met with resentment from the unions and appreciation on the employers’ side.

In the meantime, the trade unions had also started a campaign against the excessive use of so-called ‘junk contracts’, referring to **fixed-term contracts and civil law contracts**.

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15 These contracts offer little protection. For instance, some temporary contracts which are valid for more than six months allow the employer to give only two weeks’ notice for dismissal with no obligation to give a reason. Furthermore, according to the National Labour Inspectorate, 20.9 per cent of workers – many of whom young workers – had such a civil law contract in 2010, which are excluded from labour law. Many of these contracts were signed during the crisis and most are not covered by social contributions.
According to Eurostat figures, at the end of 2010 Poland had the highest proportion of workers in the European Union employed on fixed-term contracts, at 27.7 per cent of total employees, in comparison with the EU27 average of 14 per cent. Figures released by the Ministry and the Central Bureau for Statistics showed that also in 2011 there were 3,381,000 fixed-term contracts (around 27 per cent) compared with 9,120,000 permanent ones.


3.1 Job protection and financial support for employers

On 23 January 2013, the government presented the social partners with a new anti-crisis bill, which, contrary to the one adopted in 2009, only provided for financial support mechanisms in the form of wage subsidies for ailing businesses. It did not contain measures on the organisation of working time or the regulation of fixed-term contracts. The proposal was aimed at introducing solutions to boost employment via direct financial support in order to complete the remuneration of workers threatened with layoffs.

Following prolonged discussions in the Tripartite Commission, the bill to renew the Anti-Crisis Act was eventually submitted to Parliament on 31 May 2013. In fact, the government sought to institute a new framework of labour law provisions intended to alleviate the impact of the economic crisis by saving jobs and avoiding collective redundancies. The main issues envisaged for reform were:

- financial assistance for employers experiencing transitory difficulties;
- amendment of working time regulations;
- reform of employment offices.

Following discussions in the Parliamentary Committee on Social Affairs on 27 September, Parliament enacted the Act on specific regulations related to job protection (pol. Ustawa o szczególnych rozwiązaniach związanych z ochroną miejsc pracy) on 11 October 2013, signed by the President on 31 October. The Law on the Amendment of the Law of 11 October 2013 on specific regulations related to job protection came into force on 1 February 2015. The new provisions were aimed at maintaining the level of employment by reducing labour costs and providing financial support for companies that face economic stoppage or reduced working time (no less than 50 per cent of regular working time) due to an economic slowdown (that is, not related to the employee personally). The main features of the new law were:

- Financial support for employers that find themselves in economic difficulties by supplementing employees’ wages. The financial assistance was to be regarded as de minimis aid and could be granted by the Fund of Guaranteed Outstanding Employee Claims. The Act also included possibility to subsidise workers who are in training or are retraining from the State Labour Fund.
- Eligible for subsidies were companies facing a decline in revenue of no less than 15 per cent during six consecutive months in a 12-month period before applying for financial support, compared with the previous year.
- Public financial support could be provided for up to six months and could cover part of the wage bill during an economic stoppage or reduced working time, as well as employers’ social security contributions. For as long the company received this wage support, the employer could not terminate the relevant workers’ employment contracts for reasons unconnected to the employee.
- An employer could also apply for the financing of 80 per cent of employee training during the economic stoppage or working time, which could not exceed 300 per cent of the average wage.

A year later, the Act of 11 October 2013 on specific regulations connected to job protection was amended, triggered by the political tensions between Russia and the European Union. In order to extend the scope of this financial aid to prevent dismissals the Sejm (Lower Chamber of Parliament) adopted the amendment on 19 December 2014. It was submitted to the Senate (Higher Chamber of Parliament) and expected to take effect on 1 February 2015.

The amendment for public aid was to be extended to entrepreneurs facing difficulties as a result of the embargo imposed by Russia in August 2014 on the import of certain products from EU Member States and several other countries. It was targeted at businesses in the field of commerce, fruits or vegetable processing and/or transport, and was to be provided by the Fund of Outstanding Employee Claims in 2015–2016.

Furthermore, since 2013 employers who hire an unemployed person over 50 years of age have been permitted to apply for a wage subsidy granted by the Labour Fund. The duration of payment is 12 months for unemployed people aged 50 or over and 24 months for unemployed people 60 years of age or over. The wage subsidy cannot exceed 50 per cent of the minimum wage. Once the subsidy has expired, the employer has to continue the employment contract with this person for at least half of the period for which they received financial support.

3.2 Working time

The Polish government has also been quite active in amending the law on working time. As mentioned above, specifically in the context of adopting anti-crisis measures, also the organisation of working time was to be rendered more flexible. The government advanced a far-reaching proposal to amend the Polish Labour Code to this end on 5 February 2013. Besides having the support of the main coalition party Civic Platform (PO), this reform was also promoted by the employers’ organisations. Two main changes were envisaged: extending the reference period and introducing flexible working time. The amendment was basically aimed at codifying solutions proposed by the so-called Anti-Crisis Act that was in force from 2009 to 2011. Trade unions strongly opposed the proposed changes; however, the Sejm adopted the amendments to the Labour Code on 12 July 2013:17

- The annualisation of working time schedules was cast into Article 129 LC. Besides the basic reference period of four months, the possibility of establishing reference periods of up to 12 months was added. If justified by objective or technical reasons or on work organisation grounds, this possibility could be applied to any working time scheme. Nevertheless, general rules on health and safety must be observed.
- In addition, Article 150 LC allowed for longer reference periods to be negotiated by collective agreements or other types of agreement (so-called ad hoc agreements on working time).
- The provisions on irregular working time (ruchomy czas pracy) were renewed. A working time schedule with varying starting times of work could now be adopted based on the new Article 140(1) LC. The right to daily and weekly rest periods must still be respected; however, repeated performance of work within one 24-hour period does not constitute overtime. Irregular working time could be introduced by collective agreements or other agreements. The law now also entitled employee to submit individual proposals for irregular working time, irrespective of the general work schedule at the establishment.

Besides this, 2013 saw two competing proposals being put forward regarding the regulation of work on Sundays. At the time, the Labour Code (Art. 15110) specified the situations and establishments in which work on Sundays was permissible; it already provided for a very broad range of situations in which such work was allowed.18 One draft amendment presented by the Civic Platform on 14 May called for the further broadening of its scope to accommodate interests of foreign firms operating in Poland and to promote competitiveness.19 Another draft

18 For example, activities involving continuity, necessary maintenance repairs, transport and communications, municipal establishments.
19 The extension is envisaged in particular to accommodate the interests foreign-based employers. Poland has become a popular location for the establishment of international service centres that frequently provide services, using modern communication technology, for employers located in other time zones or other countries with different rules on free days. In recognition (and promotion) of this development, the proposed amendment is to allow expressis verbis the work performed by means of electronic communication for an employer located abroad or if the branch of an employer is located abroad, when the abovementioned entities are subject to other provisions on free days. The intention is to improve the competitiveness Polish firms in global markets by flexibilising Polish labour law, liberalising Sunday and public holiday work.
amendment was aimed at prohibiting work in commercial establishments on Sundays, notably, work in shops, especially large supermarkets, in order to protect family life.\textsuperscript{20}

The second proposal gave rise to heated debates and its opponents feared a rise in unemployment. The government presented its official disapproval of the draft on 29 January 2014 and discouraged further legislative activity on the issue. On 21 March 2014, the Bill on the ban on working in commercial establishments on Sundays (in practice in large supermarkets) also faced rejection by the Parliament, in which economic arguments seem to have been decisive. The first proposal (further liberalising Sunday work), however, was more successful. The Sejm preliminarily adopted the draft on extending the scope of work permissible on Sundays and public holidays on 12 December; parliamentary enactment was finalised on 24 January 2014. The Act came into force on 4 March 2014. The new Article 15110, point 11, hence provides that \textit{work by means of electronic communications} for a company located in a foreign country is permitted when Sundays or Polish public holidays are considered working days at the foreign company. An employee who performs work on Sundays or public holidays is entitled to an additional day of leave.

The Civic Platform (PO) proposed another change to the Labour Code provisions on working time on 27 August 2014. This time the amendment concerned the possibility of \textit{compensation for overtime work} performed on a day off, usually a Saturday. Besides the legal working time standards of an eight-hour working day and a five-day working week (Article 129 (1) LC), Article 1513 Paragraph 3 LC entitles every employee who works overtime on a day off (as a rule, on a free Saturday) based on a standard weekly working time schedule, to an additional day off granted before the end of the current calculation period. The limitation of the reference period caused problems in practice, depriving employees of a compensatory free day if the overtime was worked towards the end of a calculation period. The proposed amendment sought to remedy this problem by a confined overtime payment in lieu. However, the proposal did not pass the discussion stage in the Parliament;\textsuperscript{21} it was feared that such an amendment would effectively introduce a six-day working week.

3.3 Precarious and atypical work

In addition, several attempts have been made to address the widespread \textit{problem of precarious work} in Poland, including the following two initiatives:

- On 26 November 2013, the party Palikot’s Movement (‘Ruch Palikota’) proposed a far-reaching amendment to the Labour Code based on which \textit{contracts not concluded in written form} would be presumed to be employment contracts, unless the employer provided proof to the contrary; there were also to be stricter provisions on fixed-term contracts and protection tightened against discrimination and bullying. However, the proposal was rejected at the first reading on 12 September 2014.\textsuperscript{22}

- Another failed attempt to improve protection for precarious workers was a Bill of 14 January 2014, putting under discussion the Labour Code provisions on employers’ obligation to inform employees of the conditions applicable to the employment contract. It sought to address the problem that, in practice, an employer can quite easily avoid the obligation to provide a written confirmation of the employment contract. According to the State Labour Inspectorate, when failing to produce written information on concerned contracts, employers frequently claim that the employee had just commenced his or her duties, having time to issue a written statement by the end of the day. The draft, submitted by a group of deputies from various political parties, required that the employer should provide a \textit{written statement on the employment conditions ‘before an employee is allowed to commence work’}. Written confirmation of the contract would therefore have to be delivered before the newly hired employee assumed his or her duties instead of on the first day of employment. After passing the first reading in

\textsuperscript{20} It was directed at expanding the prohibition of Article 1519a LC, which previously applied only to work conducted in such establishments on public holidays (for example, Labour Day, Constitution Day), also to Sunday work generally.


the Sejm, the proposal was rejected on 11 September 2014 following deliberations at the committee stage.\textsuperscript{23}The issue of the **statutory minimum wage** in Poland is also related to two major problems in the labour law field. On one hand, the minimum wage does not currently provide protection against precarious work due to the exclusion of own-account workers. On the other, the annual process of reviewing and adjusting the amount of the minimum wage reflects some fundamental difficulties in the Polish industrial relations system.

Regarding the *first problem of precarious work*, the ongoing debate on the minimum wage was broadened by a proposal by the political party Democratic Left Alliance (*Sojusz Lewicy Demokratycznej*) on 13 March 2014 to introduce far-reaching amendments to the 2002 Law on Minimum Wages. The Polish labour market is highly segmented because of the widespread problematic use of civil law contracts. These contracts often involve precarious work and are used by employers for longer periods to avoid having to apply labour law protection regulations. As the law stands now, only employees properly speaking enjoy full protection with reference to the minimum wage; labour law does not in principle cover civil law ‘contractors’ (workers). At the time, the government showed some willingness to consider changes – a broader, long-term reform of Polish labour law was under discussion, also touching on issues related to fixed-term employment, social security and public procurement, all intended to eliminate precarious work and to improve the situation on the domestic labour market. Concretely with respect to the minimum wage, the draft proposed to introduce the notion of ‘occupational activity’ (*dzialalność zarobkowa*). The legislation was to be amended accordingly to extend the right to the minimum wage to persons performing work in a ‘self-employed’ capacity, that is, based on such a civil law contract. The proposal, however, did not make it further than a discussion in different parliamentary committees on 6 May and 5 June 2014.\textsuperscript{24}

Regarding the *second problem, social dialogue*, it should be noted that Poland has a statutory minimum wage that is regulated by the Act of 10 October 2002 on minimum wages (Journal of Laws 2002, No. 200, item 1679, with further amendments). However, the Act requires that the minimum wage is updated every year, giving the social partners the competence to set the amount within the framework of the Tripartite Commission. If they fail to reach an agreement, the government must determine the amount. This has occurred frequently in recent years, whereby the impasse of negotiations in the Tripartite Commission is taken as proof of the failure of social dialogue in Poland (see below). In 2013, the government proposed to raise the minimum wage from PLN 1600 in 2013 to PLN 1680 (around 420 euros), which would amount to a 5 per cent increase for 2014. The employers’ representatives welcomed this proposal, while the unions demanded a raise to at least PLN 1720. Due to the lack of consensus, the amount was then set at the level proposed by the government (Regulation of the Council of Ministers of 11 September 2013 on minimum wages for work in 2014, Journal of Acts 2013, No. 1074), effective from 1 January 2014. Remarkably, a more substantial raise of the minimum wage – more in line with union demands – was applied in 2015, based on the Regulation of the Council of Ministers of 15 September 2014 (Journal of Laws 2014, item 1220). For 2015, the amount was increased to PLN 1,750 (around 440 euros).

Furthermore, as already indicated, also the discussions on reforming Poland’s law on fixed-term employment contracts have been going on for a considerable time.\textsuperscript{25} Employers’ preference for temporary contracts over permanent ones is associated with the lack of direct regulation concerning the permitted length of fixed-term contracts, the short legal notice period for termination (two weeks) and the ability to terminate without a cause.\textsuperscript{26}

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\textsuperscript{26} Hence, abuses such as fixed-term workers being employed on successive contracts for up to 10 years with termination notice of only two weeks have not been uncommon. Dismissal protection for permanent employees, by contrast, amounts to a three-month notice period after three years of service and entitlement reinstatement or compensation, if the contract’s termination is not objectively justified. A major lacuna is that the Labour Code does not provide for a maximum length for fixed-term employment. It
In fact, since 2012, the European Commission and the Council of the EU have repeated their specific recommendations for addressing labour market segmentation in Poland by reducing the excessive use of fixed-term employment. However, Poland only picked up a tailwind through a combination of external pressures, such as the judgment of the Court of Justice of the EU (CJEU) in the case Nierodzik in March 2014.\textsuperscript{27} The CJEU declared Polish regulations (notably, Article 33 LC on notice periods) to be incompatible with the principle of equal treatment between fixed-term and permanent workers under the applicable Directive 99/70. Further pressure came from Brussels where the European Commission had initiated infringement proceedings against Poland in December 2013, following a complaint submitted by the ‘Solidarity’ trade union (\textit{NSZZ Solidarność}).\textsuperscript{28}

Another attempt to counteract the extensive use of temporary contracts was launched by the Polish Alliance of Trade Unions (\textit{Ogólnopolskie Porozumienie Związków Zawodowych}) in early 2014. Their proposal was taken up by a group of representatives of the Democratic Left Alliance (\textit{Sojusz Lewicy Demokratycznej}), which presented the draft as an amendment to the Labour Code on 26 February 2014.\textsuperscript{29} The bill entered the legislative process in the Sejm on 10 April 2014, followed by a first reading in the plenary on 5 June, and subsequent deliberation in the parliamentary committees.\textsuperscript{30} The 2014 proposal of unions and Democrats, however, did not survive the stage of parliamentary deliberations.

3.4 Childcare leave

On a more positive note, in the recent past the Polish provisions on different types of childcare leave have been clarified and improved, as follows:

- After a ruling of unconstitutionality by the Polish Constitutional Court (Case No. P 59/11), an amendment of the Law of 12 December 1997 on supplementary annual remuneration for employees in the state budget sector (Journal of Laws 1997, No. 160, pos. 1080 with further amendments) was enacted. The provision in question concerned the conditions under which public sector employees were entitled to receive a thirteenth \textit{wage}, normally linked to a qualifying period of service of at least six months. While several exemptions to this qualifying period existed, these did not take into account problems of accumulation resulting from \textit{maternity leave}. This was corrected with the amendment of 10 May 2013.

- Following heated debates on the extension of leave for the care of newborns and equal treatment for men and women, Parliament unanimously adopted another amendment on 28 May 2013, related to the Labour Code provisions concerning maternity and paternity leave. This introduced \textit{parental leave} into Polish labour law as a new institution. For children born since 1 January 2014 mothers enjoy the right to maternity leave of 14 weeks and another six weeks of additional leave may be taken by either the child’s mother or father, who are also entitled to another 26 weeks of parental leave. These extended leave provisions can be used not only by employees but also by other persons covered by sickness insurance, including self-employed persons and those carrying out work on the basis of civil law contracts. Leave periods may also be combined with occupational activity. Next to the maternity benefits that cover 100 per cent of remuneration, the 26 weeks of parental leave will now also be covered by an entitlement to 60 per cent of remuneration. The law took effect on 17 June 2013.

On 10 May 2013 an amendment to the Law of 12 December 1997 on \textit{supplementary annual remuneration} for employees in the state budget sector (Journal of Laws 1997, No. \textit{\ldots}) does state the so-called ‘third contract rule’ that stipulates that a third consecutive fixed-term contract is automatically converted into a permanent one but some employees have to wait years before any third contract materialises.\textsuperscript{27}

\textsuperscript{27} Judgment of 13 March 2014, Case C-38/13 Nierodzik ECLI:EU:C:2014:152.

\textsuperscript{28} http://www.labourlawnetwork.eu/national%3Cbr%3Labour\_law/miscellaneous/miscellaneous_-_national\_labour\_law/prm/192/v_detail/id_3921/category_27/index.html (accessed 9 February 2016)

\textsuperscript{29} The following changes were proposed: (i) if (successive) fixed-term contracts exceeded the maximum length of 24 months (or 36 months by a collective agreement), they would be automatically converted into a permanent contract; (ii) for contracts concluded for more than 12 months (currently six months) a clause for termination may be included with notice prior to the contract’s expiry; (iii) for contracts for more than 12 months (18 months) the notice period will be two weeks (one month); and (iv) the amount of compensation for unjustified termination of contracts of indefinite duration (currently capped at a maximum of three months’ pay) is supposed to be extended to 12 months of remuneration that an employee can claim as compensation.

160, pos. 1080 with further amendments) was adopted. Under the new law the periods of maternity leave, additional maternity leave and paternity leave (pol. urlop ojcowski) will be taken into account to determine the right to the thirteenth wage in institutions financed by the state. Besides, the law also applies to the right to the thirteenth wage in 2012.

Finally, from 2014, employers hiring unemployed persons who return to the labour market after parental leave may apply for grants for the creation of a job to be performed as telework, or for employment support benefits.

4. Labour law reforms: 2015 onwards

In this period attention should be drawn to the fact that in Poland the controversial31 ‘Law and Justice’ Party emerged as the winner of the October 2015 elections. The new government’s first reform steps, pushed through Parliament around the turn of the year, caused much commotion abroad. These measures introduced changes to the voting requirements in the Constitutional Court on the review of legislation (now a two-thirds majority in the 15-member court is required to block legislation, instead of the former simple majority) and tightened state supervision over public media institutions.32 They have triggered unprecedented responses from Brussels amidst strong concerns about the compatibility of these national reforms with the EU’s democratic rules.33 Views on the government’s economic policy plans are rather sombre as well.34 However, concerning labour law, the changes introduced can be seen in a more positive light.

4.1 Precarious and atypical work

On 2 October 2015, the ‘Law and Justice’ Party made another attempt at reform of the Minimum Wage Act. This was also intended to reduce the currently large difference in the legal situations of employees and civil law contractors, even if the type of work they perform is similar or the same. The proposed amendment introduced a new Article 4a of the Act providing an hourly rate of PLN 12 (around 2.67 euros) for work actually performed and applicable as a statutory minimum wage for civil law contracts for the provision of services (pol. umowa zlecenia). The draft was submitted in the course of campaigns for parliamentary elections, which were held on 25 October.35

The ‘Law and Justice’ Party seems committed to the idea that Polish labour law requires a major change to address the problem of abuse through civil law contracts. It introduced a new draft law to that effect on 20 January 2016, which also contains a provision of an hourly minimum rate of pay (PLN 12) for service contracts. Along with long-standing unions demands to tackle these so-called ‘junk contracts’ the amendment aims to curb excessive recourse to such contracts as a form of disguised employment and to protect less well-paid independent workers, foreseen to become effective in July 2016. Besides requiring a minimum hourly pay, the draft text also seeks to impose upon companies the obligation to specify the working time of their independent workers, as they do for regular employees. To enforce the new provisions, the competences of the Labour Inspectorate for monitoring and sanctioning would also be broadened. The new legislation authorises the Inspectorate to monitor both minimum pay and working time across all contracts. Violations by contracting companies would face fines ranging between 1,000 PLN (approximately 233 euros) and 30,000 PLN (approximately 6,677 euros). Finally, the new law, if adopted, would also abrogate the current discrepancy in minimum pay based on career length. The existing reduction of only paying 80 per cent of the minimum wage for new hires to stimulate job creation would be abolished. This novelty would come into force on 1 January 2017.

31 https://www.foreignaffairs.com/articles/poland/2016-08-25/polands-constitutional-crisis
The proposal is now with the social partners for consultation. It has naturally been received favourably by the unions. While the employer’s side has so far been rather restrained in its direct criticism of the proposed measures, they preferred the changes to be introduced incrementally rather than the envisaged date of July 2006. The hourly rate proposal is considered a sensible suggestion because of its potential to improve the quality of work but warnings have been issued about taking such regulations too far because of the risk of bringing about the opposite effect (for example, increased unemployment).\textsuperscript{36} The adoption of this law would certainly be beneficial for improving certain employment terms for independent workers, but it is considered unlikely to make employment contracts preferential to civil law contracts, which may continue to attract certain employers by being easier to terminate and requiring no funding of sick days and leaves.\textsuperscript{37}

In this context, not to mention the issue of precarious workers, it should also be mentioned that the Polish Constitutional Court delivered a ruling of unconstitutionality regarding the Law on Trade Unions on 2 June 2015. It found incompatibility with regard to the Polish Constitution in so far as the law’s provisions currently in force exclude those who work under \textbf{civil law contracts and those who work freelance}. The Court ruled that the personal scope of the statutory guarantee to organise trade unions is too narrow in relation to the constitutional norms and those arising from international binding agreements. It held that such a restriction was indeed contrary to the constitutional guarantees of freedom of association and ILO Convention No. 87, declaring freedom of association in trade unions for all workers regardless of the legal basis on which the work is performed. According to the constitutional judges, the criterion of ‘legal basis of employment’ used by the legislator to determine the group of entities entitled to organise in trade unions was not a decisive element for the exercise of freedom, referred to in Art. 59 paragraph 1 of the Polish Constitution. The application of that criterion excluded a large group of workers from exercising freedom of association in trade unions. Instead, it was considered that the legislator’s task should be to facilitate freedom of association in trade unions by all those who, from a constitutional perspective belong to the category ‘workers’. It was required that an appropriate legislative technique be chosen to ensure implementation of the constitutional norm.\textsuperscript{38}

The government presented its own proposal on legislative reform on 31 March 2015 and forwarded it to the Parliament on 10 April. The draft was further analysed and evaluated in response to the Commission’s question on the Council Recommendation concerning Poland (delivered on 16 November 2014).\textsuperscript{39} Actually, the government’s proposal referred explicitly to the Council Recommendation of 8 July 2014 concerning Poland, underlining ‘\textit{efforts to ensure a better transition from fixed-term to permanent employment}’. It also referred to the respective negative evaluation of the Committee of Independent Experts of the Council of Europe delivered in 2014.\textsuperscript{40} On 25 June 2015, then, the Sejm approved the major amendment to the Polish Labour Code, as did the Senate, without any changes, on 24 July 2015.\textsuperscript{41} With the President’s signature, the new law introducing substantial changes to the nature of employment contracts was passed on 21 August 2015, scheduled to become effective on 21 February 2016.\textsuperscript{42} The main features of this Labour Code reform are as follows:

- Among the different types of \textbf{temporary contracts} that Polish law previously provided for, both the contracts for completing a specific task and contracts for replacement are abolished.
- The provisions on concluding \textbf{fixed-term contracts} for the purpose of probation – that is, to test the employee’s qualifications and suitability for the job – have been clarified. The new law lays down that such contracts may be concluded only for a trial

\textsuperscript{36} Grochocinska (2016). Certain sectors have not waited for the new law to negotiate minimum pay levels, in the construction sector the unions and employers’ bodies recently agreed a minimum hourly rate of 15.60 PLN (approximately 3.50 euros).
\textsuperscript{38} Unterschuetz, J. (2015) Poland: Polish Constitutional Tribunal decides rules on freedom of trade union association are too narrow and unconstitutional. Planet Labor, 10 June 2015, n° 9126 – www.planetlabor.com
\textsuperscript{40} The Committee found Article 33 of LC to be in conflict with Article 4 point 4 of the European Social Charter (right to fair remuneration). European Committee of Social Rights. Conclusions XX – 3 (2014) (Poland), Strasbourg 2015, str. 12.
\textsuperscript{42} Unterschütz, J. (2015) Poland: during the summer new legislation on fixed term contracts and parental leave was adopted. Planet Labor, 7 September 2015, n° 9235, available at www.planetlabor.com
period of three months. But it also permits limited renewal, provided the following conditions are met:

- if the employee will carry out another type of work; or
- if at least three years have elapsed since the termination of an employment contract between the two parties.

In order to protect against abuses of fixed-term employment, the amendment introduces a maximum time limit of 33 months for successive contracts (Article 251 LC). Automatic conversion may also occur if the total number of three consecutive contracts is exceeded. This represents a fundamental change in the Polish regulation of temporary employment. Also, if these limited are exceeded, the reasons for such action should be indicated in a contract (Article 29 (11) LC).

Conversion into a contract of indefinite duration will hence occur after three years (a three-month probation contract can be accumulated with 33 months of fixed-term contracts). But there exist several exceptions to this rule, albeit subject to the employer’s obligation to notify the relevant district labour inspectorate in writing or in electronic form, stating the reasons for concluding a fixed-term contract within five days of its conclusion. Successive contracts are therefore exempted from the general rule, if any of the following objective reasons justify the continued renewal of fixed-term contracts (Article 251 (4) and (5) LC):

- an employee is employed under a fixed-term contract for the purpose of substituting another employee during their justified absence;
- for the purpose of completing occasional or seasonal work;
- for the purpose of performing work during a period of office; or
- if the employer indicates objective reasons that justify fixed-term employment due to temporary needs.

In future, any type of employment contract can be terminated with notice (Article 32 LC), allowing also for the earlier termination of a fixed-term contract. However, neither an objective reason nor trade union consultation is required for the termination to be legal. Notice periods will be the same for permanent and fixed-term contracts, depending on the length of employment with the given employer:

- two weeks for employment of less than six months;
- one month for employment more than six months; and
- three months for employment exceeding at least three years.

Codifying the current practice, the amended Labour Code also provides for possible exemption from work during the period of notice, while the dismissed employee retains his or her right to remuneration (new Article 362 LC).

For several years, the practice of posting workers – with Polish posted workers being one of the EU’s main ‘exports’ – have been vigorously criticised in terms of the risk of social dumping in countries with reputedly higher social standards. In 2014 the EU Member States eventually agreed on Directive 2014/67/EU, which was meant to improve enforcement of European regulations as regards the posting of workers. Three months before the final deadline for transposing the Directive, Poland’s Council of Ministers adopted a draft ‘law on the posting of workers within the context of the provision of services’.  

In June the Parliament adopted the government’s proposals on posted working and formalising employment contracts with several more legislative and regulatory projects still under way.

The Law amended four articles from the Labour Code so that in future it will require employers to supply written employment contracts. In addition, employment contracts will have to be signed before the newly hired employee actually starts work. Penalties can be levied for breaches of the rules that can range from 1,000 PLN to 30,000 PLN (277 euros and 6,800 euros). The provisions aim to end the ‘first day syndrome’ legal lacuna whereby formerly, during labour inspections, employers could affirm that their employees were only on their first day in the job, and as a result could rely on the former Labour Code’s stipulation that employers could set up an employment contract in a period of time after the new employees’ actual starting date. This new law came into effect on 1 September 2016.

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43 Planet Labor, 22 April 2016, n°9623 — www.planetlabor.com
44 Planet Labor, 13 July 2016, n°9770 — www.planetlabor.com
45 Planet Labor, 13 July 2016, n°9770 — www.planetlabor.com
The Law transposing Directive 2014/67/EU on enforcement of the Directive on posting of worker provided that:

- employers that post workers within Polish territory must provide working conditions that are at a minimum equivalent to those in Poland’s Labour Code in terms of working time, remuneration, health, safety, as well as protection for pregnant women and minors;
- exceptions to this can be allowed for workers posted for periods shorter than eight days per year on installation jobs, except within the construction sector;
- within the construction sector both the contractor and the employer have joint responsibility for timely payment unless the contractor can prove it has performed the necessary diligence by informing the employer on working conditions.
- In addition the law bolsters the role of the National Labour Inspectorate in terms of information and cooperation with the competent authorities from the other Member States as regards posting of workers. For example the Inspectorate can directly carry out inspections at employers or it can ask for information about other countries’ authorities from the fiscal or social security services. This law came into effect on the last day set by the European Directive for its transposition, 18 June 2016. For postings that are currently under way, employers have an extra three months to come into line with the new requirements.

In addition, there are still various amendments either announced by the government or pending before the Parliament:

- an amendment to the Labour Code demarcating a ban on certain trades deemed particularly arduous or dangerous for pregnant or breastfeeding women;
- raising the minimum monthly gross salary by 8 per cent to 2,000 PLN (450 euros) compared with 1,850 PLN currently. The social partners have until 15 July to adopt or amend this proposal; however in situations where disagreement arises the government will have the final word;
- establishing a single obligatory levy and applying three distinct monthly payments for income tax comprising the PIT (taken at source), health insurance contributions (NFZ), and pension payments (ZUS).

According to the Central Statistics Office 4.4 per cent of workers in Poland are employed on the basis of civil law contracts instead of employment contracts (subject to labour law), even though most of them would prefer employment contracts. In order to avoid further segmentation of the labour market and abuse of civil law contracts, as well as to protect those receiving remuneration at the lowest level, in August 2016 the Polish Parliament adopted a law introducing a minimum hourly rate of 12 PLN (2.73 euros) for workers employed on civil law contracts and for the self-employed. The act was signed by the President on 5 August and its main provision will enter into force on 1 January 2017 in order to give the employers time to adapt to the new rules.

Finally, the Polish Ministry of Labour, Family and Social Affairs has decided to revise a law dating back to 9 July 2003 on the employment of temporary agency workers with the aim of giving such individuals better legal standing to combat abuses committed by temporary work agencies. The main aspects of the draft law are as follows:

- a ban on giving temporary employees ‘the same type of work’ as that done by a permanent staff member at a user company who has been laid off less than three months previously (unless the dismissal was based on personal reasons);
- a duty on the part of user companies to disclose — when requested by a temporary work agency — its pay scale, so that temporary employees can be given a salary which corresponds to that of permanent colleagues;
- an upward standardisation of maternity leave rights, so that women employed on a temporary contract enjoy the same allowances as those on permanent contracts;
- an 18-month limit on the length of time a temporary worker can be deployed at a particular user company, followed by a 36-month waiting period. This would apply regardless of the temporary work agency;

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46 Planet Labor, 13 July 2016, n°9770 — www.planetlabor.com
47 Planet Labor, 29 August 2016, n°9797— www.planetlabor.com
– a duty for user companies to keep a list of temporary workers, and to maintain a log for a period of 36 months, so that the labour inspectorate can check for abuses of the system;
– an obligation for temporary work agencies to indicate, in work certificates given to employees, the name of all user companies;
– a change to the calculation of holiday allowance, or the equivalent in pay, which temporary workers are entitled to;
– an opportunity for the temporary workers to bring a case before a court as if they were a regular employee of the temporary work agency.

The draft also proposes penalties if the worker is assigned dangerous tasks, is used to replace a worker on strike, is given the same ‘type of work’ as someone who has recently been dismissed, and if the 18 and 36-month time limits are violated. Potential fines vary from 1,000 to 30,000 PLN (from 230 to 7,000 euros).

4.2 Social dialogue

In 2015 the social partners jointly drafted a new law on the principles and institutions of social dialogue. Trade unions and employers’ organisations preliminarily agreed with the Minister for Labour on a common draft on 21 March 2015. The proposal seeks to replace the current Tripartite Commission for Social and Economic Affairs with a newly created Council of Social Dialogue and draw up new rules that would govern the new body. The Sejm, the lower chamber of the Polish Parliament, received the new draft law from the government for deliberation on 17 June 2015. It preliminarily adopted the new Law on the Council of Social Dialogue and other institutions of social dialogue on 25 June. Following some technical changes proposed by the Senate in early July, the Sejm finally adopted the new Law on the Council of Social Dialogue on 24 July 2015 and it entered into effect on 11 September as the new Act on the Council of Social Dialogue (Journal of Laws 2015, item 1240).

The new law is expected to successfully deal with the social dialogue crisis in Poland. As the new Council of Social Dialogue will replace the existing Tripartite Commission for Social Dialogue (repealing the 2001 Act on the Tripartite Commission), the law introduced the following main changes:

– The Council of Social Dialogue is now the main platform for tripartite cooperation between the employee representatives, the employer representatives and the government. It seeks to enable dialogue to ensure conditions for social and economic development, enhance the competitiveness of Poland’s economy and social cohesion.
– The Council strives to promote social consensus based on transparent, substantial and regular dialogue among the social partners and the government. It supports social dialogue at all levels of territorial self-government (Article 1), and for that purpose is competent to present positions, express opinions on assumptions of laws and drafts of legal acts, initiate legislative processes (according to the present law) and execute tasks arising from other statutes (Article 2). It obliges the government to present relevant draft legal acts to the social partners to obtain their opinions. Where it does not take their opinions into account, this must be substantiated at further stages of the legislative process. It entitles the employee and employer representatives to jointly request a public hearing of the body responsible for elaborating the particular draft.
– Regarding legislative initiatives by the social partners, in case of non-acceptance of such a proposal the government must substantiate its rejection (or amendments) in writing within a period of no more than four months. The social partners can also jointly urge the President of the Council to submit a motion to the Supreme Court to rule on a particular legal issue, where there are discrepancies on interpretation in judicial

48 Planet Labor, 7 October 2016, nº 9857—www.planetlabor.com (The draft bill makes a distinction between the status of consulting/intermediation agencies and of temporary work agencies. Foreign firms will also have to sign up to the recruitment firm register, which includes both kinds of agency. The posting of foreign workers at companies that operate in Poland will require certification. Moving in the other direction, it will no longer be possible to send workers to another temp agency abroad such individuals can only be assigned directly to a user company. Recruitment firms will need an office and not just a postal address. In the case of non-compliance with the rules, the companies can be removed from the register, or subject to a fine as high as 100,000 PLN [more than 23,000 euros]).
decisions of the courts. Finally, employee and employer representatives, too, have the right to conclude multi-enterprise collective agreements, whereby the relevant provisions of the Labour Code apply.

– A concise schedule for cooperation and consultation regarding Poland’s annual social and economic situation, economic forecasts, the elaboration of the state budget and the determination of the minimum wage. Each year, following the government’s overview of (planned) legislative activities submitted by 20 January, the Council must present a plan of its activities, taking into account the current social and economic situation and indicating the priorities for social dialogue. Each year by 10 May, the government is to issue an economic forecast as the basis for preparing the state budget for the following year. After that, the social partners jointly present an opinion on the rise in remuneration in the national economy, minimum wage for work, pensions and old age pensions. By 15 June of each year, the government has to present the expected budget for the next year to the employee and employer representatives, who can then submit an opinion within 30 days. In the absence of consensus, each party that is a member of the Council can present its individual opinion.

– The Council will be chaired by a president, whose term lasts one year and rotates successively between the three parties (government, employers and employees). Furthermore the Act newly establishes the Office of the Council of Social Dialogue, which is meant to provide regular support for the Council’s activities.51

– Finally, the new law also provides for the possibility of creating regional councils of social dialogue at the level of the ‘voivodship’ (regional self-government, comparable to provinces).

4.3 Other measures

On 30 March 2015, the Polish President submitted to Parliament a draft amendment to the Labour Code on extending workers’ rights connected to parenthood. Aimed at facilitating the reconciliation of work and family life, the proposed law simplified and introduced more flexibility for childcare leave (clarifying the distinction with maternity and parental leave for newborn care), incentives to make use of flexible work patterns according to individual needs and other rights connected to parenthood, taking into account both working parents and their employers. Following its adoption, with further amendments, by the Sejm on 24 July and the Senate’s approval on 4 August, it was signed into law on 5 August 2015.52 The rationale behind the law is to counteract negative demographic changes.

On 13 May 2016 the Polish Parliament adopted a measure to help to combat the shadow economy in the form of undeclared work. The measure requires employers to deliver a written employment contract before work actually starts. The measure still has to receive the Senate’s approval.

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51 For more details (in English) on the Council’s composition, transitional provisions etc., see http://www.labourlawnetwork.eu/national%3Cbr%3E%3Ecountry%3Cbr%3E%3E%3Cbr%3Epoland/Elabour_law/national_legislation/legislative_developments/prm/109/v_detail/id_6030/category_27/index.html (accessed 9 February 2016)


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