

# Chapter 7

## Temporary employment, unemployment and employment protection legislation in Poland

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### 1. Introduction

Temporary employment has risen substantially in Poland since the early 2000s, while the share of workers with open-ended contracts has declined. Between 2002 and 2014, net employment in Poland increased by 2.07 million workers. This growth was spurred by the country's strong macroeconomic performance and the rising educational attainment of the Polish workforce. However, almost the entire employment increase can be attributed to gains in temporary employment, which grew by 1.97 million workers. Employment under permanent contracts fluctuated at around 12.1 million during that period. The growth in temporary employment in Poland – both in absolute terms and as a share of total employment – started during the recession of the early 2000s, which was characterised by unemployment rates of over 20 per cent,<sup>1</sup> and continued after macroeconomic conditions improved around 2004. The incidence of temporary contracts continued to rise up to 2007 and then stabilised at around 20–22 per cent of total employment (27–28 per cent of dependent employment) in 2008–2013. In 2014, Poland was the country with the highest share of temporary workers in the EU (22.0 per cent of total employment, 28.3 per cent of dependent employment). In parallel, the unemployment rate in Poland declined substantially in the 2000s, from 20.2 per cent in 2002 to 7.2 per cent in 2008. It rose again during the Great Recession, but it peaked at about half the level it had reached a decade earlier.

However, in Poland – unlike in, for example, Spain in the 1980s – the rise in the incidence of temporary employment was not triggered by any substantial regulatory changes. Importantly, temporary contracts in Poland are heterogeneous themselves and include arrangements with various degrees of regulation. Moreover, some forms – civil law contracts – imply lower total tax wedge which translates into a lower total cost for employers and / or higher net earnings for workers. To understand the interplay between the incidence of temporary employment, unemployment and regulation in Poland, it is crucial to account for the heterogeneity of temporary contracts and look at regulations beyond employment protection legislation.

In this chapter, we discuss regulation and the incentives to use particular types of temporary employment in Poland. We present the evolution of their incidence between the early 2000s and middle 2010s and we identify the groups of workers who are the

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1. The question on temporary employment status was first introduced in the Polish LFS in 2002. Previously, the distinction was between regular work and casual work. Therefore, the data in these two periods are not comparable, and we analyse the incidence of temporary employment only from 2002 onwards.

most affected by this process. Using Polish LFS data, we also conduct a flow analysis which allows us to measure worker transitions between unemployment, temporary and permanent employment. Additionally, we discuss the role of state and the public sector in undermining employment standards and contributing to the high incidence of temporary employment becoming a new normal in Poland. We conclude with a summary of findings and an assessment of the policy initiatives taken in Poland, so far unsuccessfully, to reduce the incidence of temporary employment.

## **2. Non-standard employment in Poland**

### **2.1 Types of non-standard employment in Poland**

There are three main types of non-standard employment forms in Poland: fixed-term employment contracts based on the Labour Code (henceforth FTC); civil law contracts (not based on the Labour Code); and employment through temporary work agencies (henceforth TWAs). TWAs are regulated by a separate act but, in principle, they should provide workers with the social security and minimum wage guarantees mandated under the Labour Code. In this chapter, when using the term “temporary contracts” we refer to the sum of these three types of contract. Table 1 summarises the most important features of the various types of employment and civil law contract. Below we discuss them in more detail. Changes in the structure of employment under the various types of contract are analysed in section 3, which discusses the doubling of the incidence of temporary contracts (FTC, TWA and civil law contracts) between 2002 and 2014.

#### **2.1.1 Fixed-term employment contracts**

Of the non-standard employment forms in Poland, fixed-term employment contracts (FTC) are the most regulated. However, a fixed-term employment contract can be terminated by an employer without justification. Permanent employees’ contracts can be terminated only if a just cause (as defined in the Labour Code) is given. For years, notice periods were also shorter for FTCs than for permanent contracts but, since 22 February 2016, the notice periods for both types of contract are identical. The shorter notice period and the ability to terminate a contract without justification have resulted in employers abusing FTCs: in 2012, 25 per cent of workers employed under an FTC had a tenure in the current workplace of over four years (Structure of Earnings Survey data). The rules pertaining to social security contributions and the minimum wage coverage of FTCs are identical to those for open-ended contracts.

#### **2.1.2 Civil law contracts**

Civil law contracts are work arrangements that are not regulated in the Labour Code and thus do not provide employees with any protections or rights guaranteed by the Labour Code. This is the first reason why employers find them attractive. The other reason is related to the lower tax wedge associated with these contracts that stem from various regulations on social security contributions.

The two types of civil law contracts that are used most frequently in Poland are the contract to perform specified work (*umowa o dzieło*) and the contract of mandate

(*umowa zlecenie*). A contract to perform specified work must specify a particular outcome (tangible or intangible) that a contractor is expected to deliver. A contract of mandate can be used when the contractor provides a service but there is no requirement to specify an outcome.<sup>2</sup>

Table 1 Features of various employment contracts in Poland

Benefits and rights of workers	Labour Code contracts		Civil-law contracts	
	Permanent	Fixed-term (FTC)	Contract of mandate ( <i>umowa zlecenie</i> )	Contract to perform specified work ( <i>umowa o dzieło</i> )
Social security benefits	Yes	Yes	Yes, but can be relatively low	No
Health insurance	Yes	Yes	Yes	No
Paid leave	Yes	Yes	No (upon agreement)	No (upon agreement)
Minimum wage requirement	Yes	Yes	No	No
Period of notice	Yes*	Yes, but was shorter than in PLC until 2016	Upon agreement	Upon agreement
Justification for terminating contract	Yes	No	No	No
Severance pay	Yes**	Yes**	Upon agreement	No
Employment (millions of workers)				
2002	1.2.26	0.94	0.58***	
2012	1.2.37	2.45	1.04***	

\* The length of the notice period depends on length of service in the enterprise. There are three statutory notice periods in Poland: two weeks if the worker has been employed for less than six months; one month if the worker has been employed between six months and three years; and three months if the worker has been employed for three years or more.

\*\* The amount of severance pay depends on length of service in the enterprise. Workers employed for less than two years are entitled to severance pay equal to one month's salary; workers employed between two and eight years are entitled to severance pay of two months' salary; and workers employed for more than eight years are entitled to severance pay equal to three months' salary. Regulations regarding severance pay apply irrespective of the type of contract.

\*\*\* In the available data, both types of civil law contracts are presented jointly.

Source: own elaboration based on Gatti *et al.* (2014), LFS and Polish Ministry of Finance data

An employer who hires a worker under a contract to perform specified work is not required to make any social security contributions (SSC) or health insurance contributions on behalf of the worker. The worker is only required to pay personal income tax. The size of the tax depends on whether the contract involves a transfer of copyright related to the outcome.<sup>3</sup> In 2015, the income tax effectively ranged from 6.3 per cent to 14.1 per cent of the total labour cost for gross pay between PLN 1 750 and PLN 15 000 per month. In contrast, for an employment contract (both open-ended and fixed-term), the total tax wedge, including social security contributions, was much higher, ranging from 39.3 per cent to 42.7 per cent in the same wage bracket. An employer who hires a worker under a contract of mandate may also be required to make social security contributions

2. However, the interpretation and the enforcement of this rule can be lax. For instance, the Polish Supreme Court ruling from 18 September 2013 stated that painting a company office can be contracted as specific work (outcome), even though this task intuitively seems to represent a service.
3. Taxation is lower if the author (contractor) transfers copyright to the contractee. Copyright may apply to a spectrum of creative, intellectual and artistic works.

on behalf of the worker. Until 2015, if the contract of mandate was the worker's only source of social insurance, all the worker's SSC had to be paid. The resulting tax wedge equalled 33.3 per cent to 37.6 per cent of total labour costs (in the same wage bracket). However, the parties have often tried to reduce the total tax wedge by using a clause that stipulates that, if the worker has another source of social insurance — e.g. from an employment contract, from another contract of mandate, or from being a student aged up to 26 years — then the employer is not obliged to make any SSC in conjunction with the contract in question.<sup>4</sup> Thus, a worker earning the minimum wage from an employment contract and additional income from a contract of mandate faced a tax wedge of between 27.6 per cent and 35.7 per cent of gross pay between PLN 1 750 and PLN 15 000 per month. In sum, the tax wedge is lowest for the contract to perform specified work, followed by contracts of mandate and by employment contracts.

Until 2017 the minimum wage was not binding on either type of civil law contract. Not surprisingly, the wages of civil law contract workers are relatively low.<sup>5</sup> Furthermore, an individual who is working under a civil contract is not entitled to paid leave, sick leave, severance pay or maternity leave (unless the worker voluntarily made the sickness contributions that are obligatory for workers under Labour Code contracts). Likewise, the notice period is not guaranteed (though it can be stated in the agreement). The Civil Code does not restrict the number of civil contracts a worker can enter into with a given employer, so individuals may be trapped into signing a series of civil contracts over a long period of time. Finally, individuals who work under civil contracts could not become members of trade unions — this rule was declared unconstitutional by the Constitutional Tribunal in 2015 but, at the time of writing, the right of civil law contractors to join unions has not been legally implemented by the government.<sup>6</sup>

### 2.1.3 Temporary work agencies

The law that regulates the activities of TWAs in Poland was enacted in 2003. TWAs operate on the basis of a standard tripartite relationship: between a TWA, an employee and a user-employer. TWAs provide user-employers with workforce flexibility, lower labour costs and lower risks related to job mismatch. From the perspective of the worker, however, employment through a TWA is inherently precarious. The regulations that apply to TWA employment in Poland appear to be strict (and stricter than in many other EU countries) but they are, in practice, fairly loose. The law states that temporary agency work must be (i) seasonal/ transitory; or (ii) involve the performance of tasks that cannot be completed on time by the user's permanent employees; or (iii) involve the performance of tasks otherwise performed by a permanent employee who is temporarily absent. The law also requires that workers are employed under fixed-term

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4. In January 2016, more strict regulations regarding the SSC contributions required under contracts of mandate were introduced.

5. This in turn translates into lower future pensions in the Polish defined contribution pension scheme. Lewandowski *et al.* (2015) estimate that workers born in the early 1980s who entered the labour market under a civil law contract are expected to receive a pension that is on average 17 per cent lower than that of their peers who entered the labour market under a permanent employment contract.

6. The constitution guarantees the freedom to start and to operate a trade union (art. 12). However, this right was long interpreted as applying to employees only. The Constitutional Tribunal ruled in 2015 that a worker who is employed under a civil law contract also has the right to join a trade union. However, at the time of writing in October 2016, the law on trade unions has not yet been changed in line with that ruling.

employment contracts or employment contracts for the duration of a particular job (but still fall under the Labour Code). However, in comparison to a standard employment contract, this TWA-specific contract has a shorter notice period and less generous provisions regarding holidays, parental leave, etc. Poland also imposes limits on the length of time an individual can perform temporary work for a particular end-user firm (a maximum of 18 months over a period of 36 months, or of 36 months consecutively if the temporary agency worker is replacing an absent employee). However, this rule can be circumvented by moving the worker to another agency that serves the same end-user firm. Thus, many TWA workers may, in fact, work in a single position for a prolonged period of time. According to estimates by PFHR (2015), a Polish TWA association, only around 15 per cent of TWA workers are hired as permanent employees.

There are TWA-specific employment contracts, but the agencies can also circumvent some restrictions – in particular, the 18 month limit – by hiring workers under civil law contracts. The use of civil law contracts has become even more widespread among TWAs than in the overall economy. In 2004, according to the annual reports of the Ministry of Labour and Social Affairs, civil law workers accounted for 36 per cent of all individuals employed by TWAs but, by 2014, this figure had risen by 20 percentage points (MPiPS 2015). The majority of workers on civil law contracts accumulate no social security contributions and do not benefit from the legal protections that apply to permanent workers, such as rules regarding notice periods, paid leave, working hours or wage discrimination.

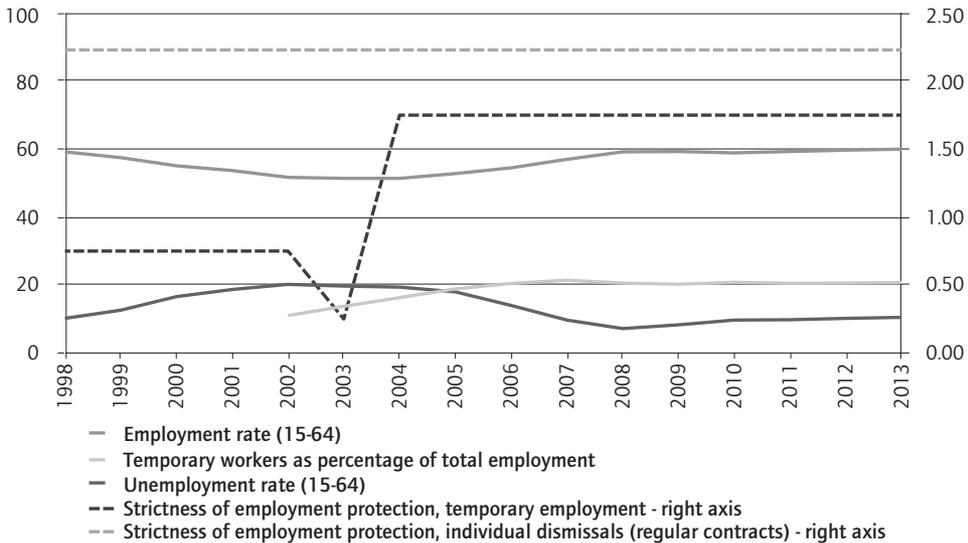
The potential to hire temporary workers may be abused by firms seeking to lower their labour costs, in part by reducing their social security contributions. For some firms, using TWAs may constitute a backdoor form of outsourcing. The weakness of the TWA market is reflected in its structure: there is a large number of small agencies (in 2013, 40 per cent of the 5 100 employment agencies operated as self-employed or micro businesses); and their turnover is high (which increases the risk that social security contributions will not be paid and adds to the already-high degree of employment volatility associated with temporary work). The proliferation of small TWAs is enabled by the very low barriers of entry to this market.

## 2.2 The evolution of the regulatory environment

The changes in Polish labour law introduced between the late 1990s and the early 2010s were minor modifications rather than substantial reforms. This is confirmed by quantitative measures of employment protection. Figure 1 shows that the strictness of the regulation of permanent contracts, as reflected by the OECD indicators of employment protection legislation (EPL), has not changed since the late 1990s. The regulation of temporary contracts was temporarily loosened in 2002 and was then tightened again from 2004 onwards. This short-lived loosening of the rules resulted from the brief removal of limitations on the number of renewals of fixed-term contracts. Before 2002, employers were permitted to renew a FTC with a given individual only twice, after which the employment contract had to be converted into an open-ended contract if it was renewed immediately. The change introduced in 2003 allowed the

unlimited renewal of fixed-term contracts, but this was valid only until EU accession in 2004. After Poland joined the EU, new regulations were introduced that stated that employers are permitted to enter into only two fixed-term contracts with a single worker and that the third FTC automatically converts to an open-ended contract if signed within one month of the expiry of a previous contract. This development led to an increase in EPL regarding temporary contracts in 2005. Between 2004 and 2013, no more important changes were made to the hiring and firing rules that apply to temporary contracts. None of the law changes in Poland increased the gap between the regulation of permanent and the regulation of temporary contracts, which has been shown to be a crucial determinant of labour market segmentation in countries such as Spain (Dolado *et al.* 2002).

Figure 1 Labour market indicators (left axis) and index of strictness of employment protection on temporary employment (right axis) for Poland in 1998–2013



Source: own elaboration based on EU-LFS, Eurostat and OECD EPL data

Table 2 summarises the regulatory changes between 2002 and 2015. There was no clear-cut tendency towards increasing or decreasing the strictness of labour regulation over this period. Generally, there was a trend towards loosening labour regulation in the early 2000s and towards tightening it from 2003 onwards. Besides the changes already discussed, regulations regarding the procedural aspects of severance payments and notice periods were tightened in 2003, while the regulation of collective dismissals was loosened. Important changes were introduced in 2014 and 2015. Employers are now obliged to make social security contributions on behalf of all workers contracted under a contract of mandate. The rules regarding FTC renewals were also tightened. Furthermore, on 22 July 2016 the parliament passed a bill aimed at expanding minimum wage coverage to civil law contracts.

Table 2 Main changes in the Labour Code in Poland between 2002 and 2015

Year	Implementation year	Policy field	Direction
2002	2003	Collective dismissals	Decreasing
2002	2002	Maximum duration of fixed-term contracts	Decreasing
2002	2003	Procedural requirements	Decreasing
2003	2004	Collective dismissals	Increasing
2003	2003	Maximum number of renewals of fixed-term contracts	Decreasing
2003	2003	Notice and severance payments	Increasing
2003	2004	Temporary agency work	Increasing
2004	2004	Maximum number of renewals of fixed-term contracts	Increasing
2013	2013	Large-scale deregulation (250 professions)	Decreasing
2014	2016	Social contributions for all contracts of mandate	Increasing
2015	2016	Maximum total duration and renewals of FTCs	Increasing

Source: own elaboration based on LABREF

The employment protection indices do not account for some facets of Poland's labour laws and broader regulatory framework that are central to the use of non-standard work in Poland. Among the concerns that have been raised about the OECD EPL index, discussed in the chapter by Myant and Brandhuber, this volume, the most important for Poland are related to the construction of the temporary employment regulation sub-index; the non-coverage of some workers; interactions between employment protection and other institutions; and imperfect enforcement.

The main caveat regarding the construction of the EPL indicator on temporary employment as it applies to the Polish regulation is that the EPL indicator does not take into account rules regarding the premature termination of an FTC. In Poland, a fixed-term employment contract, unlike an open-ended contract, can be terminated by an employer without justification. Until 2016, the notice period for terminating a fixed-term contract was shorter than for terminating an open-ended contract. It is much easier for Polish employers to terminate a fixed-term contract than an open-ended contract, so employers have incentives to use FTCs that are not reflected in the EPL indicator.

Non-coverage is also an issue. All of the key components of the Labour Code (i.e. those defining employment protection) apply to all firms regardless of size or sector, but workers employed under a civil law contract are not covered at all by the Labour Code provisions. In 2014, approximately one million workers (out of a total of approximately 16 million) in Poland were working under a civil law contract and thus were not covered by key components of the employment protection legislation. The lenient regulations pertaining to this category of contract workers are not reflected in the EPL index at all.

Interactions between employment protection and other labour market institutions also matter. Workers who work under a civil law contract pay lower social security contributions than permanent employees who earn the same wage. Thus, both employers (because their total employment costs are lower) and workers (because they earn a higher net income) have financial incentives to use these contracts. The use of civil law contracts is especially common in low-wage segments of the labour market

because social security contributions constitute most of the total tax wedge on low wages (Arak *et al.* 2014). Civil law contracts are not covered by the minimum wage, which was increased substantially between 2007 and 2014. It is therefore possible that civil law contracts are used by firms as a way to pay workers less than the minimum wage. The available data do not allow verification of how many workers on civil law contracts have been paid less than the minimum wage (or its full-time equivalent). However, Goraus and Lewandowski (2016) have found that Poland is the only Central and Eastern European country where minimum wage violations among temporary workers (a category that includes workers on civil law contracts) noticeably affect the overall incidence of minimum wage violations.

Table 3 Labour inspection indicators in Poland, average for 2009-2015

Inspectors per 10,000 employed persons		Labour inspection visits per inspector	
Poland	1.3	Poland	50
EU median	0.8	EU median	107
EU average	1.0	EU average	129

Source: own elaboration based on LABREF

Finally, enforcement is an issue. Another example of the misuse of civil law contracts is relevant in this context. The Labour Code specifies that, if a civil law contract is used to employ an individual who is doing a job that meets the criteria of an employment relationship, the civil law contract should be converted into an employment contract. According to the Chief Labour Inspectorate's annual reports, labour inspectors investigated the validity of 13 040 civil law contracts in 2015, 3 482 (27 per cent) of which were converted into employment contracts. In 2014, there were 14 028 such cases and 3 525 (25 per cent) conversions; while in 2013, there were 8 751 such cases and 3 313 (38 per cent) conversions. Data from the Ministry of Finance show that the number of individuals whose incomes were derived solely from civil law contracts amounted to 0.97 million in 2013 and 1.04 million in 2014 and 2015. The number of controls thus seems to be far from sufficient. Table 3 indicates that the number of labour inspectors per 10 000 workers in Poland is above the European median and average. However, the number of inspection visits per inspector is far below the European median and average. This suggests that there are inefficiencies in the organisation of the labour inspection process. In 2015, several media outlets conducted interviews with labour inspectors (Ćwieluch 2015, Rozwadowska 2015). These interviews revealed that the organisation of the system incentivises inspectors to focus on small infringements, punishes them for not meeting targets for the number of fines imposed per month and encourages them to avoid serious cases that would need to be resolved by the labour courts.

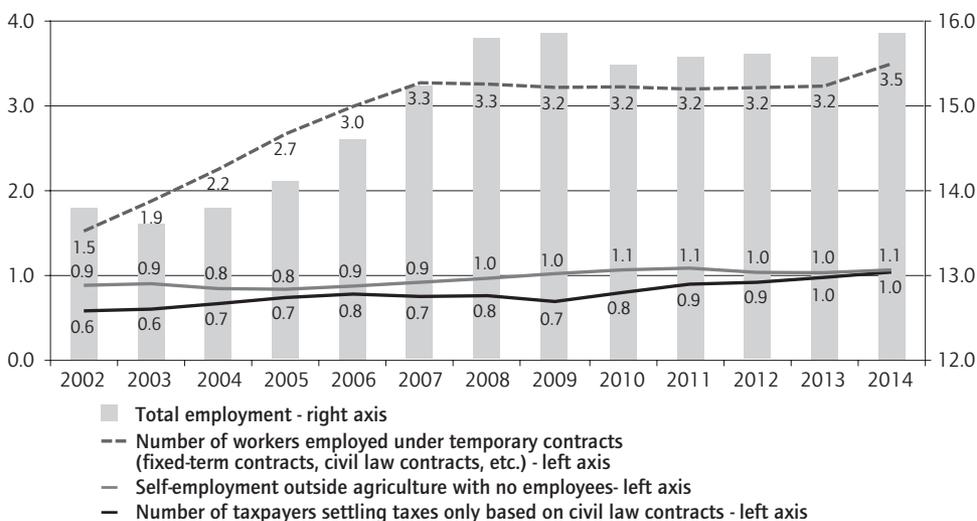
### 3. The growth in temporary employment in Poland

#### 3.1 Who are the temporary workers in Poland?

Between 2002 and 2014, the total number of temporary workers in Poland more than doubled, from 1.5 million in 2002 to 3.5 million in 2014 (Figure 2). This was partly fuelled by the increase in the incidence of civil law contracts. According to data from the Ministry of Finance, 1.04 million people in Poland were working solely under a civil law contract in 2014, up from 580 000 in 2002. Unfortunately, due to the lack of appropriate information from the LFS,<sup>7</sup> it is impossible to identify the socio-demographic groups who were most likely to engage with this form of employment. However, based on Polish Social Security Institution (ZUS) data, Lewandowski *et al.* (2015) found that contracts of mandate were most prevalent among younger workers and women.

Employment through TWAs also rose (Figure 3). According to the Ministry of Labour data, the number of people working through TWAs more than quadrupled between 2004 (167 000 workers) and 2014 (700 000). Women constituted a majority of TWA workers: of all workers employed through a TWA between 2008 and 2014, an average of 55 per cent were women (own estimate based on LFS data). Women constituted a minority of all workers (45 per cent on average between 2008 and 2014); thus, women were clearly more likely to have been working through TWAs than men.

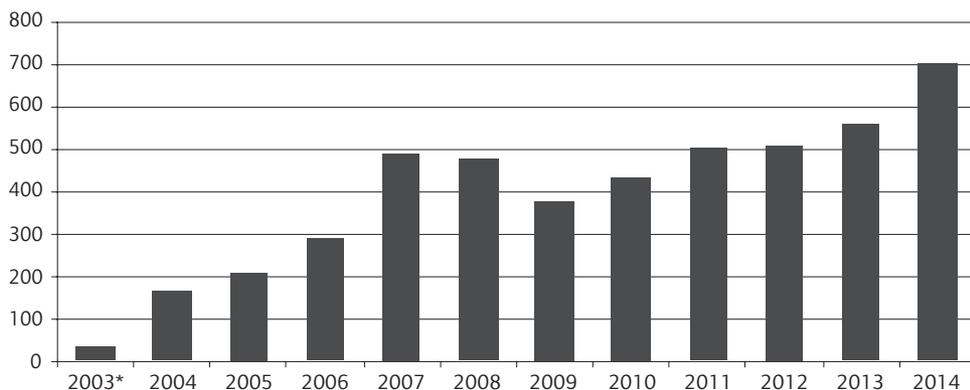
Figure 2 Numbers of persons working under various contracts in 2002–2014 (in millions)



Source: own elaboration based on LFS and Ministry of Finance data

7. In the Labour Force Survey, respondents are not asked about the type of temporary contract under which they are employed (i.e. whether it is a fixed-term or a civil law contract). On the other hand, the Structure of Earnings Survey data cover only individuals employed under an employment contract (either fixed-term or open-ended).

Figure 3 Numbers of persons employed through TWAs between 2003-2014 (in thousands)



\* In the first year in which TWAs were operating, not all entities were obliged to report temporary work; hence, the number of TWAs in 2003 is probably underestimated.

Source: own elaboration based on "Informacja o działalności agencji zatrudnienia w 2014r."

Temporary employment has become widespread among all age and educational groups, yet the most intensive growth in temporary employment indicators has occurred among individuals aged 20-29 (Lewandowski *et al.* 2015). Approximately 294 000 people aged 20-29 were working under a temporary contract in 2000, yet this figure had risen to more than 1.35 million by 2006. In absolute terms, the temporary employment level among young adults aged 20-29 reached its peak in 2007 (more than 1.4 million) and then slightly decreased during and in the aftermath of the Great Recession (to 1.34 million in 2014). Between 2003 and 2007, an average of 48 per cent of the women and 44 per cent of the men working under a temporary contract were aged 20-29 but, by 2011-2014, these shares had dropped to 40 per cent for both sexes (Figures 4-5). On the other hand, the share of people aged 30-39 in total temporary employment increased (from 20 per cent in 2000 to 29 per cent in 2014). Of all age groups, workers aged 30-39 experienced the second highest level of growth in temporary employment. The increasing incidence of temporary employment has affected not just people in the early years of their career, but older adults as well. In 2014, for example, nearly one in three temporary workers (32 per cent of male and 30 per cent of female temporary workers) was aged 40-64.

Temporary workers also tend to be less educated than permanent employees. Figure 6 presents the structure of open-ended and temporary employment by education. In 2014, tertiary education graduates accounted for 25 per cent of all temporary workers and for 39 per cent of all permanent workers (LFS data). The shares of people with post-secondary or vocational secondary education were comparable in both groups of workers (26 per cent of temporary workers, 27 per cent of permanent workers). The breakdown of less-educated workers in temporary versus permanent employment by highest educational attainment is as follows: 13 per cent versus 8 per cent with secondary education; 28 per cent versus 23 per cent with basic vocational education; and 9 per cent versus 3 per cent with primary education (2014 LFS data). These patterns are reflected in statistics showing how often workers with particular educational levels tend to work

under a permanent or a temporary contract. Of all workers with tertiary education (excluding agriculture), up to 80 per cent were employed under an open-ended contract in 2014. This share was significantly lower for workers in other educational groups, particularly for those with only primary or lower secondary education. The least-skilled workers, or those with primary or lower secondary education only, were equally likely to be in temporary or permanent employment in 2014.

Figure 4 Temporary employment structure by age group in the period 2000-2014, women (per cent)

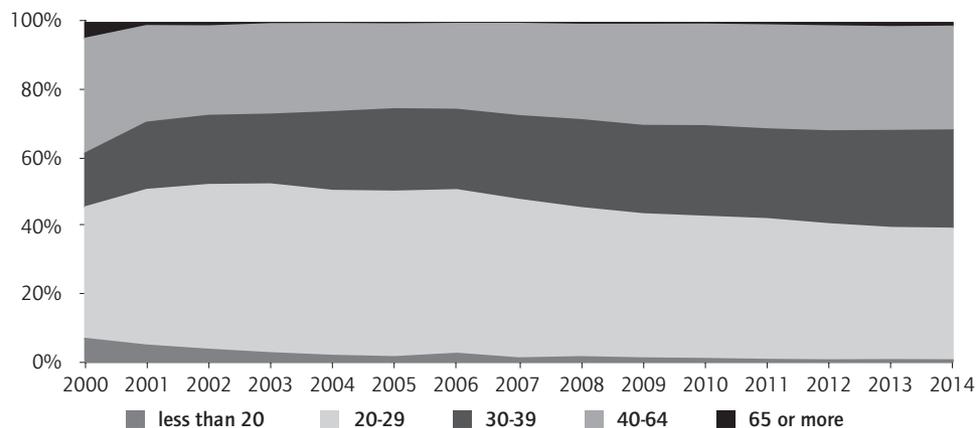
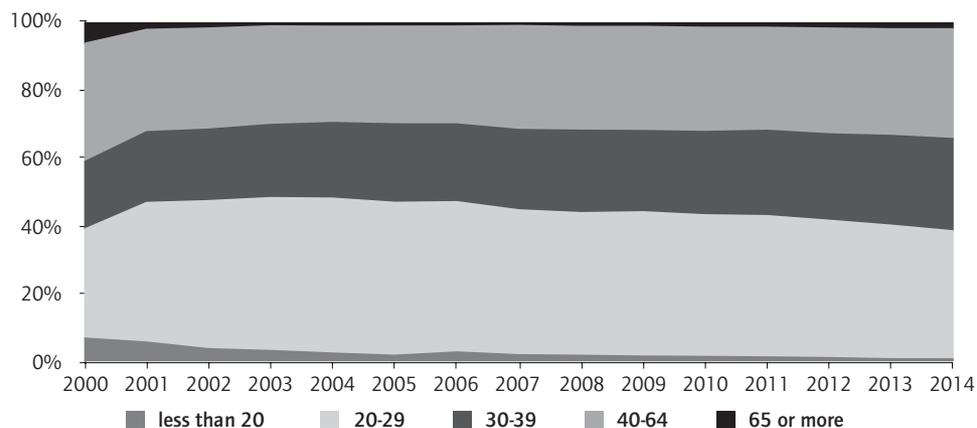
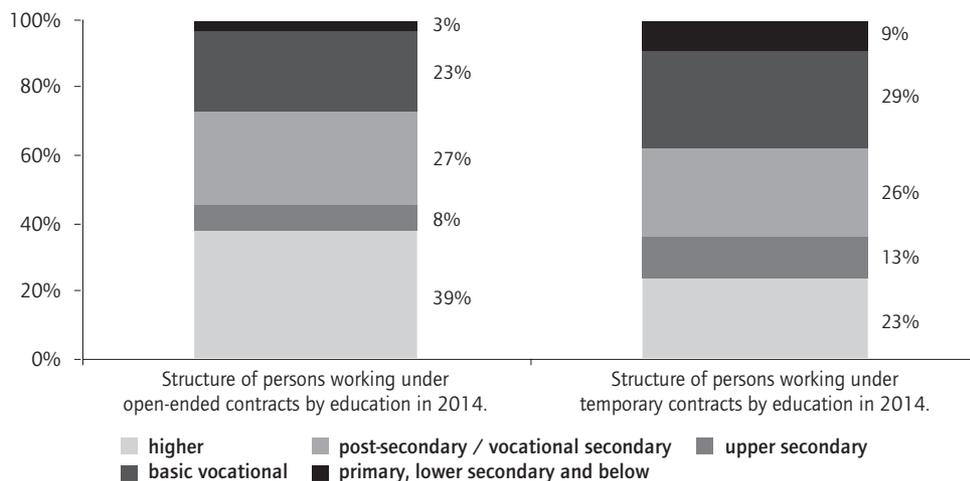


Figure 5 Temporary employment structure by age group in the period 2000-2014, men (per cent)



Source: own calculations based on LFS individual data (Figures 4-5)

Figure 6 Structure of permanent and temporary workers in Poland by education in 2014 (per cent)



Source: own calculations based on LFS individual data

### 3.2 Flows between permanent, temporary employment and unemployment

The assessment of the economic and the social impact of widespread temporary employment largely depends on whether a temporary employment spell is a stepping stone to permanent employment or is a dead end. It also depends on who are the workers occupying temporary jobs; i.e. whether they were previously in permanent employment but were downgraded, or whether they were previously unemployed and were entering employment. We cannot fully answer these questions because the data available allow us to analyse labour market flows only over a single year (with the LFS data), whereas career transitions from joblessness to temporary and permanent employment tend to take place over longer periods. Nevertheless, we can shed light on these issues via an analysis of one-year transitions between unemployment, inactivity and various forms of work.

Table 4 Yearly labour market flows of people aged 15-64 in Poland, average 2003-2014 (per cent)

t \ t + 1	Permanent Employment	Temporary Employment	Self-employment	Unemployment	Inactivity
Permanent Employment	94.0	1.5	0.6	1.3	2.6
Temporary Employment	15.5	70.5	1.2	7.2	5.6
Self-employment	1.0	1.2	94.7	0.8	2.2
Unemployment	4.2	18.7	2.4	56.6	18.1
Inactivity	0.9	2.9	0.6	3.1	92.4

Source: own calculations based on Polish LFS data

Figure 7 Labour market flows from temporary employment in Poland, 2003-2014, people aged 15-64 (per cent)

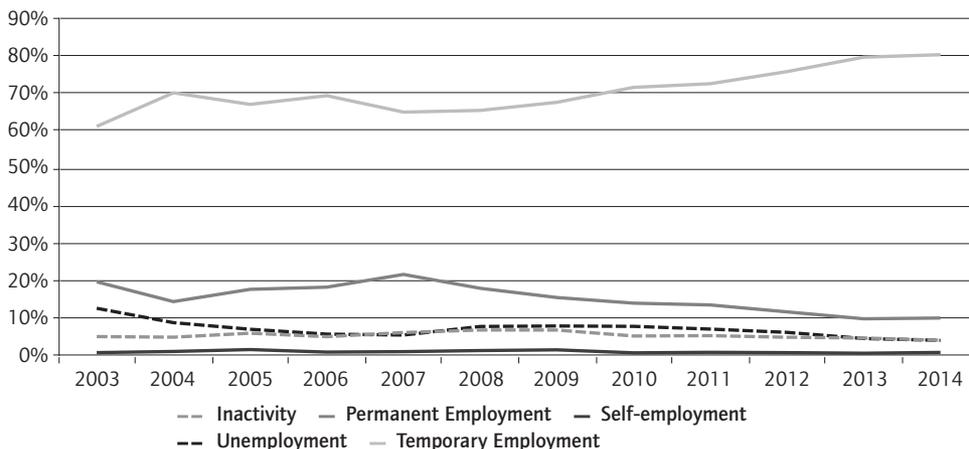
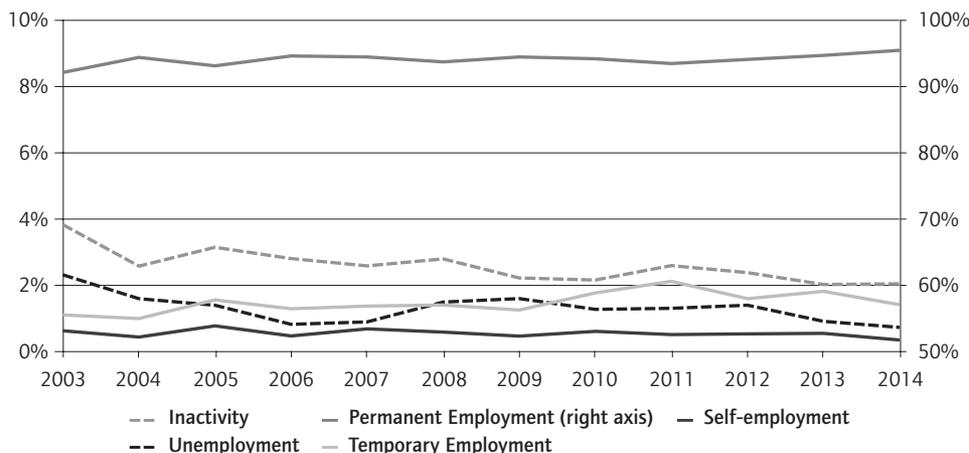


Figure 8 Labour market flows from permanent employment in Poland, 2003-2014, people aged 15-64 (per cent)



Source: own calculations based on Polish LFS data (Figures 7-8)

The flows of workers between permanent and temporary employment in Poland were relatively limited.<sup>8</sup> Table 4 shows that, on average in 2003-2014, 94 per cent of workers with a permanent contract retained their status one year later, and 1.5 per cent had moved to a temporary job; while 70 per cent of temporary workers remained in a temporary job one year later, and 15 per cent had moved to permanent employment. The fraction of workers remaining in a temporary job one year after the survey (though not necessarily in the same job) rose from 61 per cent in 2003 to 80 per cent in 2014

8. Data issues have meant that, when analysing labour market flows, we have had to group fixed-term contracts, civil law contracts and temporary agency work into a single category of temporary workers.

Figure 9 Labour market flows from unemployment in Poland, 2003-2014, people aged 15-64 (per cent)

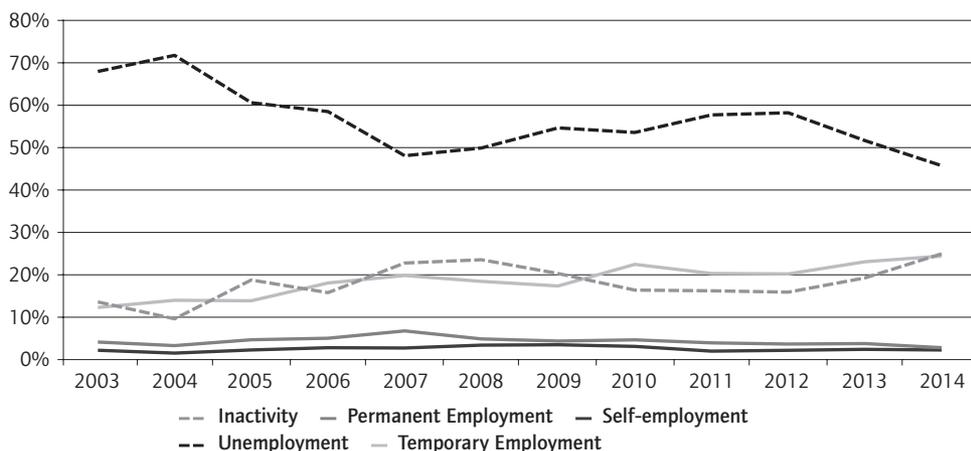
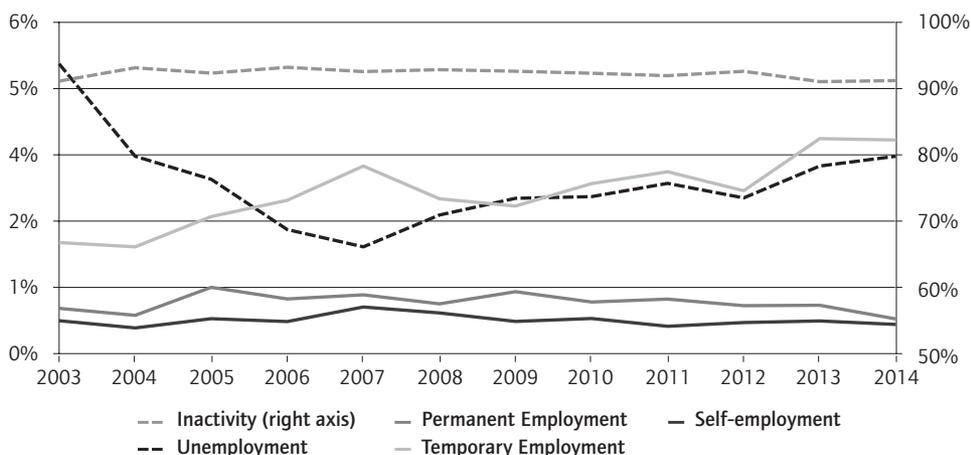


Figure 10 Labour market flows from inactivity in Poland, 2003-2014, people aged 15-64 (per cent)



Source: own calculations based on Polish LFS data (Figures 9-10)

(Figure 7). Together with the increase in the pool of temporary workers, this trend translates into a significant growth in the number of temporary workers who had the same temporary worker status one year previously (which indicates that they remained in a temporary job for at least one year). This number grew threefold between 2004 and 2014, from 0.7 million to 2.1 million, with the steepest increase occurring between 2007 and 2012. The flows from temporary to permanent employment averaged 15 per cent in 2003-2014. On average in 2003-2014, the largest flows from temporary to permanent jobs (18 per cent) were among the 25-34 age group, while the smallest flows were among the 55-64 age group (10 per cent). The incidence of flows from temporary to permanent employment declined over time, from approximately 17 per cent in the early 2000s to

approximately 11 per cent in the early 2010s. Transitions to open-ended employment declined for all age groups, but most significantly among workers aged 15-24 and 25-34.

At the same time, temporary jobs were becoming increasingly important for transitions from unemployment to employment. This does not mean that, if there were no temporary jobs, the unemployed who took them would have been unable to find another job. However, there is also no reason to believe that these individuals would have found permanent employment in the absence of temporary jobs. What is clearly visible in the data is that more unemployed people found temporary jobs than permanent jobs (Figure 9). Between 2003 and 2014, the yearly flows from unemployment to permanent employment oscillated between 3 per cent and 7 per cent, at an average of 4 per cent. Over the same period, the yearly flows from unemployment to temporary jobs were much higher and increasing, rising from 12 per cent in 2003 to 24 per cent in 2014; and involved an average of 19 per cent of the unemployed (Table 4). On the other hand, flows from temporary employment to unemployment decreased from 13 per cent in 2003 to 4 per cent in 2014, which was related to the unemployment rate decreasing substantially over this period. Meanwhile, flows to unemployment affected between 1 per cent and 2 per cent of workers with permanent contracts (Figure 9), depending on the overall macroeconomic conditions.

Flows from inactivity to temporary employment were also more common than flows to permanent employment (on average in 2003-2014: 3 per cent to temporary and 1 per cent to permanent jobs, cf. Table 4).<sup>9</sup> The largest flows from inactivity to temporary jobs involved young people. On average in 2003-2014, 7 per cent of inactive people aged 25-34 found a temporary job, compared to 4 per cent of inactive people aged 35-44. The fraction of inactive people aged 25-34 who moved to a temporary job was the highest in 2013, but only 4 per cent of inactive people aged 25-34 found a permanent job in that year. This suggests that, for jobless people, temporary employment was an important avenue to employment.

This flow analysis shows that temporary employment in Poland grew primarily because increasing numbers of people remained in a temporary job for more than one year. Furthermore, the incidence of temporary employment grew and it became an increasingly absorbing segment of the labour market: in 2014, 80 per cent of temporary workers were still in a temporary job one year later, while the remaining 20 per cent were almost as likely to have become jobless as to have upgraded to a permanent contract.

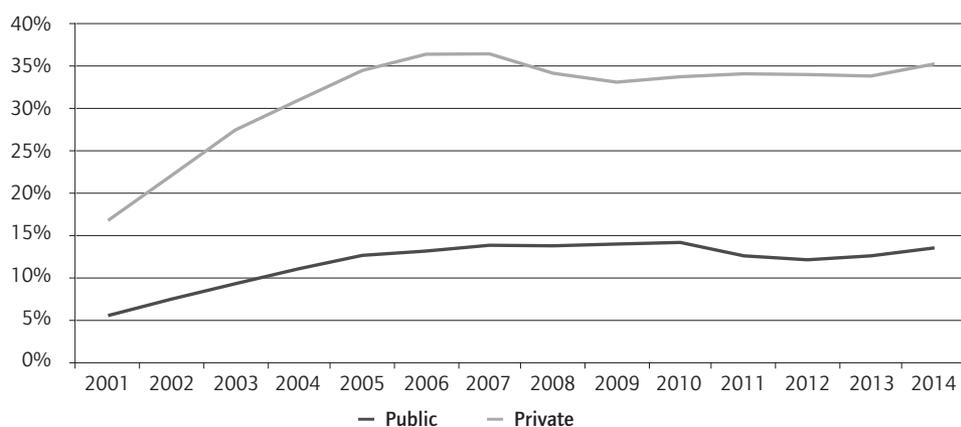
#### **4. State role in undermining employment standards**

The incidence of temporary jobs in the public sector has been consistently lower than in the private sector (Figure 11), but the state and the public sector have played important roles in increasing the incidence of temporary jobs and in changing public perceptions of non-standard employment forms. The share of temporary workers in public sector

9. Flows from temporary employment to inactivity were stable over time and involved an average of 6 per cent of temporary workers (Table 4).

employment nearly tripled between 2001 and 2014. This rising trend reflected the practice of hiring new workers under a fixed-term contract, but also under a civil law contract (NIK 2010). The latter practice gradually became widespread in the public administrative agencies, largely because local and central administrative offices were seeking not to increase, or even reduce, their payroll (NIK 2015). For instance, in 2012 the Ministry of Labour and Social Policy employed 14 per cent of its workforce under civil law contracts; a share that was substantially higher than the national average of 6 per cent in 2012 (Pawłowska 2012). The rising incidence and acceptance of employment under a civil law contract in public administrative agencies, state-owned companies and universities contributed to the perception that these arrangements represented a ‘new normal’ in labour relations. This trend, in turn, is likely to have increased workers’ acceptance of such arrangements.

Figure 11 Incidence of temporary jobs in the private and public sectors in Poland, 2001-2014, per cent of paid employment



Source: own calculations based on Polish LFS data

The shift in the regulation of public procurement represents another example of the state’s role in undermining employment standards. Public sector institutions began to outsource cleaning and security services to the private sector but paid no attention to the quality of employment offered by subcontractors. Even worse, they actually indirectly encouraged contractors to contract workers on precarious contracts (with no social security contributions or minimum wage protection) by using the lowest price as the only selection criterion (UOKIK 2013: 35-39, 61-62). Duda (2016: 14-16) showed how the practice of *lean government* led to the outsourcing of large numbers of auxiliary government workers (in services, mainly cleaning and surveillance) to private companies in the mid-2000s and at the beginning of the 2010s, and that this practice led to a significant deterioration in conditions for these workers. They became much more likely to lose their job (or to leave their job due to the difficulties they encountered) and to be employed under a civil law contract with no, or a minimum level of, social security contributions. The lowest price criterion was inherent in the concept of *lean government*, which was supposed to reduce the operational costs of public administration.

Attempts (in 2014) to change the public procurement system so that price was no longer the sole criterion used were unsuccessful: the additional criteria (such as ‘encouraging subcontractors to hire employees under labour contracts’) that were introduced were not obligatory and most institutions did not use them.<sup>10</sup> Public companies, public universities, and local and regional governments continued to evaluate contractors’ bids on the basis only of price. Duda (2016, p. 32-33) found that in just seven out of 30 public institutions she analysed, the tenders included special clauses that required contractors to hire workers under permanent employment contracts. Moreover, in three out of these seven cases, the contractors circumvented the rules in a number of ways by, for example, employing workers part-time (e.g. 1/8 of full-time) and paying the remaining wages under civil law contracts for which social security contributions or compliance with the minimum wage was not required. Indeed, she found that, in some cases, workers were being paid 50 per cent less than the minimum wage and that, in other cases, managers were employed as ‘cleaning workers’ in order to meet the employment contract targets.

Public sector employees whose jobs were outsourced to the private sector were often transferred to a new company (in line with the Labour Code regulations), but they had the right to retain the same working conditions (contracts, wages, working time) for a certain period of time only, usually one year. Afterwards, most firms changed the working conditions, usually by terminating open-ended employment contracts and offering civil law contracts instead, reducing employees’ wages and increasing the workload (Duda 2016). In addition to increasing the level of precariousness in this segment of the labour market, these practices led to concerns being raised about health and safety among both workers and public sector clients (e.g. in hospitals or courts where cleaning and security tasks were outsourced).

The case of the restructuring of the Polish public broadcaster, TVP SA, offers another example of how the new, lower employment standards were shaped in the public sector. In 2014, TVP transferred approximately 16 per cent of its workforce (journalists, editors, make-up artists and graphic designers) to a private firm, with a year-long guarantee of unchanged employment conditions. According to an official resolution of the TVP board, it was also anticipated that many of the outsourced employees would continue working, but as self-employed individuals (NIK 2014). This move was aimed at reducing the costs related to paid absence (such as sick leave) and social security contributions. After the guaranteed employment period expired, most employees were not offered new contracts and their relationship with TVP was terminated.

Moreover, in several public services, fixed-term employment contracts have been introduced as the default contract type for entrants. This practice is especially prevalent in the public education system, in which apprentices (the first career stage for graduates) and so-called contract teachers (second stage) are employed on fixed-term contracts. In 2014, there were approximately 140 000 individuals occupying such positions. The

**10.** The 2016 reform also aims at reducing the number of civil law contracts used by contractors by introducing a requirement that Labour Code contracts must be used ‘if the jobs fall under a category of paid employment’. However, it is not clear if – and, if so, how – these rules will be enforced (<http://prawo.gazetaprawna.pl/artykuly/963426,koniec-przetargowego-paralizu-nowelizacja-odblokuje-zamowienia-publiczne.html>).

other important group is that of university teachers: except for tenured professors, all university lecturers and professors are employed under fixed-term contracts. In 2014, about 75 000 belonged to this group. The third important group is made up of resident doctors, who are employed by hospitals on fixed-term contracts during the period of their career known as specialisation practice. In 2014, there were approximately 10 000 resident doctors and apprentices (also on temporary contracts) in the public healthcare system. In total in 2014, the public sector employed approximately 225 000 temporary workers in early career stages in respected professions such as teaching and as professors and doctors. Working in a temporary position can be an appropriate approach to building a career path in academia or healthcare, but it is also possible that this widespread practice has contributed to the increase in public acceptance of the use of temporary contracts.

Ultimately, these various actions and measures undertaken in the public sector all appear to have contributed to the weakening of employment standards, the proliferation in the use of non-standard jobs and the evolution of their perception by labour market actors.

## 5. Conclusions

In the early 2000s, an unemployment rate above 20 per cent constituted the main labour market concern in Poland. By the late 2000s, this rate had declined to single-digit figures but most of the new jobs that led to this reduction in unemployment were temporary. Virtually all of the net employment growth between 2002 and 2014 in Poland was in temporary employment and its share in total employment became the highest in the EU. The incidence of both fixed-term and civil law employment contracts increased. Civil law contracts are especially precarious as they are not covered by the Labour Code. These contracts can be terminated without cause or a notice period, and those employed under them may not receive full social security contributions and are not covered by the minimum wage. The issue of precarious employment has replaced unemployment as the most pressing labour market challenge in Poland. The growing incidence of employment with no, or very low, social security contributions aggravates the problems of the healthcare and pension systems and offers rather gloomy prospects to precarious workers, many of whom will find it difficult to accrue even the minimum level of old-age pension benefits.

Importantly, there was no single reform of the regulatory framework that could have triggered the increase in the incidence of non-standard employment in Poland. This distinguishes Poland's experiences from those of countries like Spain, where temporary employment grew in response to employment protection reforms that made it easier for employers to hire workers under temporary contracts. Despite the drawbacks of the OECD Employment Protection Legislation index, the story it tells about regulation in Poland is largely accurate: there were no legal changes that substantially changed the incentives to use temporary contracts and that can be identified as the culprits behind the temporary employment boom. Instead, there was a gradual increase in the use of temporary job contracts and civil law contracts, while minor regulatory changes sometimes loosened, but sometimes tightened, the regulations regarding temporary employment.

It appears that the boom in temporary contracts was fuelled both by the cost competitiveness strategies used by employers to minimise labour costs and the increasing weakness of the state. Employers took advantage of the very lenient rules governing these arrangements, including the ease of termination under fixed-term contracts, the limited social security contributions required under civil law contracts and the almost non-existent bureaucratic burden associated with civil law contracts. The state failed to enforce the existing regulations in full (such as non-compliance with the requirement to employ workers under Labour Code-based contracts), while weak and ineffectual labour inspectorates were ill-prepared to cope with abuses. Public administrative agencies and the public sector in general also helped to undermine employment standards. First, the public sector increasingly employed workers under civil contracts and outsourced support jobs to private firms that competed for contracts by minimising personnel costs and shifting workers to cheaper civil law contracts. Second, the public sector employed all entry-level workers in education and healthcare under fixed-term contracts, a practice that may have had spillover effects on public acceptance of temporary contracts. Finally, collective bargaining was largely decentralised. The partners involved in the Tripartite Social Dialogue Commission (which ceased its activities in 2014 and was dissolved in 2015) had low levels of workforce coverage and their activities were weakly coordinated. These developments have led to a further deterioration in labour's position and bargaining power in the workplace, and have hindered any attempts to create a concerted policy agenda that would seek a new balance between the demands of employers for flexibility and cost effectiveness, the demands of workers for secure and high-quality jobs and the demands of the unemployed for good job employment prospects.

In the current debates, a number of ideas for improving this situation have been proposed, including closing the existing loopholes in the law by increasing the social security contribution requirements associated with civil law contracts and providing civil law contractors with hourly minimum wage protection. Yet, we believe these ideas have two main drawbacks. The first drawback is related to enforcement. Enforcing the existing regulations has already been shown to be problematic in Poland and successfully implementing new policies could thus be even more challenging. The second drawback is that these measures could represent a *de facto* legitimisation of the use of civil law contracts as a regular substitute for permanent employment contracts. Higher social security contributions, the right to join unions and minimum wage coverage are all valuable provisions but, even if they are enacted, workers on civil law contracts would still have no contract termination protections or a guaranteed right to paid holidays or sick leave. Blurring the line between Labour Code-based contracts and civil law contracts by improving levels of social security or minimum wage coverage may create the illusion that serious progress is being made and may actually hamper further reforms aimed at increasing the job security of civil law contract workers.

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## References

- Arak P., Lewandowski P. and Żakowiecki P. (2014) Dual labour market in Poland – proposals for overcoming the deadlock, IBS Policy Paper 1/2014, Warsaw, Institute for Structural Research (IBS).
- Coe N. M., Johns J. and Ward K. (2008) Flexibility in action: the temporary staffing industry in the Czech Republic and Poland, *Environment and Planning A*, 40 (6), 1391-1415.
- Ćwieluch J. (2015) Grzywnienka, wystą pionko, nakazik, *Polityka* 21 lipca. <http://www.polityka.pl/tygodnikpolityka/spoleczenstwo/1626437,1,inspektor-panstwowej-inspekcji-pracy-o-bezradnosci-wobec-pracodawcow.read>
- Dolado J.J., Garcia-Serrano C., Jimeno Juan F. (2002) Drawing lessons from the boom of temporary jobs in Spain, *Economic Journal*, 112 (480), F270-F295.
- Duda K. (2016) Outsourcing usług ochrony oraz utrzymania czystości w instytucjach publicznych, Wrocław, Ośrodek Myśli Społecznej Im. Ferdynanda Lassalle'a.
- Gatti R., Goraus K. and Morgandi M. (2014) Balancing flexibility and worker protection. understanding labor market duality in Poland, Working Paper 98274, Washington DC, World Bank.
- Goraus K. and Lewandowski P. (2016) Minimum wage violation in Central and Eastern Europe, IBS Working Paper 3/2016, Warsaw, Institute for Structural Research (IBS).
- GUS (2014a) Monitoring rynku pracy, Warsaw, Główny Urząd Statystyczny
- GUS (2014b) Rocznik Statystyczny Pracy 2012, Warsaw, Główny Urząd Statystyczny.
- LABREF database, DG EMPL, European Commission. <http://ec.europa.eu/social/main.jsp?catId=1143&intPagId=3193&langId=en>
- Lewandowski P., Stroński K. and Keister R. (2015) Labour market segmentation and pensions in Polish defined-contribution scheme, IBS Working Paper 9/2015, Warsaw, Institute for Structural Research (IBS).
- MF (2003) Informacja dotycząca rozliczenia podatku dochodowego od osób fizycznych opodatkowanych na ogólnych zasadach za 2002 rok. Warszawa, Ministerstwo Finansów.
- MF (2014) Informacja dotycząca rozliczenia podatku dochodowego od osób fizycznych za 2013 rok. Warszawa, Ministerstwo Finansów.
- MPiPS (2004) Raport z działalności agencji zatrudnienia w 2003 roku, Warszawa, Ministerstwo Rodziny, Pracy i Polityki Społecznej.
- MPiPS (2005) Raport z działalności agencji zatrudnienia w 2004 roku, Warszawa, Ministerstwo Rodziny, Pracy i Polityki Społecznej.
- MPiPS (2015) Informacja o działalności agencji zatrudnienia w 2014 roku, Warszawa, Ministerstwo Rodziny, Pracy i Polityki Społecznej.
- NIK (2010) Informacja o wynikach kontroli naboru pracowników na stanowiska urzędnicze w jednostkach samorządu terytorialnego, Zielona Góra, Najwyższa Izba Kontroli.
- NIK (2014) Produkcja zewnętrzna dla Telewizji Polskiej S.A., Warszawa, Najwyższa Izba Kontroli.
- NIK (2015) Zlecenie podstawowych zadań organów władzy publicznej, Warszawa, Najwyższa Izba Kontroli.
- Pawłowska M. (2012) Premier potępia umowy śmieciowe, a jego ministerstwa zatrudniają tak setki osób. Resorty łamią prawo?, <http://natemat.pl/11567,premier-potepia-umowy-smieciowe-a-jego-ministerstwa-zatrudniają-tak-setki-osob-resorty-lamia-prawo>
- PFHR (2015) Rynek agencji zatrudnienia w 2014 roku, Warszawa, Polskie Forum HR.

Rozwadowska A. (2015) Trudny zawód inspektora pracy, <http://wyborcza.biz/biznes/1,147141,18475377,trudny-zawod-inspektora-pracy.html>

UOKIK (2013) Raport: system zamówień publicznych a rozwój konkurencji w gospodarce, Warszawa, Urząd Ochrony Konkurencji i Konsumentów.