

## Poland

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 include:

- 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 provides that more rushed work periods may be compensated by slow periods or additional rest days. Individual work schedules may also be applied if the worker requests it to take care of a relative or a child under 14 years of age.
- *Fixed-term contracts* are limited to a maximum of 24 months. The new law also suspends 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 is no longer a limit on the number of consecutive fixed-term contracts.
- Whereas the three abovementioned measures apply to all businesses, the law also provides for *specific measures for companies experiencing temporary financial difficulties*, such as a possibility to reduce working time and pay for (a maximum) six months and the introduction of 'inactivity leave', allowing employers who cannot offer their employees any work to dismiss them for (a maximum) six months as an alternative for collective redundancies.
- The bill also introduces special protection for employees receiving benefits due to decreased activity and for employees attending training as they cannot be laid off for 12 months.

This 'Anti-crisis Act', which was adopted on 1 July 2009 and came into effect on 22 August 2009 (Journal of Laws 2009, No. 125, item 1035) was to have expired on 31 December 2011. In June 2011, the social partners, gathered under the aegis of the tripartite committee, 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 the calculation of working time:

- *Maximum duration of fixed-term contracts.* Whereas Article 251 of the Labour Code provides that employers can only sign two fixed-term contracts in a row with employees, by way of exception Article 13 of the Anti-crisis Act allowed the signing of several fixed-term contracts in a row with the same employee, provided that they do not exceed 24 months. One new proposal tabled by the employers was to introduce the possibility for fixed-term contracts of a maximum of four years, with the alternative of becoming a

permanent contract after two years. However, in that case for the next two years employers would be allowed to terminate the contract with one month's notice without having to provide a reason. At their last meeting, in September 2011, the social partners agreed to limit fixed-term contracts to a maximum of 18 months, regardless of the number of successive contracts. Should the employment relationship be extended after the end of the contract, the fixed-term contract would automatically become permanent. The social partners want these principles to be added to the Labour Code.

- *Extending the reference period for the calculation of working time.* Whereas according to the Labour Code the reference period for the calculation of working time is three months, the Anti-crisis Act has extended it to 12 months. Again, the employers would like to make the 12 months the rule and repeal the three month period laid down in the Labour Code. At the September 2011 meeting, the social partners decided to split the difference, setting it at six months. Extending the reference period from three to six months could be done via company agreements signed with unions. If there is no union in the company, agreements may be signed with other employee representatives and the Labour Inspectorate notified.
- *Introduction of a 'project contract'.* Another proposal from the employers' side is the introduction of a new contract, a so-called 'project contract', signed with employees to complete a special project. Such a contract could even last for more than four years. It is unclear whether this proposal is still on the table or not.
- The social partners also committed themselves at the September 2011 meeting to developing a joint position on the *representativeness of union and employers' organisations*, in particular looking at introducing a representativeness criterion at sectoral level and establishing rules on *employee representatives' entitlement to sign collective agreements at company level*, in particular in companies where there is no trade union representation.

At the beginning of January 2012, talks were still going on. At the last meeting of the Tripartite Committee in December 2011, the Minister of Labour and Social Policy apparently presented the social partners with three possible scenarios in an effort to break the deadlock:

- The first proposal consists of creating a temporary bill containing special provisions modelled after the Anti-crisis Act.
- A second proposal aims to permanently add to the Labour Code two provisions from the Anti-crisis Act: namely, increasing the reference period for the calculation of working time to two months and introducing personalised working hours.
- A third proposal foresees a completely new part of the Labour Code on working time in light of the lessons learned from the Anti-crisis Act, while complying with EU law (maximum working time and minimum resting time) and protecting some categories of workers (women who are pregnant or breastfeeding, parents, those doing strenuous jobs and so on).

Both social partners continued to put forward other amendments. The trade unions presented proposals for (1) limiting fixed-term contracts to 24 months, (2) reviewing the regulations governing collective disputes, notably to make possible strikes against central management (or the parent company) and (3) the development of regulations governing union membership to let people working on the basis of a civil-law contract (particularly the self-employed) to join unions and enjoy the same rights as employees. The employers' organisations, for their part,

asked for (1) renewal of the 20 per cent threshold of union representativeness at company level, (2) amendment of the regulations on collective disputes, notably by making unions give clearer grounds for a strike and criteria for determining the lawful character of a social movement, (3) improving independent collective bargaining at company level and (4) reviewing union representatives' special protection.

Discussions became even more complicated in mid-January 2012 when the three union confederations – NSZZ Solidarnosc, FZZ and OPZZ – announced that they would suspend their involvement in the Tripartite Committee, mainly because they consider that the government is violating the Tripartite Committee Act. For instance, the Act provides for at least one Committee meeting every two months – in other words, four meetings of the Presidency and three plenary meetings – but in 2011 only two such meetings took place. The government was also blamed for not properly consulting the social partners via this Committee and for presenting controversial draft reforms without consultation or debate.

In the meantime, the trade unions also started a campaign against the excessive use in Poland of so-called 'junk contracts', in other words, fixed-term contracts and civil law contracts. 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 to the EU27 average of 14 per cent. These contracts do not offer proper 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, in 2010 20.9 per cent of workers had such a civil law contract, which are not governed by labour law (for example, they do not offer the right to paid leave or the minimum wage) and are in particular used for young people. Apart from the high use of these contracts, the trade unions are also strongly concerned by the plan of the main coalition party, the Civic Platform (PO), (proposed in its election programme) to amend the Labour Code to include measures on renewable seasonal contracts. Along similar lines NSZZ Solidarność planned to ask the Polish branch of the International Labour Organization (ILO) to examine whether it is a breach of international conventions that people with civil law contracts have no right to join a union. Not surprisingly, the Polish employers' organisations objected to extending the rights of workers on civil contracts, in particular to allow them to join a trade union, arguing that these flexible contracts should remain as they are crucial to combating the economic crisis.

On 1 June 2012, talks were still ongoing on the agenda: increasing working time flexibility, increasing the security of fixed-term contracts, and abolishing the option of being reinstated in the event of unfair dismissal, in return for higher compensation. The Minister of Labour and Social Policy presented the draft amendments to the Labour Code aimed at "increasing flexibility in the organization of working time and opening up more options to negotiate hours in order to reconcile work with training, another job or even family life." In doing so, the Labour Ministry suggests 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 3 at present); and the setting of working hours with the obligation to inform workers at least 2 weeks in advance. The provisions set forth in the Labour Code would still apply in the absence of agreement between the social partners at company level. Whereas employers' organizations 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.

With regard to providing more security to fixed-term workers, the Ministry's current proposal is to extend the notice period to (prematurely) terminate a fixed-term contract dependent on its duration. Both social partners seem to be in favour of this proposal. Figures released by the Ministry /Central Bureau for Statistics show that 27 percent of workers had a fixed-term contract in 2011! (3,381,000 fixed-term contracts compared to 9,120,000 permanent ones).

As for changes to the law on dismissals, the proposal was to remove the option of reinstating a worker unfairly dismissed and to replace it with a higher level of compensation. This proposal was firmly rejected by the trade unions.

At the meeting of the Tripartite Committee on September 18 2012, talks continued and proposals on the table included:

- Extending the reference period for calculating working time from its current 3 to 12 months: The extension of this system, tried out in association with the Anti-Crisis Act in a large number of companies, has been a request for months. The proposal provides that this extension would be possible if "justified by objectives, technological grounds or reasons affecting the organization of labour."
- Variable working hours: Proposals introduce the possibility of changing the times when work starts and ends. In such a case, going back to work the same day would not be considered as overtime.
- "Intermittent work" (breaks): proposals provide that a single eight-hour workday can be interrupted by up to 5 hours of break.
- Overtime: two different options are proposed depending on the reference period chosen. With the first, overtime means all hours worked over and above 8 hours within a 24-hour timeslot. With the second, overtime means all hours worked over and above an amount specified for the chosen reference period (4 or 12 months). The annual overtime limit would be 150 hours unless a negotiated provision states otherwise. The bill also provides for an increase in overtime remuneration, but the percentage has not yet been determined.
- Adjusting working time via collective agreements: All working time provisions would be implemented via company or sectoral agreements. In the absence of a trade union in a company, employers will have to negotiate with employee representatives. This mostly affects working time and the increase in the reference period.

Poland's new parliament was elected on 9 October 2012, and a coalition between the re-elected centre-right Civic Platform (PO) and the Polish People's Party (PSL) formed in mid-November.

On 12 October, Prime Minister Donald Tusk gave his general policy speech in the Diet, announcing *inter alia* the following proposals:

- Increasing maternity/paternity leave from six months to one year: Under the new system, the parents concerned will receive 100 percent of their full salary for the first six months and 80 percent for the remaining 6 months;

- A return to forms of flexible employment: measures include bringing the reference period used to calculate working time from 6 up to 12 months and variable working hours
- No social contributions for service contracts suspected of concealing 'bogus' self-employed workers: this concerns contracts outside the scope of labour law and covered by civil law. Many of these contracts were signed during the crisis and most are not covered by social contributions. Although the trade unions asked for these contracts (also known as "trash contracts") to be included in the social contribution system, the Prime Minister is against such a move, doing everything to maintain employment levels.

Whereas all trade unions condemned the proposals in general, it comes as no surprise that the employers' organisations welcomed them by and large. In particular the proposals on the "trash" contracts are surprising as, in its Country-specific Recommendations 2012-2013, the EU had clearly indicated that "the partial abuse of self-employment and civil law contracts which are not governed by Labour Law appear to be a cause of labour market segmentation and in-work poverty, which is among the highest in the EU" and had therefore issued the recommendation: "To combat labour market segmentation and in-work poverty, limit excessive use of civil law contracts and extend the probationary period for permanent contracts."

The social partners unanimously and immediately appealed to the government to start dialogue in the Tripartite Commission for Social and Economic Affairs (KT). It would seem that the government has no interest in doing so. On the contrary, it continues to block such discussions by either not attending meetings or coming unprepared or by the Prime Minister not having appointed new KT members after the elections.

## References/sources

### Electronic newsletters/websites

Planet Labor: <http://www.planetlabor.com> EIROOnline: <http://www.eurofound.europa.eu/eiro/> Epsucob@NEWS – Collective Bargaining in the Public Services: <http://www.epsu.org/>

ETUI-AIAS Collective Bargaining newsletter:  
<http://www.etui.org/E-Newsletters/Collective-bargaining-newsletter> )

ETUC website section on economic and social crisis: <http://www.etuc.org/r/1378>

ETUI website section on crisis: <http://www.etui.org/Topics/Crisis>

European Labour Law Network (ELLN) - <http://www.labourlawnetwork.eu>

### Periodicals

Liaisons sociales Europe

Social International

## Other

ILO (2012) World of Work Report 2012: Better jobs for a Better Economy, ILO, Geneva

Laulom, S., Mazuyer, E. Teissier, C., Triomphe, C.E. and Vielle, P. (2012) How has the crisis affected social legislation in Europe? ETUI Policy Brief 2, 2012, Brussels: ETUI.

Available in English and French at: <http://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/How-has-the-crisis-affected-social-legislation-in-Europe>

Mitrus, L. (2010) Anti-crisis regulation of Polish Labour Law, *European Labour Law Journal*, 1 (2).

Muller, A. (2011) Employment protection legislation tested by the economic crisis: A global review of collective dismissals for economic reasons. *Dialogue in Brief*, No. 3, September 2011, ILO, Geneva.

Available in French, English and Spanish at: [http://www.ilo.org/ifpdial/information-resources/publications/WCMS\\_166754/lang--en/index.htm](http://www.ilo.org/ifpdial/information-resources/publications/WCMS_166754/lang--en/index.htm)

Tajgman, D., Saget, C., Elkin, N. and Gravel, E. (2011) Rights at work in times of crisis: Trends at the country level in terms of compliance with international labour standards, *Employment Sector, Employment Working Paper N° 101*, ILO Geneva.

Available at: [http://www.ilo.org/employment/Whatwedo/Publications/working-papers/WCMS\\_167804/lang--en/index.htm](http://www.ilo.org/employment/Whatwedo/Publications/working-papers/WCMS_167804/lang--en/index.htm)

## Contributions by ETUC affiliated organisations:

ETUC Litigation network (meetings 29 June 2012 and 10 December 2012)

ETUC Social Policy and Legislation Ad hoc working group (Meetings 13 November 2011, 5 April 2012, 24 October 2012).

ETUC Legal Experts Network NETLEX (Annual Conference 1-2 December 2011, 11–12 December 2012)