Introduction

The Polish "peaceful revolution" of 1989, in which the independent worker's movement Solidarity played a leading role can be understood as the re-emergence of citizens' rights (Kurczewski 1993). Already from the 1970's, the leaders of the communist regime had started a process of ‘legalisation’ of institutions, rules of behaviour. These legal institutions remained by and large purely formal until 1989, when a “resurrection of rights” and a restoration of the rule of law took place. This equally applies to social and labour rights. While a Labour Code was formally adopted in 1974 and a labour inspectorate set up in the 1980's these played little role back then and the post-1989 period was marked by a resurrection of labour law insofar as it became necessary to define and enforce both new rules governing labour and employment in the market economy and, a new kind of rule-making process in the democratic political system.

From 1989 onwards, public authorities pulled out of direct workforce administration and began to fulfil a new function increasingly characterised by law-making and distant
supervision. The rationale of employment regulation became to guarantee employees’ a certain level of security in holding their job and obtaining the corresponding income, as well as protecting them against possible abuses of the employer (MEL 2005, 176). At the same time, de-regulation, both in the sense of a decentralisation of regulation and a dismantling of certain rules was pursued as a policy objective by government actors aiming to give a certain degree of flexibility to employers, thereby responding to their needs and demands. The tensions between these two objectives reveals the difficulty to define "flexicurity po polsku" (Rymsza 2005).

The formulation of appropriate policies to accompany labour market adjustment, insofar as it touches on the regulation of employment, is an unusually politicized process in the Polish public policy arena. It is one of the few policy domains in which the scope and objectives of public intervention (or the role of state policies) is a matter of debate within and outside the parliamentary arena: partisan organizations have diverging views, and so do trade unions and employers associations. What is at stake is the definition of individual and state (collective) responsibility, in other words a more or less risk-sharing arrangement (Esping-Andersen 1999) to accompany wide scale economic transformations. In that sense, regulation providing protection from certain market mechanisms can be considered functionally equivalent to a welfare benefit. In that perspective, labour market reform belongs to the welfare policy arena and is likely to be heavily determined by political compromises, especially in the context of post-communist transformations. It lies at the heart of "negotiating neoliberalism" (Bandelj 2008).

Reform in this perspective is not a radical one-off event; rather it is a trajectory, not necessarily linear, shaped by a cumulation of successive policy changes, often with a limited immediate individual impact. Using a process-tracing methodology, the paper traces the trajectory of reform in the area of employment regulation and aims to identify the political conditions underlying the implementation of a new policy paradigm, in other words, the institutionalisation of labour flexibility in a context previously dominated by state administration without labour market policies. Policy-making in the area of labour market governance is determined primarily by domestic politics along a regulatory and redistributive dimension, which interact with European integration in the recent years. In some respect, Poland has been an unprecedented laboratory for the negotiation of fundamental policy reforms on a background of systemic change, the actors being themselves embedded in a learning process. Section 1 sets the analytical framework while section 2 reviews successive reforms.

1. Labour market reform: identifying and explaining policy change

European labour markets tend to be heavily regulated for multiple reasons. First, there is a widely shared belief that labour cannot be considered a commodity like any other: market mechanisms apply very imperfectly to "the labour market", which is strongly embedded in social norms and relations (Polanyi 1957; Etzioni 1988; Solow 1990). Secondly, the

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1 This contrasts with unemployment insurance, a completely new area of public policy and a much less salient issue since (i) there is no pre-existing institutional arrangement providing rights and entitlements likely to trigger path-dependence and (ii) it does not concern a visible category with easily identifiable group consciousness and interests, let alone a mobilization capacity. The politics of labour market adjustment are therefore located in the sphere employment policy, rather than unemployment policy.
employment relationship is an asymmetrical exchange in which the weakest part needs to be protected by regulation. The rationale of employment regulation is to guarantee employees’ a certain level of security in holding their job and obtaining the corresponding income, as well as ensuring appropriate working conditions and protecting them against possible abuses of the employer. Thirdly, the importance of labour market regulation in Europe also has socio-political roots: it came as a response to the demands of unions who made job and income security for all a priority since the afterwar period (Crouch 1993). This not only triggered the construction of the modern welfare state, but also the institutionalization of collective bargaining on wages and working conditions, and legislation protecting jobs and employee’s rights (Regini 2000, 12). A further argument in favour of labour market security (and the welfare state more generally) relates to the wider economic environment: it contributes to consumer confidence and consumption capacity, nowadays at the heart of economic growth in capitalist economies. Yet the balance between these different objectives varies across countries.

1.1. Dimensions of variation of labour market (employment) regulation

In most (continental) European countries, and likewise in Poland, the primary instrument of the governance of work and employment relations is a binding labour code, applying equally to both parts of an employment relationship\(^2\). The code governs hiring, firing, establishes a framework for working conditions. It also influences the circulation of workers between different jobs and labour market status, the adjustment capacity of firms with respect to the workforce, and the level of security and predictability on which the individual worker can count. In contemporary European societies, rules governing employment in the economy is are “designed to foster longer-term employer-employee relationships”, but also act "as a shock absorber by shielding workers against job loss and could be seen as an alternative for unemployment insurance" (Van den Noord et al. 2006, 6). In short, they provide various forms of security to employees.\(^3\) Labour regulation can concern both the individual rights of workers (and employers) and their collective rights to organize and bargain. The latter encompass for instance the right to form and join a trade union, the freedom to assemble and organise as workers, and the right to take part in concerted industrial activity such as social dialogue. Collective labour rights determine the nature of the governance of work, how regulation comes about but only indirectly influences work conditions and the redefining of the employment relationship.

**Employment versus work-based contracts**

In modern societies, the rights and protection of workers also derive from a contract, usually, though not always, an employment contract fixing the details of working time, tasks and wage. In function of how encompassing legal regulation is, the scope of discretion in the labour contract may be large, with contracts specifying matters such as hours of work, rates of pay, holidays entitlements and grievance/disciplinary procedures in a discretionary manner, or reduced if norms like maximum working hours and a minimum wage are specified by labour law, thus binding employers.

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\(^2\) The mechanisms and degree of enforcement, however, vary significantly across countries as it may depend more or less heavily on the judiciary, the labour inspectorate or the trade unions.

\(^3\) See Standing (1999) for an extensive definition.
The employment relationship is the central institution of the labour market (Streek 2005, 260). With the rise of industrial society, “the employment relationship has in most countries and sectors become less like a contract of work and more like a contract of employment” (Streek 2005, 260; see also Beck 1992). In a work-based contract, the tasks of conception and execution tend to be integrated: the employer pays a price for a particular piece of work and the organization of the work is left to the supplier, or subcontractor; the relation between the two independent parties is usually limited to the time of work execution, mediated by market coordination (Streek 2005, 260-261). By contrast, the contract of employment integrates the worker into a firm and implies the payment of a regular wage, rather than a price. What is contracted upon is not a particular task, but the availability of the worker to perform tasks as defined by the employer (Streek 2005, 261). It thus provides more security and ongoing prospects to the worker, who is integrated in a hierarchical coordination.

### Table 1 - The employment relationship: two polar types

<table>
<thead>
<tr>
<th>Labour supply</th>
<th>Contract of employment</th>
<th>Work-based contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structure of skills</td>
<td>Deskilled: separation of conception and execution</td>
<td>Skilled: integration of conception and execution</td>
</tr>
<tr>
<td>Labour demand</td>
<td>Ongoing, bureaucratic administration</td>
<td>Project by project craft administration</td>
</tr>
<tr>
<td>Organisation of work</td>
<td>Sale of labour power, wage for time available</td>
<td>Sale of labour, price for completed project</td>
</tr>
</tbody>
</table>

Source: Streek 2005, 260

Yet, the rules applying to employment are restricted to those on an employment contract. Some workers are excluded from some or all statutory rights attached to employment, because they are excluded from standard employment (Dean 1996; Streek 2005). Among them, we find: part-time workers, self-employed, those beyond retirement age, those on civil contracts designed for a specified task. This trend increased with structural changes in the economy, such as the rise of flexible specialisation, giving rise to greater needs for labour flexibility, which resulted in a renewed interest of employers in work-based contracts at the expense of standard employment, and an expansion of non-standard, flexible forms of work. This has also put pressure on labour regulation which serves as a framework for contracts, the fixed work site, and working hours.

Thus, if the employment contract remains the most widespread form of work in advanced industrial countries, it faces a double risk of erosion: on one hand, a marginalisation through the expansion of forms of work that are not regulated by employment regulation and on the other one, an increasing pressure for a modification of its statutory conditions.

**Protection versus flexibility**

Since the 1980’s and 1990’s, labour market regulation increasingly came under criticism as the Keynesian welfare state entered a crisis and achieving full employment by policy means seemed no longer a realistic and attainable objective. Although scientific evidence is lacking,

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4 It is impossible to demonstrate that employment protection actually induces unemployment, although it may aggravate it. Regulation tends to slow down the flows out of unemployment but does not have any observable effect on the flows into unemployment (Esping-Andersen 2000a; 2000b). However, the rigidities arising out of employment protection affect “the relative price” of selected groups of workers, disadvantaging the youth and the low-skilled.
the “rigidities” that the legal conditions of employment impose on employers are often pointed to in the policy debate on labour market adjustment and unemployment. The policy debate on labour flexibility and job security signalled a shift of emphasis on macro outcomes, no longer conceived solely as the protection of individuals against socio-economic risks or the asymmetry of power in the employment relation, but rather, or also, macroeconomic risk arising from regulation. If the argument linking poor employment performance to labour market rigidities remains highly controversial in the scientific and analytical debate (Esping-Andersen 2000), it has been persuasively used in the policy debate5.

Flexibility refers to the capacity of a firm to reorganise input and processes to accommodate changing market demand and production strategy (Regini 2000, 15-16). As a baseline definition, still from an employer’s perspective, labour flexibility can be taken as “the ability to combine the different components of the employment relation (wage levels, skills, working time, job security, etc.) in different ways.” (Regini 2000, 15) In short, flexibility means less constraining rules for employers. Yet, it is important to keep in mind that policies pursuing labour market flexibility as an employers' objective and flexibility (or job security) as a social outcome do not necessarily go hand in hand – and the same for policies of social protection and worker's security in the labour market. Policies do not always have the impact that they claim to have; unintended consequences are frequent.

Since the mid-1990's, a common policy objective of de-regulation policies in West European countries became to remove "only those rules and institutions which, from a comparative point of view, may be shown to impose ‘excessive rigidities’ on economic activity" (Regini 2000, 24). A shift from centrally managed, protected, standard employment towards more flexible, decentralised labour relations obviously implies three kinds of flexibility: flexibility as self-regulation (the collective agreement model); flexibility as a deregulation or unilateral self-regulation; flexibility as external-to-regulation (Gamet 2000, 198). The latter involves a decline of standard employment and an expansion of less regulated forms of work.

1.2. Labour market reform between regulation and redistribution: a complex regulatory regime with distributive implications

Labour market governance is a complex regime combining features of regulatory and redistributive policies. The regime of employment is regulatory in that it applies to specific individual actors (employees or employers), for which it produces immediate coercion (Lowi 1964, 1972). However, it also a redistributive policy in that, especially perhaps in the process of post-communist transformations, it redistributes risk and protection.

Limiting the pure workings of the market, regulation encompasses "the various ways in which the set of activities and relationships associated with the production and distribution of economic resources is 'coordinated', [these] resources allocated and the related conflicts, whether real or potential, structured, that is, prevented or reconciled" (Lange and Regini 1989, 4). The focus here is on state regulation through which: "the state can coordinate activities, allocate resources and structure conflicts, primarily through the exercise of its authority, which in the last analysis, is based on monopoly of legitimate coercion" (Regini 2000, 22).

5 “There has been heated policy debate on the costs and benefits of regulations governing dismissals and other features of employment protection. The key issue is how to keep a balance between the need for firms to adapt to ever-changing market conditions on the one hand, and workers’ employment security on the other." (OECD 2004, 61)
Rather than taking a narrow view centred on the regulation versus deregulation the paper investigated how the complex "regulatory regime" of the labour market broadly conceived is being reshaped. Aside deregulation, reforms marking a change in the regulatory mechanisms, may involve "a decentralization in order to achieve a greater variety of results, or the introduction of 'controlled exceptions' to the general rules" (Regini 2000, 25).

Regulatory policies can be modelled as rules that are both "specific and individual in their impact" (Lowi 1964, 690) and involve general, direct and immediate coercion. They set up specific conditions and constraints for individual or collective behaviour. The rules impose sanctions and obligations and have a direct effect on individual conduct: "although the laws are stated in general terms (…), the impact of regulatory decisions in clearly one of directly raising costs and / or reducing or expanding the alternatives of private individuals" (Lowi 1964, 690).

"The regulatory decision involves a direct choice as to who will be indulged and who deprived. Enforcement of an unfair labor practice on the part of management weakens management in its dealing with labor. While implementation is firm-by-firm and case-by-case, policies cannot be disaggregated to the level of the individual or the single firm (as in distribution), because individual decisions must be made by application of a general rule and therefore become interrelated within the broader standards of law. Decisions cumulate among all individuals affected by the law in roughly the same way." (ibid., 690-691)

Besides, labour market regulation can be considered a segment of the welfare state insofar as it provides protection to a specific category of beneficiaries, those in employment. This is functionally equivalent to other forms of welfare benefits as it aims to restrict employers' discretion in a relationship characterised by power asymmetry and it institutionalizes a protection from pure market mechanisms in hiring, firing and the determination of wages and work conditions.

The rules governing the labour market contribute to define an adjustment trajectory. Labour market adjustment in a context of radical macro-economic transformations is a highly redistributive process triggering increasing inequality as a result of "the transition from a world of jobs that were equally good (or equally bad) to a world of jobs that differ considerably in terms of job security and reward" (Rutkowski 1998, 17). It is a reshuffling process in the most basic sense: it involves the reorganization of job allocation and the redefinition of both private and collective roles, individual and state responsibilities. In this process, many individuals are exposed to a high risk of loss or deterioration of their income and job but they are affected to a varying extent. Finally, regulation may have unintended redistributive effects: employment protection legislation affects "the relative price" of selected groups of workers, disadvantaging the youth and the low-skilled. (Esping-Andersen 2000a; 2000b)

Redistributive policies are modifying the distribution of existing resources, they impose classification or status, categorize activity (Lowi 1985, 74). They divide individuals into broads groups of beneficiaries and non-beneficiaries, by effect of a remote, indirect constraint or coercion (control on eligibility for benefit schemes). The rules therefore work through an "environment of conduct" rather than direct constraint on individual behaviour; "the categories of impact are much broader, approaching social classes. There are haves and have-nots (…) The aim involved is not use of property but property itself, not equal treatment but equal possession, not behaviour but being" (Lowi 1964, 691)
The reform of the labour code is certainly the one that is bound to trigger the toughest negotiations between two groups of actors directly concerned, representatives of employers and representatives of workers, who traditionally hold antagonist positions while falling into two clear-cut camps. The labour code can be considered as a collective good for employers: it is an unusually common interest that brings together both small and large firms, and those in various economic sectors\(^6\) (McMenamin 2005, 221). To a large extent, the same goes for employees since workers in all sectors are in principle equally covered, and thus concerned by labour law.\(^7\) Indeed, among all the issues on which businesses are known to lobby intensively, this one concerns trade unions most directly. Furthermore, labour regulation is of direct importance in the context of post-communist transformations in that it influences the circulation of persons from jobs to unemployment, from unemployment to jobs, and between places of work. In that sense, it is both one of the constitutive element of the process of transformation, and an institutional pillar of emerging capitalism.

### 1.3. The politics of reform: regulatory and redistributive politics

Lowi's "general interpretative scheme", aiming to develop a broad typology of public policies based on "functional categories" (Lowi 1964, 688-689), applicable to welfare policies and beyond, becomes useful here:

"(1) the types of relationships to be found among people are determined by their expectations – by what they hope to achieve or get from relating to others. (2) In politics, expectations are determined by governmental outputs of policies. (3) Therefore, a political relationship is determined by the type of policy at stake, so that for every type of policy there is likely to be a distinctive type of political relationship. If power is defined as a share in the making of policy, or authoritative allocations, then the political relationship in question is a power relationship, or over time, a power structure." (Lowi 1964, 688)

In other words, "it is on the basis of established expectations and a history of earlier government decisions of the same type that single issues are fought out", therefore policies should be defined "in terms of their impact or expected impact on the society" (Lowi 1964, 689). The combination of the effect of policy instruments (which translate into either remote or immediate coercion) and the addressees of policy (individuals, or a more or less specified collective) allows to build a two-way typology. Both dimensions refer to the way in which the state exerts its power (coercion), through sanctions imposed intentionally on citizens (Lowi 1985). Along the first one, the notion of coercion can impose obligations (immediate coercion) or confer powers or privileges (remote coercion) The second dimension is concerned with the way in which coercion affects individuals: policies can affect them directly, by constraining them, or indirectly, by modifying their environment (ibid.). The policy areas thereby defined “constitute real arenas of power”, with a characteristic political structure, political process, elites, and group relations.” (Lowi 1964, 689) In other words,

\(^6\) The only other issue triggering a similar consensus among various kinds of employers may be company taxation

\(^7\) However, the "workers' side" tends to be undermined by an insider-outsider divide. Trade unions represent workers who have a job, and they are more likely to represent workers in traditional, standard forms of work and industrial sectors, than workers in small firms, self-employed and temporary workers. The interests of those who are unemployed, or employed under flexible contracts, may differ.
policies are "types of regimes, each of which is likely to develop its own system of politics" (Lowi 1985, 67).

The regulatory arena is "composed of a multiplicity of groups organized around tangential relations" – “shared attitudes” (Lowi 1964, 695). It cannot be disaggregated into a very large numbers of related actors, however, since regulation affects a broad category of individuals in the same manner. “Because individual regulatory decisions involve direct confrontations of indulged and deprived, the typical political coalition is born of conflict and compromise among tangential interests that usually involve a total sector of the economy.” (ibid., 695). The typical power structure is less stable as "coalitions will shift as the interests change or as conflicts of interest emerge" (ibid., 697). Coalitions form around either interests or ideology, but they are likely to shift from one issue to another, therefore it is unlikely that a parliamentary committee, an administrative agency, a peak association or a policy elite may be able to "contain all the participants long enough to establish a stable power elite" with the capacity to take a leadership position in a process of policy reform (ibid., 697).

Therefore, when policy in a particular domain is identified with immediate coercion on individual conduct, then reform is likely to be dominated by regulatory politics: coalitions pro- or against reform will tend to be based on a whole sector or segment of the economy (rather than being based on classes that cut across sectors), dominant actors are not stable and the decisive policy-making steps take place in the Parliament.

By contrast, the redistributive arena is marked by “a stable and continual conflict that can only be understood in class terms.” (ibid., 715) and characterised by the following features. First, a class cleavage is identifiable. “Issues that involve redistribution (...) activate interests in what are roughly class terms. If there is ever any cohesion within the peak associations, it occurs on redistributive issues, and their rhetoric suggests that they occupy themselves most of the time with these” (ibid., 707). Secondly, politics are determined by expectations: “it is not the actual outcomes but the expectations as to what the outcomes can be that shape the issues and determine their politics. One of the important strategies in any controversial issue is to attempt to define it in redistributive terms in order to broaden the base of opposition or support.” (ibid., 707 note 28) Thirdly, peak associations have a high level of cohesion and play a special role as "the differences among related but competing groups are likely to be settled long before the policies reach the governmental agenda." (ibid., 711) Fourth, the number of policy positions and actors supporting them can generally be reduced to two sides. “In redistribution, there will never be more than two sides and the sides are clear, stable, and consistent. Negotiation is possible, but only for the purpose of strengthening or softening the impact of redistribution. And there is probably one elite for each side.” (ibid., 711) Finally, this cleavage is so present in the executive and legislative decision-making institutions that decisive compromises tend to be settled outside of the parliamentary or government arenas. "So institutionalized does the conflict become that governmental bureaucracies themselves begin to reflect them, as do national party leaders and Administrations. Finally, just as the nature of redistributive policies influence politics towards the centralization and stabilization of conflict, so does it further influence the removal of decision-making from Congress " (ibid., 715)

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8 The example on which Lowi builds in his original article is the complex range of welfare and tax policies adopted in the 1930's in the US in the face of the Great Depression.
A second hypothesis on labour market reform can thus be specified as follows. When policy in a particular domain is identified with immediate coercion creating an environment of conduct, reform is likely to be characterized by distributive politics: two sides tend to dominate the process, the leading role belongs to peak associations; consequently Parliament is no longer the primary decision-making place, another institutional forum may be more central.

Table 2 - Two policy arenas: major actors and political relationships

<table>
<thead>
<tr>
<th>Types of policy</th>
<th>Primary political unit</th>
<th>Relation among units</th>
<th>Power structure</th>
<th>Stability of structure</th>
<th>Primary decisional locus</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation (immediate coercion on individual conduct)</td>
<td>Group</td>
<td>coalition shared subject-matter interest, bargaining (interest politics)</td>
<td>Pluralistic, multi-centred, balance of power</td>
<td>Unstable</td>
<td>Parliament</td>
<td>Agency decentralized from centre by delegation, mixed control</td>
</tr>
<tr>
<td>Redistribution (immediate coercion on selected groups of individuals creating an environment of conduct)</td>
<td>Association</td>
<td>peak association, class, ideology (class politics)</td>
<td>Conflictual elite (elite and counter elite)</td>
<td>Stable</td>
<td>Executive and peak associations</td>
<td>Agency centralized toward top, elaborate standards</td>
</tr>
</tbody>
</table>

Source: adapted from Lowi 1964, 713

2. The trajectory of successive reforms

The shift from universal, centrally managed, protected standard employment towards more flexible and decentralised labour relations has three faces: the retreat of the state from certain aspects of labour regulation as part of the process of setting the institutional foundations for a capitalist economy, a change of the regulatory regime of employment, and the rise of non-standard forms of work.

2.1. Institutionalizing the labour market

The end of the employer-state and the revival of the Labour Code

In conjunction with the macroeconomic stabilisation plan and privatisation prospects, the first step of reshaping labour market regulation in post-communist Poland involved the re-institutionalisation of market mechanisms, in particular as far as hiring and firing were concerned. Prior to 1989, Poland was “command economy” in which everybody had a constitutional right to work and unemployment had been made illegal (Młonek, 1999). A number of rules applicable to the employment relationship existed, but they did not play any major role since the communist regime was not characterized by the rule of law. Labour legislation had first appeared in the interwar period, before being remodelled in 1974 under the communist regime. The 1974 Labour Code comprised rules stipulating the right to work

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9 peak associations are stable and broad interest-based organisations within a particular field of society.
(a formal guarantee of full employment) and the "duty to work", which allowed public authorities to fine men in working age who did not work\textsuperscript{10} (Surdej 2004b, 13). Aside this, it kept some elements of the early codification: an employment relationship supposedly based on the freedom to contract, a distinction between the contract of indefinite duration, the norm, that of pre-determined, short duration, the exception, and finally rules for employee dismissal (Surdej 2004b, 13). The small number of modifications between 1945 and 1989, ten at most\textsuperscript{11}, testifies that it was a rather inactive piece of legislation (Gardawska 2002a). The Labour Code was revived only after 1989.

Given this, in the fall of 1989, at the outset of economic transformations, changing labour law was a necessity, but a lesser priority: reformers were mainly preoccupied with macroeconomic stabilization, liberalization and privatization (Balcerowicz 1995; Surdej 2004a, 2004b). At the time, “there [was] a prevailing belief that the government should take care of the economy first and then try to develop the legal superstructure.” (Świątkowski 1990, 45). A new basis for labour regulation was not perceived as an element of major importance for the functioning of the labour market; priorities were elsewhere, for instance in creating good conditions for economic restructuring.\textsuperscript{12}

The major laws needed to prepare the ground for economic restructuring and labour market adjustment were passed within the last four days of 1989 with little involvement of the parliament: the Law on Collective Dismissals on 28 December 1989, the Law on Employment and Unemployment on 29 December 1989, immediately followed by the programme of macroeconomic stabilization, also referred to as “Balcerowicz plan” on 31 December 1989/1\textsuperscript{st} January 1990. This first series of laws restoring market mechanisms in workforce allocation decidedly set in motion the process of labour adjustment, by allowing dismissals, re-establishing the market and defining employment and unemployment. It set the conditions of workforce reductions and established some clauses for the protection of employees affected by these reductions, possibly aiming to give the trade unions some leverage on selecting who is made redundant (Surdej 2004a, 27). Dismissals exceeding 10% of the workforce of a given plant should follow a special procedure. The employer had several obligations: notifying the relevant trade unions one month and a half in advance, stating the reasons for redundancies and the number of people concerned; informing the local labour office; elaborating a programme for retraining and the re-employment of the employees made redundant; making redundancy payments, calculated as one month of pay per decade in the job (ranging from 1 month for less than 10 years of tenure, to a maximum of 3 months for tenure over 20 years).

**From centralised control on wages to plant-level bargaining**

The second major aspect of the state disengagement from administrating the workforce is the liberation of salaries and the withering away of state control on the level of wages. While wages were centrally fixed prior to 1989, the liberalisation of the labour market and the launch of privatisation put and end to this in the rapidly expanding private sector. Following price liberalisation in Poland in 1989, the necessity to fight inflation justified the persistence of state control on wages through tax-based policies (ILO 1995a). Excess wage increases

\textsuperscript{10} Naturally, the "duty to work" was immediately abolished in the early 1990's.

\textsuperscript{11} to be compared with 20 amendments between 1989 and 2002, and many more beyond this date

\textsuperscript{12} In his book Eight Hundred Days recounting his thinking when he was in office as a deputy prime minister, Leszek Balcerowicz does not even once mention labour regulation among the tasks and issues he had to deal with in his (Surdej 2004a, 28).
were penalised by a progressive taxation 13 to avoid fuelling inflation, which led to a real wage decline. Regulation was mainly targeting the public sector, thus virtually all workers initially, and then a decreasing share of them. The potential for union pressure on wages was considerably restricted as a consequence. Tax-based income policies were abandoned in 1995-1996, leaving wage determination to social partners.

The Tripartite Commission, in its first version, provided the main forum for wage negotiations, but concerned almost exclusively the budget sector. During its active period in 1995-1996, the commission established common positions on the growth of average monthly wages in enterprises during the third and fourth quarters of 1994; the level of resources to be allocated to wages in budget sector institutions in 1995; the maximum annual growth rate of average monthly wages in enterprises for 1995, 1996 and 1997; the expected level of average pay in budget sector and pay differential in sub sectors (Casale 2001, 10). Union leverage was potentially strong since the voting powers of the union side equalled those of government and employers representatives taken together (Pankow 1996), but it was undermined by a lack of cooperation between OPZZ and Solidarity and the self-restraining behaviour of the latter. Negotiations were suspended at the end of 1996. The Commission had practically no influence on wages in the private sector, where the absence of both unions and minimum standards often allowed for employer opportunism and unilaterally imposed wages and employment conditions. In the mid 1990’s, wage-bargaining was taking place at the local plant level in more than 80% of Polish firms (ILO 1997), often without the presence of a shopfloor union. NSZZ Solidarity supported performance-based pay (Solidarity 2001).

The minimum wage was formally recognised by the Polish Constitution adopted in 1997. As a rule, it is set at a uniform rate by the Ministry of Labour and Social Policy. The government had planned to differentiate it according to regions in order to match the variation of average wages, but this was not adopted (Surdej 2004b, 11). Solidarity militated for a higher level set at 40 % of the average wage (Solidarity 2001). At the end of the 1990’s, it was opposing the indexation of the minimum wage on inflation and the introduction of a lower separate minimum wage for labour markets entrants (Casale 2001). A new legislation on the minimum wage was adopted in October 2002, which increased its amount, changed the way it is set, and established a lower rate for school leavers14 (Czarstacy 2002b). According to the new law, from 2003 onwards the minimum wage is subject to negotiation in the Tripartite Commission on the basis of a government proposal15.

This is one of the few subjects on which the trade unions, particularly divided in Poland, always managed to agree (Kruszczinski, interview). However, with marginal variation over time, since 2000, it is wavering between 35% and 37% of average wage, one of the lowest rates among EU countries.16 At such a low level, the minimum wage bears the pre-poverty

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13 the tax on wage increase (popiwek), was initially targeting the total wage bill of enterprises, which came at the expense of employment. It was revised in 1991 to target average individual wages.

14 Such a measure aimed to foster youth employment, at a time when unemployment was exceeding 40% for people in the 15-24 age range.

15 In case of failing agreement in the Commission, the minimum wage is set by a government resolution. The law further included a mechanism of indexation based on the forecast of annual average price index, with annual or bi-annual adjustment (Czarstacy 2002b).

16 To be compared with 34% in Spain (lowest in the EU) and 37% in the UK, where the minimum wage is a relatively recent introduction.
income level (estimated at 30% of average wage)\textsuperscript{17}. Raising the minimum wage has been a constant demand of the unions, chiefly Solidarity, yet the government showed no sign of responsiveness. Three motives for refusing to consider a rise are usually opposed: the minimum wage serves as an index for the calculation of many other benefits and wages, therefore any marginal increase is likely to trigger significant additional budget costs; employers keep complaining about the cost of labour and find more support; the government wants to cut social expenditure to reduce budget deficit in view of qualifying for joining the Euro (Kruszczynski, interview).

\textbf{2.2. Successive reforms of the Labour Code: towards flexicurity po-polsku?}

Successive reforms of the Labour Code have taken place in four waves. In 1995-1996, a first, limited attempt to modify the text aimed to adapt it further to the new economic context. Between 1997 and 2001, the second attempt to modify the labour code was subject to trade union pressure to protect standard employment against deregulation. From 2001, a clear move towards de-regulation and greater institutionalised flexibility signalled a revival of Labour Code reform. Nevertheless, interestingly, the government stepped back on some issues in 2003-2004 when it had to cope with aligning rules with European framework legislation and policy guidelines in the context of looming EU accession.

\textbf{1995-1996: a limited attempt to further adapt the old Labour Code}

The issue of a fundamental reform of the labour code came back on the political agenda and under public attention in 1995 as it became clear that the existing labour code was not entirely suitable for a market economy: for instance, it did not impose any limitation on the renewal of fixed-term contracts, which led to widespread abuse.

In 1996, some changes to labour law were initiated by the government, at the time backed by a centre-left coalition (SLD – UP – PSL). To prepare this, an \textit{Extraordinary Parliamentary Commission for the Modification of Labour Law} worked from July 1994 until February 1996 under the guidance of Wit Majewski, an SLD representative. The Commission was composed of 26 members, of which 14 were union militants (Surdej 2004a, 29). It discussed the proposal to modify the labour code article by article. Still, on the whole, the proposed modifications were not elaborated directly by the Parliamentary Commission, but rather by an expert committee for the reform of the labour law. This committee, composed mainly of labour law professors, had been established by Tadeusz Mazowiecki, then prime minister, as early as in 1990 and had been operating ever since as a standing advisory body to the Ministry of labour and social policy. Its implicit mission in the eyes of the founder was to design a new labour law for a social market economy (Surdej 2004a). From 1991 to 1996 it carried it work under the presedency of Baczkowski, who was also a deputy minister of labour and social policy in five successive governments, before he became minister for short period in 1996; this ensured continuity in the work on labour legislation in this expert committee (Surdej 2004b).

The Parliamentary Commission, acting to draft an acceptable reform compromise, held meetings with the participation of representatives of the major trade unions (OPZZ and

\textsuperscript{17} To give an element of comparison, the 1997-1998 pension reform established an anti-poverty social safety net by introducing a minimum pension fixed at a level of 35\% of the average wage.

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Solidarity), representatives of employers (KPP, PRB, BCC), and two public institutions closely involved in the matter, the social security institution (ZUS) and the labour inspectorate (PIP). The outcome of this work was sent to Sejm and passed in first reading in late November 1995. The Senate made only minor changes and the law was passed in second reading in Sejm on 2 February 1996 and entered into force in June 1996. This amendment eliminated outdated legal provisions no longer relevant in the market economy and brought greater uniformity of regulation for employment in the public and private sectors (Kwiatkowski et al., 2001, 25; Czarzasty 2002a).

The most contentious issue was the definition of the employment contract. The spreading practice of by-passing the labour code by using task-based contracts for assignments that, given their regularity and a unique employer, would normally require more binding employment contracts, had revealed the holes in the existing legislation. This happens at the expense of worker's protection: the Labour Code by definition only governs employment contracts, while contracts covering the execution of a precise task within a specific, limited time frame (the so-called civil contracts in Poland) fall under the rules of the Civil Code. It makes a major difference as the Civil Code comprises no rules on employment regulation, which means that the contractor is neither considered an employee nor protected against employers' abuse: it is a work-based contract (Streek 2005). In an attempt to remedy this situation, the Extraordinary Parliamentary Commission put forward a proposal to modify the legal definition of employment (Surdej 2004a, 30).

The trade unions, the labour inspectorate (PIP) and the Social Insurance Institution (ZUS), PIP and ZUS called for the introduction of a legal provision stating that every job automatically implied an employment contract unless the employer proved that it qualified for an agency contract. The proposal was opposed by the Ministry of Labour and Social Policy and eventually rejected with the argument that it would have created legal uncertainty and high implementation costs. The compromise consisted in adopting a solution that defined the employment contract as “a work under principal’s supervision”. (Surdej 2004a, 30-31), as opposed to task-based contracts designed in principle for independent workers. This seems an insufficient measure given that some enterprises were already using civil contracts in abnormal situations. A few other changes were introduced in the Labour Code, without putting its continuity into question. The most important of these is a restriction on multiplying fixed-term contracts: only two such contracts between a given employee and a given employer can succeed to each other to, a renewal for a third contract automatically taking the shape of a undetermined, long-term one.

While the two main trade union federations proved satisfied with the changes, the Labour Code in general continued to be criticised by employers for being too employee-friendly, too rigid for small businesses, and insufficiently amended (Czarzasty, 2002a; Surdej 2004a). In fact, the lack of radical changes to the Code at this stage could be seen as a union-friendly compromise of the ruling coalition composed of the Democratic Left Alliance (SLD) and Polish Peasants Party (PSL) (Czarzasty, 2002a).
1997-2001: trade union pressure to protect standard employment against attempts to deregulate\textsuperscript{18}

By 1997, the SLD and peasant government coalition had thus introduced some non-radical revisions to the labour code while keeping the bulk of it unchanged, which was seen as damaging for business and interpreted as an indication of both union power and employers' failure to organize and lobby efficiently for their interests. In particular the main employer organisation, the Confederation of Polish Employers was perceived to have reacted too little (McMenamin 2005, 224).

In a context of rising unemployment, labour law reform was taken more seriously; it was an agenda of the AWS coalition (connected to the Solidarity trade union), which returned to power in 1997. The third legislature signalled a turn in employers behaviour, with a large number of proposals to amend the labour code put forward. Two reform projects were especially significant: the union proposal for shortening the working week and a series of liberalising measures proposed by businesses; they triggered an ongoing battle over labour law reform opposing the two sides for several years (McMenamin 2005, 224).

The labour code reform was put onto the political agenda by a coalition of business associations gathering the Confederation of Polish Employers,\textsuperscript{19} the Business Centre Club, the Polish Chamber of Commerce, and the Association of Polish Artisans, representing small craft businesses. Although there was no formal umbrella group, this was a well-coordinated effort with the administrative support and technical analysis drawing on the capacity of Business Centre Club. The coalition worked to prepare a detailed and radical bill, aiming to significantly increase flexibility and reduce labour costs. Their first proposal was a law focusing on improving conditions for SMEs\textsuperscript{20}, a theme that both the Freedom Union, the party of Leszek Balcerowicz, and AWS were attached to, but in fact a number of measures adopted within this frame concerned all firms and aimed to reform the labour market in general (Mc Menamin 2005, 229). In parliament, a specific SME committee\textsuperscript{21} was dealing with this bill and other issues relevant to small businesses. In reality however, the draft bill included both measures concerning overtime and fixed-term contracts of interest to all employers\textsuperscript{22} and measures specifically targeting SMEs, exempting them from certain obligations\textsuperscript{23} Mc Menamin 2005, 230).

\textsuperscript{18} this section draws on Mc Menamin 2005 who specifically analysed business lobbying in relation to the reform of the labour code in this period. Given the difficulty to reconstruct a policy process ex post as time passes, since it implies tracing the individuals who were involved and relying on their possibly distorted memories, his work based on a series of interviews carried out closer to the events provides valuable information.

\textsuperscript{19} Konfedercja Polskich Pracodawcow (KPP). Note that the Confederation of Private Employers (Polska Konfederacja Pracodawcow Prywatnych – PKPP Leviatan), which quickly became the leading employers organization, was founded only in 1999.

\textsuperscript{20} SMEs are an important segment of the Polish economy: they constituted 95% of all enterprises and employed 50% of the working population in 2002.

\textsuperscript{21} Komisja Malych i Srednich Przedsiębiorstw

\textsuperscript{22} substantial extensions in maximum overtime allowance, a 50% cut in overtime pay, softening the limit of two consecutive fixed-term contracts: an employer can overcome this if at least one fixed-term contract is longer than six months

\textsuperscript{23} exemption from the obligation to post work and pay regulations for enterprises employing less than 20 employees; exemptions for some SMEs from a range of safety and hygiene regulations; removal of the lump sum payment to retirees for firms of less than 20 employees.
The way in which the bill was discussed and presented largely explains how it was received. The leaders of the business coalition themselves recognised that their strategy was inadequate: the text had been shown neither to the government nor Solidarity before reaching parliament. It was discussed only in the SME committee, a favourable audience a priori, but also a committee with no history of passing legislation and no political weight (Mc Menamin 2005, 232). AWS and SLD were committed to rejecting the proposal. After the SME bill was rejected in its first parliamentary reading, business associations and their political allies learned to behave more skilfully. They turned to a more efficient active lobbying strategy, talking to politicians of the opposite side to see which elements of the bill may be acceptable to them and persuade them, lobbying the government directly, using personal channels rather than institutional ones (Mc Menamin 2005, 232-234).

In the meantime, a distinct project explicitly aiming to reform the labour code was taking shape. During the debate on the SME bill, both left and right political forces were publicizing proposals concerned with the duration of the workweek and working time, primarily aiming to satisfy union demands for a shorter working week. The "left" (SLD) realized that they also had to make some concessions towards liberalising measures (Mc Menamin 2005, 235).

This led to two draft bills: one from the governing coalition and one from the opposition, both appearing sympathetic to unions' concerns. The first one was proposed in the Senate by Solidarity, supported by a faction of the party only. It focused on two measures: reducing the forty-two hour workweek to forty hours with no reduction in pay and free Saturdays in place of old designated free days. The proposal included also practical provisions for the implementation of these changes in a worker-friendly way, and other pro-union or pro-worker adjustments to regulations (Mc Menamin 2005, 235- 236). The second one was proposed by SLD in the Sejm. It was supported by the leadership of the party and was more likely to represent a compromise between the pro-union and pro-business factions (Mc Menamin 2005, 236). The bill "was designed to ensure that AWS could not take the credit amongst workers, as the party that had shortened the working week. However, it also had something to offer employers and was, to some extent, inspired by the small enterprise bill. The bill simply declared a 40-hour week and increased the overtime limit from 150 to 200 hours per year." (ibid., 236) In comparison with the Solidarity bill, the proposal of the left would have raised the cost of labour significantly, but it was less of a threat to employers since it did not provide for free Saturdays and raised the overtime limit. Both proposals would allow to uniform working conditions across branches, given that in many state sectors such as steel, energy, mining, the 40-hour week already existed. (ibid.)

24 "The business associations cooperated with the SME committee of the Sejm. The bill encountered no opposition in this committee but suffered a crushing defeat at its first reading in a plenary session of the Sejm. In retrospect, business association leaders, members of the committee and others all agreed that the content of the bill and the political strategy were unrealistic. (...) At the time, however, employers maintained that their bill was politically realistic. (...) The bill had little to offer workers. (...) it was treated almost as a provocation by trade unions. They interpreted it as a direct challenge to their political power and also as a direct challenge to the state’s vocation to protect workers against untrammeled capitalism. They were particularly irritated by statements which argued that the labour code was ‘pro-worker’ and should be amended so that there would be ‘equality’ between workers and employers.” (Mc Menamin 2005, 231-232, on the basis of interviews of business leaders and trade unionists)

25 Cf committee debates on 16 December 1997, 19 May 1998, etc.
Taking its time, the government published a unique draft in September 1999 attempting to bring together the three previous proposals: “a compromise between the pro-union bills of AWS and SLD and the pro-business bill of the SME committee” (Mc Menamin 2005, 240). Workers had their Saturdays, a gradual implementation of the 40-hour workweek, plus two extra days on the annual minimum leave. Employers obtained an extension of maximum overtime allowed, a cut by half of overtime pay, and the abolition of restrictions on sequential temporary contracts (Mc Menamin 2005, 240). The unions were strongly opposed to most measures, arguing that not all measures involved had been discussed in the Tripartite Commission and the proposal was buried in October 1999 as the unions announced that the MPs connected with them would vote against the bill (Mc Menamin 2005, 241).

After this failure, the government decided to limit itself to implementing what the unions called for: the 40 hour and five-day week, with a two-year phase-in for the former. This was passed without the support of the Freedom Union, while two renewed attempts to pass bills that would liberalise the labour code were defeated: a resurrection of the failed SME bill by the Freedom Union, and a bill introducing a specific, more liberal labour code for SMEs aside the regular one (Mc Menamin 2005, 243). Finally, a bill banning working on Sunday in firms employing more than 5 people, proposed by a faction of AWS, was passed with the support of the Peasant party, small parties and independents. The bill “was aimed mainly at foreign hypermarkets, which many saw as destructive of Polish business, family life and workers’ rights” (Mc Menamin 2005, 244). In the face of many opposing voices in the public arena, it was eventually vetoed by the president.

In conclusion, the period of the third Sejm was marked by repeated attempts to liberalise or bypass the labour code, but the continued pressure of trade unions (in particular Solidarity, given its strong link to the AWS coalition) and business lobbying inefficiency, led to a consolidation of the standard employment contract. Conditions even improved with a shortened working week, while new legal or administrative burdens fell on employers, such as the requirement to establish internal company bylaws and social funds (Gardawski 2002a). As a result of the failure of adopting a law taking into account the specificity of SMEs, they remained subject to the same requirements as large companies, something that employers organisations, in particular KPP, the most authoritative defender of private employers at the time, continued to vigorously denounce. Nevertheless, the debate had clearly moved: the "left" had made some significant steps towards a more business-friendly position, at times departing even from the pro-workers moves of some parts of AWS. Thus two increasingly separate lines of cleavages are emerging on the issue of labour law reform: the usual left-right divide, and a workers-business opposition, while the left and workers side on one hand, and the right and employers' side on the other one are not necessarily overlapping.

2001-2003: long-awaited labour code reforms and de-regulation

Following general elections in 2001, in the face of rapidly rising unemployment, the new left coalition government taking office in autumn made boosting economic development the highest priority on the agenda. To achieve its agenda, the government planned reforms aiming at a combination of improving flexibility of the labour market and supporting SMEs. When Jerzy Hausner took up his post of Minister of Labour and Social Policy, he declared his

26 The economic programme of the new government consisted of three packages: "Enterprise above all (Przede wszystkim przedsiębiorczość, "First Job" (Pierwsza Praca) and "Infrastructure – the key to development" (Infrastruktura- klucz do rozwoju). The latter is not directly related to the object of this thesis. "First Job" is explained and analyzed in chapter 6.
intention of introducing profound changes to the Labour Code in view of reducing financial costs and administrative burden for enterprises.\textsuperscript{27}

Although the right-wing incumbent government had been defeated, business forces seemed altogether much better represented in both government and Parliament, while a number of trade unionists who were holding a parliamentary mandate in the previous Sejm lost their seat. A group of deputies representing private business appeared in the Sejm. Jacek Piechota (SLD), who previously chaired the parliamentary committee on SMEs\textsuperscript{28} was nominated Minister of the Economy, which was a clear signal. His first intervention was to draw up and circulate a list of demands from SME owners (Gardawski 2002a).

A renewal of the government approach to law-making also contributed to a new atmosphere. In contrast with earlier government practice, Hausner initially expressed his commitment to pursue such a serious reform with the acceptance of all the significant institutional partners, therefore he first worked to revive the Tripartite Commission, the institution for social dialogue paralysed since OPZZ had withdrawn. At several occasions, Hausner had expressed a long-lasting conviction that social dialogue and what he terms "interactive governance" through partnership are highly beneficial, albeit in a strategic vision, and with the understanding that priority must be given to a new of type corporatism encompassing more actors than just the groups organising themselves to defend old privileges in traditional economic sectors (Hausner 2005, interview). The innovative method was initially welcomed by the trade unions. It appeared radically different from the way in which the previous government had prepared a law behind closed door without consultations with all sides.

Measures towards enterprises were grouped in the programme "Enterprise above all", approved in the beginning of 2002. The title of the document clearly reflects the strong belief of government elites that easing the burden for entrepreneurs would allow to speed up economic growth and ultimately increase the number of available jobs. A proposal for changes to the labour code was prepared by the Ministry of Labour and Social Policy, the Deputy Minister for Labour and Social Policy, Krystyna Tokarska-Biernacik being in charge of coordination both within the government and with the parliament.

The package of labour law changes was presented and discussed with the social partners in a Tripartite Commission meeting on 28 January 2002.\textsuperscript{29} The initial negotiations seemed promising, with media reports in early 2002 stating that agreement seemed close between the leadership of OPZZ and NSZZ Solidarnosc. The two main trade unions seemed to agree on measures aiming to reduce administrative costs falling on enterprises, although they rejected the measures aiming to reduce the role and function of trade unions in collective agreements (a right for employers to dissolve collective agreements against unions) (Gardawski 2002b). The course of events took another direction, however, with NSZZ Solidarnosc eventually rejecting the proposals for amending the labour code.

\textsuperscript{27} Changes in labour law in 2002 "were meant to reduce bureaucracy in labour relations, reduce the costs associated with hiring of workers, and to increase the flexibility of working time." (MEL 2004, 20)

\textsuperscript{28} the committee at the origin of the pro-employer SME bill proposal

\textsuperscript{29} Prime Minister Marek Belka presented a document on the government projected economic strategy, Marek Kossowski, undersecretary of State of the Ministry of Economy presented the “Entreprise above all” programme and Minister of Economy Jerzy Hausner presented the "first job" programme (Communiqué of the Tripartite Commission 28.01.02)
Nevertheless, the trade union OPZZ, the employers associations PKPP and ZRP (the Polish Craft Association) worked out a common position, stating their reservations on several aspects, ranging from the dissolution of collective agreements and conditions of leave, to severance and overtime pay (Gardawski 2002b). Two agreements were signed on 19 April and 8 May 2002, with NSZZ Solidarnosc keeping out and even mobilising a demonstration in Warsaw against the government proposal. However, the consequences of this opposition were limited as the union had lost parliamentary representation and protest remained circumscribed. The government made some changes to the proposal consistent with trade unions’ demands and decided to move forward and submit the project to Parliament, despite the lack of unified support of the social partners.

The Sejm adopted the law modifying the Labour Code on 26 July 2002 with the votes of the governing social-democratic coalition supported by Platform Obywatelska (PO), following which it was passed at the Senate on 7 August 2002 (Surdej 2004a, 34). For this success, and his reactivation of social dialogue at the national level, Hausner was deeply lauded by Gazeta Wyborcza, one of Poland's most influential daily newspaper who called him "the best since Kuron" and praised him in the following terms: "rather than endlessly reminding all and sundry about social justice, Minister Hausner has created a language in which he combines economic slogans with ones about the building of civil society, with academic knowledge thrown in for good measure. (...) he has gained standing (if not necessarily affinity) among trade union people" (18 October 2002, cited by Gardawski 2002a). Unions, on the other hand, seemed to have fully internalised the constraints of a market economy and given the unemployment climate, started to buy the argument that a limited degree of de-regulation was beneficial to counter unemployment, and in the final analysis, employment-friendly (Kruszczinski interview, OPZZ interview).

Meanwhile, before the government proposal was to be examined by parliament, PO had presented its own, more radical project which was subsequently abandoned. It contained many business-friendly measures: the elimination of rule limiting the number of successive fixed-term contracts, the right to terminate the employment contract of an employee absent for longer than a month, a reduction of sick pay entitlements and a lowering of the employer burden in sick pay to the first week, a significant increase of overtime allowance (from 150 to 240 hours per worker per year), and finally the right for an enterprise in danger of bankruptcy to suspend some provisions of the Labour Code (Czarzasty, 2002a).

The actual changes introduced by the law of 2002 are well captured by the redefinition of the employment relationship. In the face of a proliferation of certain forms of non-standard

30 On this occasion, it seems that the NSZZ Solidarity representative, Sniadek, who was sitting at the Tripartite Commission on behalf of his organization took a stance that was invalidated by the rest of the union leadership. His position was rejected by the Presidium
31 between several thousands and several tens of thousands people demonstrated on 26 April 2002, depending on sources (Gardawski 2002b)
33 Jacek Kuron was the Ministry of Labour of the first post-communist government and remains perhaps one of the most highly admired individual among Polish politicians since 1989. Prior to 1989, he had been a militant of industrial democracy and a leading figure of opposition and independent workers movements. As a minister, he is remembered for creating the unemployment benefit and attempting to initiate social dialogue, mainly with a Pact on State Enterprise which was the origin of national-level tripartite institutions.
employment, the law of 2002 attempted to limit the substitution of the employment contract by task-based contracts not subject to the Labour Code. It introduced a new definition of employment, the fundamental criteria of which is the existence of "an employment relationship, irrespective of the name of contract made by the parties" (article 22.1.1). In turn, the employment relationship is the one through which "the employee agrees to perform a specified type of work for and under the directions of the employer, in a place and at times designated by the employer, and the employer agrees to employ the employee in return for remuneration" (Labour Code, article 22.1). Furthermore, a ban on abusive civil contracts is spelt out as follows: "a contract of employment shall not be replaced by a civil law contract on the same terms of performing work as those specified" (article 22.1.1). While the aim was to render illegal the practice of abusive dependent self-employment based on unprotected civil contracts, whether these rules grant an effective protection is uncertain, especially if combined with weak enforcement by the legal apparatus.

Aside this, a considerable amount of measures introduced by these new laws had the effect to increase the flexibility of labour. First, the law of 2002 suspended, until the day of EU accession, the rule imposing that after two fixed-term contract, an employee should be offer a undetermined one. This can be seen as a way to increase numerical flexibility, but it is detrimental to employment stability since it allows for an indefinite number of short-term contracts in a row. Secondly, by modifying the law on collective dismissals of 1989, it diminished both their cost as it introduced more restrictive conditions for being granted severance payment, and their visibility by limiting the consultation requirement to the enterprise union instead of, previously, the regional office. Procedures for collective dismissals were also shortened and simplified. However, as the next session will show, new legislation in 2003 had to step back on some of these measures. Thirdly, the law expanded working time flexibility as it modified the way in which working hours are calculated, allowing for more flexible arrangements in the organisation of work and making maximum working time less of a constraint. Furthermore, it cut significantly the level of overtime pay, for which the employer can from then on also grant free time. In accordance with the government objective of facilitating economic activity, SMEs were granted an exemption from a number of internal company regulations considered bureaucratic and cumbersome procedures of little use in these small units (working and remuneration codes), while health and safety regulations and procedures were simplified for all employers.

The synergy between the government objective of stimulating economic development and labour and social reforms was reinforced when the Ministry of Economy and the Ministry of Labour and Social Policy were merged as one single portfolio placed in the hands of Jerzy Hausner in July 2003. In the summer 2002, a special legal commission for the revision of the Labour Code (Komisja Kodyfikacyjna Prawa Pracy) was instituted for a duration of four years. An independent body gathering experts in the matter of labour law, it was headed by Michal Sewerynski, a recognized Law professor (who later became a Minister of education in 2005). While such commissions are regularly instituted in Poland to reform a wide body of

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34 This could only be done until the date of accession since it breaches European rules defining minimum employment standards, including a restriction on the number of consecutive fixed-term contracts
35 Later, however, Hausner expressed his difficulty to work with the new Prime Minister Marek Belka, who, an economist himself, kept challenging the decisions and views of the super-Ministry of Economy.
36 Rozporządzenie Rady Ministrow w sprawie utworzenia Komisji Kodyfikacyjnej Prawa Pracy 20 sierpnia 2002 (Dz U 2002/139 item 1167)
laws constituting a Code, it can also be seen as a way to intensify the technical character of labour law reform, and especially of the transposition of the acquis into national law, in sum an attempt to further de-politicize this process. In reality, this commission had wider role, with an implicit objective to rewrite the Labour Code entirely: according to the ordinance, its primary mission was to elaborate the foundations for a "recodification of individual labour law" and a "codification of collective labour law", together with drafting legal projects to meet EU standards. Naturally, it also served the purpose of accelerating the process of integrating EU provisions into Polish law.

2003-2005: Legislative changes induced by EU accession

Although this was at the margin of legislative alignment with the EU acquis, labour market regulation was affected by the preparation for EU membership\(^3\). The requirement to integrate the EU acquis into national law applied in two areas which relate to employment regulation: a large body of detailed and binding rules needed to implement the free movement of persons and, more of interest, selected provisions concerning employment and social policy (negotiation chapter 13), which contained little binding regulations at the time, but a number of directives requiring transposition into Polish law.

Therefore, the terms of the debate on law-making slightly changed, taking a more technical character with the urgent necessity to bring Polish legislation in line with European norms as accession became a tangible and proximate deadline set on the 1\(^{st}\) of May 2004. The accession negotiations were closed at the Copenhagen Council on 13\(^{th}\) December 2002. In 2003, legislative work focused on completing the integration of the acquis in the area of free movement and social policy and employment, leading to the adoption of three texts: the Law of 13 March 2003 on special rules for terminating labour relations for reasons not tied to the employees\(^3\), the Law of 9 July 2003 on the hiring of temporary workers\(^3\) and the Law of 14 November 2003 on amendments to the Labour Code and related laws\(^4\), aiming to refine certain aspects of labour legislation and finalise the adaptation of individual labour law to EU requirements.

The impact of these laws on labour flexibility or security is a mixed picture. On one hand, they stepped back on some previously adopted measures aiming at greater flexibility. The ban on more than two consecutive fixed-term contracts was re-introduced, yet with a list of exclusions from this limit. The law of 13 March on collective dismissals considerably enlarged the requirements for information and consultation of employees in the case of mass redundancies: the right can be exercised even in the absence of a union in the enterprise, a 30-day period of notice must be respected, all employees fired for reasons independent from them are eligible to severance payment, with no exception and the labour office must be notified too. On the other hand, the rules concerning working time were in some respect changed again, introducing a more flexible calculation, an increase of daily working hours, along with new rules facilitating work during the weekend (Saturday and Sunday) The latter is better distinguished, allowing for separate contracts specially for weekend work. More

\(^3\) The number of transposition acts needed in the area of labour and social security was lower than in many other domains covered more extensively by the acquis: according to transposition commitments as expressed in the National Pre-Accession Programmes, four acts related to labour regulation were scheduled for adoption in 2000, another four in 2001 and only three in 2002 (Zubek 2005).

\(^4\) Dz U 90 item 844

\(^5\) DZ U 166, item 1608

\(^6\) Dz U 213, item 2081

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decisively, the law on temporary work formally institutionalised this form of flexible work. Thereby, it gave a real status to temporary workers by allowing them to be protected by labour law. It defines their rights and obligations, introduces a badly needed regulation of temporary work agencies, and regulates the relation between the ultimate employer, the temporary worker and the agency.

Altogether, elements from thirty different Directive have been integrated into the Polish Labour Code in preparation for membership of the European Union (Kodeks 2004)\(^4\). In the majority of cases, the coordination, monitoring of, and information on these legal changes were carried out by a small legal office responsible for labour law within the Ministry of Labour and Social Policy. On the eve of accession, the last Comprehensive Monitoring Report on Poland’s preparations for membership published by the European Commission in October 2003, reported two areas where further attention and action was deemed necessary. First, it stressed that the combination of high unemployment and low employment rates constituted a key economic issue that the government needed to address. Secondly, the European Commission assessment concluded on the state of legal readiness: "Poland's Labour Code is only partially aligned with the acquis on labour law and completion of transposition must be prioritized. Legislative alignment still needs to be completed in the fields of working time (including sectoral working time), part-time work, transfer of undertakings and posting of workers" (EC 2003, 39). Some of these issues were remedied in the law passed in November 2003.

Post-accession transposition: a more politicized process

There are pieces of EU legislation that are more complicated to integrate into national law, since they necessitate the drafting and adoption of an entirely new law, and setting up a new service or institution. In this category one could cite for instance the implementation of the EURES services, aiming to facilitate EU-wide workers mobility, in each local labour office. The Directive on the Information and Consultation of Employees is also an excellent example. Although the text was adopted in 2002, it gave some time to member states to organise transposition, therefore Poland dealt with it after 2004, as a full-fledge member of the EU. This means that pre-accession conditionality no longer interfered, which contrasts with the obligations of integrating the EU acquis prior to the deadline set for membership, for which it was a pre-condition: the process is of a different nature. For this reason, the reception of EU norms in the domestic political arena before and after the critical juncture of EU accession obeys to different logics.

The negotiation of the implementation of this directive provides a valuable insight into the process by which domestic actors appropriate themselves a norm which they did not take part in defining. Besides, it is at the heart of industrial relations, therefore particularly salient for employers and unions. Finally, this case allows to recall the state of collective bargaining institutions in post-1989 Poland, and thereby evaluate whether there they provide some degree of representation security (Standing 1999, 52).

\(^4\) an exhaustive list of the European Directives taken into account by the Labour Code at the date of accession can be found at the end of the bilingual edition used as a reference (Kodeks 2004, 257). Among these, a few examples: the directives on employment contract information (91/533/EEC), working time (93/104/EC), parental leave (96/34/EC), part-time work (97/81/EC), etc. Regulations do not appear in this inventory because have direct effect; only Directives require transposition into national law.

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The Information and Consultation Directive corresponds to a "misfit" (Börzel and Risse 2000), since it is in sharp contrast with existing legal provisions as well as recent changes in collective labour rights and the de-unionisation trend in Polish industrial relations. The concept of employee council was re-introduced in Polish industrial relations by the law on European works councils adopted in 2002, only to implement another European Directive, which concerned exclusively large multi-national companies. Poland had no employee councils since the early 1990's when the unions had refused to institutionalise such workers representation in private firms (Weinstein 2000). It should be noted that a form of employee councils existed in state-owned firms, where they were initially marked by a logic of confrontation and protest against management and privatisation in the early 1990's, only after the mid-1990's had they become a forum for negotiated change, when all parties came to realize that it was up to them to take care of their enterprise and facilitate transition, however, the increasing power of management limited their scope. These old-type councils were gradually phased out as an effect of privatisation. The European Directive sets a general framework and leaves a significant degree of choice to member states for instance as to what institution is more suitable to implement the right of information and consultation of employees, or whether to target enterprises comprising between 20 and 50 employees or not.

In 2004, in accordance with the transposition requirement which set a deadline in 2005, the government proposed to adopt a legislative basis for the creation of employee councils in enterprises with more than one hundred employees, and a single employee representatives for enterprises comprising between 20 and 100 employees (small businesses were exempted). The proposal for a draft Law on employee representation and employee councils was submitted to social partners, more precisely to the labour law committee of the Tripartite Commission in the summer 2004, raising doubts on both the employer and the union sides, although the obligation to revive some kind of social dialogue at the firm level was understood (Towalski 2004). After the unions had vigorously opposed earlier government reform plans, chiefly the reform of public finance which included significant cuts on disability benefit entitlements, and with elections planned in 2005, the Minister of Economy and Labour Hausner was reluctant to risk further conflict and therefore did not particularly try to rush the process.

A major point of controversy was the question of employee representation in unionised enterprises: should an employee council be added aside the trade union, or could the union be the body ensuring employee representation? While employers viewed the council more positively, the unions feared that the employee councils would be competitors further

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42 for instance, in 2002 a modification of labour law gave managers the right to suspend a collective agreement unilaterally and indefinitely if the company was facing financial difficulties.

43 Interestingly, while prior to 1989, Solidarity had protested to obtain workers participation in state enterprises, sought to achieve for co-management and largely used the councils to promote its ideas under martial law, in the context of the market economy, however, "rather than viewing employee councils as a means to achieve greater levels of firm performance (...) Solidarity has viewed co-governance as a hindrance to economic transition", something irrelevant in privatised firms (Weinstein 2000, 50). At the union congress in 1991, only a 17.6% minority of unionists advocated maintaining councils in both private and state-owned firms and the pattern was similar for shopfloor activists.

44 The Tripartite Commission rarely sits in its general wide formation, most often the meetings are held in more specific sectoral committees. The labour law committee was at the time headed by Jacek Mecina, from the employer's organisation PKPP.

45 A trade union exists only in about one enterprise out of ten (Towalski 2004)

46 this was the solution adopted in the Czech Republic.
undermining their influence, and thus expressed moderate scepticism while calling for a two year postponement of implementation. It took another year to get formal acceptance and finalise the drafting of the law: it was submitted to Parliament in October 2005. It became the subject of intense discussion in parliamentary committees, where unions and employers often manage to make themselves heard (Kruszczynski, Kucharski, interviews), in a different way than within the Tripartite Commission, where they are committed to reach an agreement between themselves. The law was thoroughly reworked as a result, before being adopted by the Sejm in April 2006 (Towalski and Czarzasty 2006). The Senate in turn amended the text; all amendments being accepted by the lower chamber.

Thus, this proved a rather disputed text, since the unions saw it as an opportunity to increase their representativeness and considered the employee council as a possible competitor; their authority and role in social dialogue at the enterprise level was directly at stake. Given that employee representation itself was no longer a matter for discussion, the employers saw the idea of employee councils rather positively overall (for the same reasons that the unions were sceptical), but they expressed their dissatisfaction with the formulation of the law. Their preference was for individual delegates serving as intermediary, mediator, between employees and management. They were also very reluctant to finance the functioning and expertise needs of self-appointed employee councils as a general rule.

In the final version of the law47, only establishments of more than 50 employees are concerned.48 The works councils are defined as a collective representation of employees with a right to information (the employer must transmit necessary information for employees to get acquainted with general enterprise matters), and consultation (exchange of views and establishment of dialogue between employee representatives and the employer). Employee councils are set up in all enterprises, whether a union is present or not, but where union representation exists, the board of the trade union(s) appoints the members of the council. Elsewhere, the employee council is elected by a general ballot among workers. The cost of functioning of works councils, including the provision of external expertise to support council members, is covered by employers, except in enterprises with trade unions, where it is born by the unions.

**Conclusion**

This trajectory reveals a case of institutional conversion in which the Labour Code was given a new meaning and function without being formally replaced, thus allowing a gradual implementation of the new paradigm of capitalist and eventually flexible labour relations, thereby avoiding the necessity to have these radical changes in the world of work initially and explicitly approved all at once by social and political actors, that the adoption of a new Code would have required. While there was an implicit shared expectation that the radical turn of macro-economic policy initiated by the Balcerowicz plan would result in equally dramatic

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47 Law on information of employees and organisation of their consultation of 7 April 2006 (Ustawa o informowaniu pracownikø i przeprowadzaniu z nimi konsultacji) Dz U Nr 79, position 550
48 A number of establishments are exempted, due to their specific nature or the existence of consultative bodies instituted by earlier pieces of legislation; entities of a non-economic nature (such as public administration, schools); state-owned enterprises, enterprises of mixed ownership (partially state-controlled). In an earlier project presented to the parliamentary committee on labour law on 22 December 2005, the law applied to enterprises comprising at least 20 employees but it did not apply to employee representation in unionised enterprises, which was considered outside the scope of the law
changes on the labour market, this was only backed by a minimal implicit consensus among socio-political actors, and no such compromise on the regulation of flexible labour relations could easily be reached before 2000. The Labour Code was subject to several waves of amendments, starting with the laws of 28 and 29 December 1989, which set in motion the process of economic restructuring and labour market adjustment. Thus, a complete reform was deemed not desirable by some, not achievable by others. This can be traced back to political reasons and labour militancy, which was stronger and harder in the mid-1990's before weakening after 1999. Thus, the first attempts to liberalise the labour Code failed either in part or entirely: in 1996 the law amending the labour code was limited to cancelling outdated provisions, in 1997-1998 the project to allow more flexible conditions in SMEs completely failed, and in 1999 the modifications of the Labour Code ended up being more protective rather than less. All this happened despite intense lobbying from employers organisations, albeit in a clumsy manner in the first years. The turning point may well have been the surge of unemployment in 2000. A more concerted effort initiated by the SLD-led government in 2001, implying a renewal of social dialogue, but also more reasonable union positions in the face of the rise of unemployment, turned out more successful and the first effective move towards the formal institutionalisation of more flexible employment conditions since 1989 took place in 2002. Meanwhile, the trade unions, who constituted the main opposition against further liberalisation at all stages were themselves undergoing a learning process and gradually adapting their militancy and policy positions to the socio-economic context in which they were embedded.

The first lever of policy change is changing power relations and preferences in the domestic political game. The changing regulatory regime of the employment relationship (implying both a change of regulation and a change of governance, the way in which rules are defined) is neither matching the "shock therapy" character of economic policy making, nor completely gradual. Some steps have had a greater impact than others. Negotiations on the reform of labour regulation took the shape of an iterative game, successive governments making repetitive attempts to introduce more flexible working conditions. They failed to achieve this several times either in Parliament or by obstruction of the trade unions, before a law liberalising the Labour Code was finally passed in a major move in 2002, completed by a law formally institutionalising a minimum wage and tripartite decisions on its revision. The decisive domestic factors for the adoption of legal changes at a given point in time appear to be two: a shift of policy coalition in favour of employers and a weakening of the pro-labour union stance, which reflects not only a change of balance in power relations but also an evolution of union preferences.

In this light, can the politics of labour regulation be identified with regulatory or distributive politics? Labour market reform shares some features of both worlds. When policy reform is dominated by regulatory politics, cleavages are multiple, coalitions pro- or against policy changes are unstable, tend to be based on a whole sector of the economy rather than classes, and as a result the decisive forum of policy-making is the Parliament. By contrast, distributive politics are dominated by a recurrent two-side opposition, relying on stable and broad associations that are sufficiently credible and influential to be able to strike deals directly with the executive. The antagonistic positions of employers on one hand, and unions on the other clearly resembles a divide between two stables "sides" and mirrors a class cleavage. However, the trade unions often proved unable to present a unified position in their negotiations with government, particularly because the two main union federations, OPZZ and Solidarity have traditional political alliances with parties in opposed camps (the left, former communist parties versus the conservative or moderately liberal right). The employer side has sometimes
appeared less homogeneous, as the promotion of a specific agenda for the SME sector and the failed attempt to push a dedicated bill through Parliament in 1997-1998 exemplified. Parliament, rather than the executive, was the primary decisional locus for reform adoption: various law proposals competed in parliamentary arena and some earlier government projects failed under the influence of union connections with parliamentarians. However, the major changes aiming to institutionalise greater labour flexibility in 2002 could be adopted thanks to a new government strategy fostering better inclusion of veto groups (trade unions) in national-level social dialogue. Yet, there again, a fragmentation of the labour side was observable. The class dimension was present in the sense that two sides, the one of workers and the one of business were clearly identifiable, but in practical negotiations on legal reforms, the unity and coherence of the labour side was undermined by union fragmentation.

The second important lever of change in employment regulation is external to the domestic political arena and found in the necessary integration of European Union Law in the perspective of EU accession. The role played by this external input is in a way surprising as labour law is not a domain where European law has intervened in a particularly intense manner; it is an area that remains by and large a competence of individual member states. Only a small number of framework directives exists, which had the effect of either fine-tuning certain aspects of Polish law, or introducing new provisions in it. The second unexpected element is that overall, the alignment of Polish legislation with European Union rules tended to be conducive to more employee protection than the 2002 reform, either thanks to the introduction of protection measures in areas that were not subject to any legislation so far (equal opportunity, anti-discrimination law, temporary work), or because it imposed a backward move on certain aspects of the labour code that had recently been made more flexible (for instance with respect to the renewal of fixed-term contracts and to the procedures of consultation and information concerning dismissals). The restrictions on consecutive fixed-term contracts were re-introduced from the day of accession. This confirms the argument that Poland tried to "out liberalise" the EU, before being brought back to EU standards in this area subject to framework regulation by European law (Orenstein 2008). Furthermore, collective bargaining at the firm level was re-institutionalised in most Polish enterprises not by the initiative of domestic actors, but by the necessity to comply with an externally-defined norm of EU law, the directive on Information and Consultation of Employees. The employee councils were formed to a large extent from scratch: a new institution was created, signalling a discontinuity with the prevailing logic of industrial relations thus far. This particularly disputed case of transposition of an EU directive provided some margin of manoeuvre for Polish actors, unlike the norms that were incorporated in domestic law before 2004.

Finally, a third source of greater labour flexibility lies in the free development of employer preferences and practices in terms of hiring options, resulting in a diminishing share of standard employment contracts compared to flexible forms of work. Especially in recent years, the undetermined, and therefore long-term, employment contract providing the highest level of job security and protection for the employee, has tended to be crowded out by more flexible forms of work ranging from fixed-term employment contracts to civil, task-based work contracts not implying a stable employment relationship, with a simultaneous increase of work in the shadow economy, partly or fully outside the scope of legal frameworks. This has clearly to a greater segmentation of the labour force with a high level of differentiation of worker security and protection, some workers retaining a relatively good level of protection and security while others hardly enjoy the benefits of the Labour Code. While flexible work, when governed by a contract subject to minimal regulation, is not necessarily always conducive to an individualisation of the capacity to face socio-economic risks and

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uncertainties, unless other segments of the welfare system take this situation into account, there is a risk that this brings further consequences on other forms of social protection such as the available support in case of losing a job, and retirement rights.

The employment (labour regulation) policy arena

Social partners (established representative organisations only)

- Trade union federations
  - NSZZ Solidarity
  - OPZZ
  - Forum

- Employers associations
  - PKPP
  - KPP
  - BCC

- Tripartite Commission for Socio-Economic Issues
  - Interface institution (consultative)

- Central government
  - Executive and administrative arena

- Parliament
  - Legislative and deliberative arena

Labour legislation
- (major instrument institutionalizing employment protection and flexibility)
- Subjects of regulation: employers, workers

Both proposal actors and veto players (alternatively)
Proposal actors
Veto actors
Policy content (includes bill proposals, programmes, plans, set of measures contained in written official documents)
Channels of lobbying and influence
Bibliography


