

Chapter 22

Collective bargaining in Poland: a near-death experience

Jan Czarzasty

Poland is the largest of the new EU Member States with a population of approximately 38 million. Because of the size of its internal market, the economy is less export-dependent than those of the other Visegrad countries, Czechia, Hungary and Slovakia, as well as less reliant on foreign direct investment (Jasiecki 2013). Nevertheless the national labour market has witnessed robust out- and inward labour migration since Poland's accession to the EU in 2004. Agriculture has a relatively high share in overall employment. One of the key features of analysis is post-socialist path dependency, which has led to the creation of a hybrid form of capitalism labelled the 'dependent market economy'. 'Dependence' is determined by the power of foreign capital, represented predominantly by transnational enterprises (Nölke and Vliegenthart 2009: 680).¹ Industrial relations are also hybrid and have been characterised as 'corporatism in the public sector, pluralism in the private sector' (Morawski 1995), 'illusory corporatism' (Ost 2000) or 'fake corporatism' (King 2007). In all cases, the underdevelopment of collective bargaining, especially at industry level, is said to be artificially compensated by tripartite bodies, whose activities somehow emulate a corporatist industrial relations model. Most recently, industrial relations have taken a new turn following the reactivation of tripartism, coupled to the rise to power of a right-wing government with strong statist views, although this is still in its infancy (Czarzasty and Mrozowicki 2018).

In common with other socialist states prior to 1989, collective bargaining in Poland played little role in employment relations, although collective agreements, including industry-level ones, did exist. The reintroduction of the market economy prompted the legislature to promote collective bargaining as a main driver of employment relations (Pisarczyk 2015), which led to the adoption of a set of amendments to the Labour Code (Kodeks pracy), focusing on collective bargaining and collective agreements between 1994 and 1996. The changes evoked high expectations among the social partners and labour lawyers, but disillusionment soon followed (Wratny 1998). The general disappointment stemmed from the fact that virtually no progress could be observed either in quantitative (coverage) or qualitative (content of agreements) terms. The major reasons for this include the weakness of the social partners, complicated conditions concerning withdrawing from collective agreements, including the infamous 'eternity clause' and no options for drafting 'derogation clauses', for differentiating between entitlements for various groups of employees or for concluding an agreement for a selected group of employees.

1. For a more detailed discussion of capitalism in Central and Eastern Europe see also Bohle and Greskovits (2012), Eyal et al. (1998) and Myant and Drahokoupil (2010).

Table 22.1 Principal characteristics of collective bargaining in Poland

Key features	2000	2017
Actors entitled to collective bargaining	Trade unions, employers/employers' organisations	
Importance of bargaining levels	Single-employer level dominates	
Favourability principle/derogation possibilities	Favourability principle in place/ no possibility to derogate from (cross-)industry agreements and/or law	
Collective bargaining coverage (%)	25	14.7 (2012)/18 (2017)*
Extension mechanism (or functional equivalent)	Extension mechanism (by administrative decision) present, albeit not used	
Trade union density (%)	17.5	12.7
Employers' association rate (%)	20 (2007)	20 (2012)

Notes: * Collective bargaining coverage: for comparability data from Appendix A1.A is used in both columns. According to the author's own calculations the coverage rate in 2017 was 18 per cent.

Source: Author's elaboration.

As seen clearly in Table 22.1, the main features of the institutional environment of collective bargaining have not changed since 2000; it is the statistical indicators that have deteriorated. As of 2018 collective bargaining in Poland can only be described as being in its death throes: it plays a marginal role, both in terms of the volume of collective agreements and the number of employees covered. Collective bargaining has very little impact on the autonomous regulation of work and employment relations. The de facto absence of collective bargaining seriously hampers the efficiency of the industrial relations system, which is extremely fragmented. Poland's unionisation rate is among the lowest in the EU, at roughly 12 per cent, as longitudinal data series from survey research by the Public Opinion Research Centre (Centrum Badań Opinii Społecznej, CBOS) suggest, although it has remained stable since 2012 and seems consistent with the data in Appendix A1.H (see Table 22.1). A recent module study conducted in 2014 by the national statistics body reveals that unionisation is higher than it used to be, based on survey data only, as 17 per cent of people working on employment contracts belong to trade unions (GUS 2015). Employers' organisation density is also low, at only 20 per cent. Nevertheless, the chapter is not intended to be a 'chronicle of death foretold', as there are still prospects for a reviving impulse, to be provided by law. This, however, could take place only in the form of incremental change (with consecutive amendments to the current Labour Code), following the failure of a very ambitious labour law reform that collapsed in 2018 due to irreconcilable differences among the national social partners, further amplified by acute controversies (albeit in other fields than collective bargaining) concerning some proposed provisions.

Industrial relations context and principal actors

Industrial relations in Poland are very fragmented. On the employee side, this is because of the shape of the legal environment, which sets a low threshold of ten employees to establish a new union at workplace level, but until 1 January 2019

eliminated (wrongly)² numerous categories of people in employment (the self-employed, persons in non-standard employment) from union membership. On the employer side, the main reason is the dominance of small enterprises with fewer than ten employees, which account for 96 per cent of all economic entities and employ about 40 per cent of the workforce in Poland. The ownership factor plays a significant role in explaining the existence of trade unions or the lack thereof: the national survey Working Poles 2007, based on a representative sample of occupationally active adults, indicates that unions are present in 60.9 per cent of all workplaces in the public sector, 8.2 per cent in the domestic private sector and 32.7 per cent in the foreign private sector (Gardawski 2009). Longitudinal data series reveal that union density in Poland has declined substantially since 1989. The process has proceeded at an uneven pace, including two rapid slumps, in the early 1990s and the early 2000s. In the early 1990s, the decline in membership is attributed to economic restructuring and the mass layoffs it entailed, resulting not only in many union members becoming redundant and dropping out of unions, but also generating a general disillusionment with unions not being able or willing to defend working-class interests. In the early 2000s, the main reason for the rapidly accelerating decrease in density is believed to be the entry of NSZZ Solidarność (the Independent Self-governing Trade Union Solidarity) into party politics in 1997.³

There are seven major social partner organisations in Poland, in line with the conditions set by the Act on the Social Dialogue Council and Other Social Dialogue Bodies (*Ustawa o Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego*).⁴ They are all entitled to seats on the Social Dialogue Council (*Rada Dialogu Społecznego*, RDS). The RDS is the central tripartite social dialogue body, established in 2015. It replaced the Tripartite Commission for Social and Economic Affairs (*Trójstronna Komisja do spraw Społeczno-Gospodarczych*, TK), which had effectively collapsed in 2013 following the departure of all trade unions in a gesture of protest against unilateral government policies. The RDS has been given more essential prerogatives compared with its predecessor: the TK's aims were limited to 'maintenance of social peace', while the RDS is responsible for conducting dialogue 'aimed at facilitating conditions for socio-economic development, as well as increasing competitiveness and social cohesion'.⁵ The

2. Until the end of 2018 the Trade Union Act of 1991 limited the right to join a trade union to employees only. Nevertheless, following the ruling of the Constitutional Court which found such a limitation not only in breach of the Constitution but also in violation of ILO Convention No. 87, the Act was amended in June 2018. At present, the right of association is enjoyed by all 'persons performing paid work', regardless of the legal basis of their working relationship.
3. For a more detailed discussion of the deunionisation process see Gardawski *et al.* (2011).
4. For trade unions, the conditions are as follows: (i) being a national-level trade union or (ii) being a national-level association (federation) of trade unions or (iii) being a national-level inter-union organisation (confederation) with at least 300,000 members that covers entities pursuing operations in least half of all the sections of the Polish Activities Classification (PKD), although no more than 100,000 members employed in a given PKD section can be counted. For employers' organisations, the conditions are as follows: (i) pursuing operations on a national scale; (ii) member entities employing at least 300,000 people in total; and (iii) member entities pursuing operations in at least half of all the sections of the PKD, although no more than 100,000 employees can be counted for each section.
5. A set of specific prerogatives are assigned to social partners in the (bipartite) RDS, including rights to voice opinions on government draft legal acts, as well as strategic policy documents; prepare jointly agreed draft opinions on future legislative acts and regulations; request a public hearing; present joint queries to ministers; file joint applications requesting the issuance or amendment of a law or other legal act; file motions to the Supreme Court to settle a legal issue; and request a general interpretation of tax regulations in the event of inconsistent application of tax law by the public authorities.

three national-level trade unions represented on the RDS are: NSZZ Solidarność, the All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych, OPZZ) and the Trade Unions Forum (Forum Związków Zawodowych, FZZ). There are also four employers' associations that are considered representative at the national level and thus hold seats on the RDS. These are the Business Centre Club (BCC), the Confederation Lewiatan (Konfederacja Lewiatan), Pracodawcy RP, the Employers of Poland (Pracodawcy Rzeczypospolitej Polskiej) and the Polish Crafts Association (Związek Rzemiosła Polskiego, ZRP). On the employer side, fragmentation is mainly the result, as well as cause, of the collective bargaining incapacity of the employers and their organisations. Employers' organisations are thus de facto business associations, focused mainly on lobbying activities, and their organisational rate is low.

To understand the nature of collective agreements in the Polish legal system and the reluctance of employers to enter negotiations, the definition of 'employer' in Polish labour law must be explained. 'Employer' is defined in Clause 3 of the Labour Code as 'an organisational unit, even if it has no legal personality, or an individual, provided it employs employees'. In other words, Polish law favours the 'managerial' concept of employer over the 'ownership' concept. In practice, it does not matter whether or not the 'employer' owns the enterprise. In small or medium-sized enterprises, usually a single-establishment company, the negative consequences for collective bargaining are usually hypothetical. As a company grows, however, its organisational structure becomes increasingly complex, so 'organisational unit' – which under the law is the 'employer' – could be merely an establishment represented by its top manager, with little or no capacity to decide on matters exceeding day-to-day operations.

In Poland collective bargaining is subject to regulation by Chapter 11 of the Labour Code. In general, the law states that collective agreements regulate the 'content of the employment relationship', which is composed of the mutual rights and obligations of the employer and the employee specified in a contract of employment. To be more accurate, according to the Labour Code, not only can employees be covered by a collective agreement, but also the self-employed (Surdykowska 2017). Regarding collective agreements, the law follows two major principles: first, 'freedom of contract', except for provisions jeopardising the rights of third parties; second, 'favourability', in the sense that collective agreements cannot introduce provisions less favourable for employees than those provided for by law.

The Code does not explicitly define the notion of a 'collective agreement', so the definition is derived from legal rulings and the legal literature, that is, commentaries on the Labour Code. Thus, 'collective agreements' are understood as

normative agreements concluded by social partners: employers or employers' organisations and trade unions, determining the conditions to be met by employment contracts (*normative provisions* of collective agreements), obligations and rights of the parties to the collective agreement (*obligatory provisions* of collective agreements) and other obligations of the employer towards the group of employees (provisions included in the so-called *third part of collective agreements*) (Świątkowski 2016).

In line with the Constitutional Court ruling of 20 January 1988, collective agreements are not normative acts adopted by state bodies, but rather special sources of labour law. Importantly, the Labour Code distinguishes two types of collective agreement: single-employer collective labour agreements (*zakładowy układ zbiorowy pracy*, SECA), to be concluded by employers and representative trade unions, and multi-employer collective labour agreements (*ponadzakładowy układ zbiorowy pracy*, MECA), to be concluded by the appropriate statutory body of a multi-enterprise trade union, acting for the employees, and the appropriate statutory body of an employers' association, acting for the employers, on behalf of the employers united in the association. MECAs are sometimes incorrectly referred to as 'industry-level agreements'.

The picture needs to be supplemented with two more features, which also influence collective bargaining: the peculiar position of public employers and the presence and impact of foreign capital, a factor of significant weight in 'dependent market economies' such as Poland. Thus, in the public sector, the position of employers is often weakened because of their political entanglements. Furthermore, the empirical data do not allow for the formulation of unambiguous conclusions because, on one hand, there seems to be a positive association between foreign ownership and the presence of collective agreements, particularly within the private domestic sector (Gardawski 2009), while on the other hand, there is also evidence that multinational corporations, seen at one time as agents of the 'Europeanisation' of collective bargaining (Gardawski 2007), on entering Poland often follow the path of opportunistic adaptation in the environment of feeble institutions and avoid restraining themselves with collective agreements, even if such behaviour contradicts industrial relations patterns dominant in their home countries (Czarzasty 2014).

Extent of bargaining

There is no consolidated data source on collective bargaining coverage. Reviewing the major legitimate sources on collective agreements coverage in Poland allows us to establish that, according to Appendix A1.A, collective bargaining coverage is 14.7 per cent in 2012; according to the author's own calculations, based on administrative data from the National Labour Inspectorate (*Państwowa Inspekcja Pracy* or PIP) and the Ministry of Labour on single-employer and multi-employer collective bargaining, respectively, collective bargaining coverage stood at 18 per cent in 2015. Despite slight variations between the data cited, there can be not the slightest doubt that coverage is low.

SECAs dominate, with collective bargaining in large part taking place at the establishment level, which mainly accounts for the overall bargaining coverage. Based on the favourability principle, Poland has adopted a hierarchical bargaining structure; that is, SECAs must not contain provisions less favourable than MECAs.

There is no legal mechanism comparable to a German 'derogation clause', but the law (Clause Labour Code 241/27) allows for the temporary suspension of a collective agreement for up to three years in part or entirely by mutual consent if the employer is experiencing economic difficulties. The law forbids the inclusion in collective agreements

Table 22.2 Single-employer collective agreements (2004–2015)

Year	SECAs	Additional protocols to existing collective agreements*	Accords on application of collective agreements	Number of employees covered
2004	328	2,193	21	166,661
2005	220	1,792	12	119,601
2006	177	1,646	6	68,000
2007	168	1,961	15	121,454
2008	155	1,732	4	62,802
2009	123	1,688	2	62,572
2010	130	1,396	1	172,425
2011	136	1,291	3	49,407
2012	92	1,265	3	61,109
2013	109	1,131	1	43,800
2014	88	1,030	1	43,576
2015	69	909	0	101,473

Note: All figures in rows reported annually; * additional protocol to existing collective agreements (protokół dodatkowy do układu zbiorowego) is a formal amendment to a collective agreement, the parties are required to notify the labour inspectorate of their conclusion.

Source: PIP.

of regulations less beneficial to employees than general provisions. In other words, the provisions of a collective agreement cannot trim down the entitlements guaranteed by law; for example, the monthly gross wage for a full-time job cannot fall below the national minimum wage level, and cannot violate general rules of law, for instance, by introducing gender-based pay discrimination. Furthermore, the law established the priority of higher level (multi-employer) agreements over lower level (single-employer) agreements, thus the latter can only ‘top up’ the provisions of the former.

Clause 241/18 paragraph 1 of the Labour Code provides for extending MECAs upon a joint application of the parties submitted to the Minister of Labour. If there is a ‘crucial social interest’ (*ważny interes społeczny*), the Minister of Labour may, by administrative decision, extend such agreements in whole or in part to employees working for employers not bound by the agreement, who undertake economic activity analogous or similar to the activity undertaken by employers subject to the agreement. The decision is arbitrary, and the notion of ‘crucial social interest’ has no legal definition, leaving the government enormous room to manoeuvre. Such a scenario has never manifested itself since 1989. In addition, Clause 241/10(1) of the Labour Code enables parties eligible to conclude collective agreements to apply – entirely or partially – a collective agreement existing elsewhere, which they have not concluded. There is no information about the scope of such extension procedures in practice. Furthermore, Clause 241/9(3) of the Labour Code grants to the parties of a collective agreement a right to allow a trade union which is not a party to the agreement to join in. In the absence of data, however, there is no way to assess the extent of such scenarios in practice.

The low level of unionisation is the main obstacle hampering the development of collective bargaining at enterprise level. Union activity in the field appears to be relatively sluggish, however, as merely 68 per cent engage in the ‘development of collective labour agreements, labour regulations and ethical codes’ (GUS 2015). Employers are generally reluctant to engage in any form of coordination (Wratny 2011). The dominant stance towards trade unions and any form of collective interest representation of labour is hostile or ambivalent at best (Gardawski 2013; Czarzasty 2014). While the gradual shift in the labour market, particularly the shrinking supply of skilled labour, coupled with the steady demand for employees with specific qualifications seen since about 2013, has softened this hard-line position and could help the unions seek new members more effectively, any growth in union density is yet to be seen. As far as collective agreement incidence is considered, however, there is a close relationship between collective agreement saturation and ownership type. A national survey, Working Poles 2007, indicated the existence of a collective agreement at workplace level in unionised companies in 51.5 per cent of public entities, 45.2 per cent of domestic private ones and 59.5 per cent of foreign private ones.

The main reason for the employers’ reluctance to engage in collective bargaining is arguably the difficulty of getting out of self-imposed obligations resulting from complicated procedures envisaged for the dissolution of collective agreements (Gładoch 2016). Specifically, Clause 241/19 of the Labour Code allows for the waiving of collective agreement provisions only when one of the parties to the agreement ceases to exist. If it does not happen, provisions of the collective agreement remain intact, and even formal revocation of the agreement does not matter, because only the conclusion of a new collective agreement will disarm the legal power of the former autonomous regulation. In the case of MECAs, even if a specific employer quits the organisation that is party to the agreement, they are still bound by the agreement. There are well-known cases of employer organisations in vital industries of the economy voluntarily dissolving in order to liberate themselves from the obligations of the MECA they were a party to or to avoid a challenge by industry-level unions to engage in negotiations on a collective agreement. The most eminent such case (2013) involved three employer organisations – the Union of Employers in Heat-and-Power Plants (Związek Pracodawców Elektrociepłowni), the Union of Employers in Electric Power Plants (Związek Pracodawców Elektrowni) and the Union of Employers in Electric Power Distribution (Związek Pracodawców Zakładów Energetycznych) – and affected some 50,000 employees.

An issue of significant weight is the ‘eternity clause’ (*klauzula wieczystości*). Until 2002, by virtue of Clause 241/7 paragraph 4 of the Labour Code, ‘in the event of a resolution of a binding collective agreement until the entry into force of the new agreement the provisions of the former apply, unless the parties agreed in the agreement or by a separate accord a different term for the application of the agreement’. On 18 November 2002 the Constitutional Court ruled that this regulation breached the Constitution. Despite the removal of the measure from the legal system, however, there are still collective agreements in force containing ‘eternity clauses’, under which the agreement will remain binding, even after its dissolution, to the moment the parties agree on a new one. The obstinate presence of such clauses in the legal order, incompatible with the Constitution, has been the subject of heated debate among labour law experts and a

difficult practical problem in the reality of collective employment relations (Korytowska 2013).

Security of bargaining

Security of bargaining refers to all the factors that determine the unions' bargaining role, such as, in particular, regulations on strikes, union recognition and representativeness criteria. In Poland, trade unions enjoy a legal monopoly on employee representation in collective bargaining. In principle, collective agreements are to be signed on behalf of all employees, but there is a possibility for the parties to deviate from this rule, if two or more collective agreements overlap for a specific employer. For instance, some employees may be covered not only by a SECA but also by a MECA concluded for the occupational group they belong to. In such a case, there is no straight hierarchical relationship between the two agreements (see Muszalski 2017). In practice, this hardly happens nowadays. Collective agreements can be concluded for a definite or indefinite period. They can be dissolved by a unanimous declaration of both parties or at the end of the period for which the agreement was concluded. Agreements can also be terminated by one party, usually with three months' notice. The issue of representativeness for collective bargaining is regulated by the Labour Code.

As far as SECAs are concerned, trade unions must meet at least one of the following conditions to be recognised as representative: (i) belong to a supra-enterprise trade union organisation deemed representative (see below) and represent at least 7 per cent of the workforce employed by the employer or (ii) represent at least 10 per cent of the workforce. If no union organisation can fulfil any of the criteria, the largest trade union active in the company is deemed representative and as such has the right to become a party to a single-employer agreement, which happens fairly often. For the negotiation of MECAs Clause 241/17 of the Labour Code defines the following representativeness criteria, of which trade unions have to fulfil at least one: (i) have representative status as defined by the Act on Social Dialogue Council and Other Social Dialogue Institutions (*Ustawa o Radzie Dialogu Społecznego i innych instytucjach dialogu społecznego*); (ii) represent at least 10 per cent of all employees within a formally demarcated domain, though not less than 10,000 members; or (iii) have the highest number of members within the group of employees to be covered by a multi-employer agreement; in other words, be the largest of all the unions concerned. Under Clause 241/14 of the Labour Code, any employers' organisation whose domain is related to that of the representative trade unions at supra-enterprise level is eligible to become a party to a MECA.

Employers have no right to impose a lock out. According to the Act on Collective Disputes Resolution (*Ustawa o rozwiązywaniu sporów zbiorowych*), only trade unions can lawfully engage in strike action. Works councils are not able to call a strike and wildcat strikes initiated by ad hoc groups are illegal. Under Clause 17 of the Act, a strike is to be understood as 'collective abstaining from work by employees with a view to resolving a dispute that has arisen over interests named by Clause 1'. According to Clause 1, those interests include: 'working conditions, wages and social benefits, as well as rights and freedom of association of employees or other groups who enjoy the right

of association'. Effectuating a strike is quite a difficult process in procedural terms. The sequence of events that may eventually lead to a strike are as follows.

- (i) Trade unions address the employer with specific demand(s) related to the collective interests defined by Clause 1. This can be done by any of the establishment-level unions, a joint union representation or an external union acting on a request made by employees at a workplace with no establishment-level organisation. The trade union(s) must inform the employer about entering into a collective dispute if the demands are not met, the employer must be given at least three days to respond and unions can also indicate that, in the event of not meeting the demands, a strike will be called. This may not be done earlier than 14 days from the date of formally addressing the demands.
- (ii) Provided the employer rejects the demands partially or entirely, the collective dispute is deemed to run from the day the demands are formally addressed. In that case, the employer is obliged to engage in negotiations with unions and notify a local labour inspectorate that the collective dispute is taking place.
- (iii) Negotiations can either lead to resolution of the dispute when the parties are obliged to sign an agreement or a failure to reach a settlement when the parties must report discrepancies.
- (iv) If negotiations fail, and the employee party sustains its demands, it may request a mediator to act as an impartial intermediary between the two parties. The mediator must be a certified specialist included on a special list of mediators administered by the Ministry of Labour. The two parties must agree on a specific person to assume the role of mediator within five days; if they fail, the Ministry appoints a person from the list.
- (v) As the mediation procedure commences and the mediator comes to believe there is a need for external expertise (in general, it is paid for by the employer), they may request the employee party to postpone the originally envisaged strike. If at this point the employee party comes to believe the dispute is not likely to be resolved before any of these dates, they have a right to call a warning strike of two hours at the longest.
- (vi) Mediation can lead to resolution of the dispute, in which case the parties are obliged to sign an agreement, or the mediation can fail, in which case the parties must report points of dissension.
- (vii) If mediation fails, the employee party can already exercise their right to strike, but before taking that step, there is still a legal opportunity to seek a consensual resolution, if the employee party agrees to bring the dispute before the College of Social Arbitration (Kolegium Arbitrażu Społecznego), a special body affiliated to the court, chaired by a judge and comprising representatives of both parties in equal numbers (six each). The College takes a decision by majority vote which is binding for both parties.
- (viii) If the College of Social Arbitrage is not involved, the employee party may call a strike, allowing at least five days' notice, provided the decision has been approved by a majority of voters in a strike referendum in which over half of the employees must participate. The Act leaves an option for solidarity strikes, called on behalf of employees whose right to strike is restricted, such as military or police personnel. Furthermore, the Act states that other forms of protest are

permissible, provided they create no risk to human life and health, involve no work stoppage and do not violate the law in general.

Level of bargaining

Poland's collective bargaining system is extremely decentralised. This is illustrated by the supremacy of SECAs in the total volume of agreements in force, in terms of both number and coverage. By the end of 2015, 8,032 SECAs had been registered, covering nearly 1.8 million workers, of whom slightly above 1 million were employed in the public sector, and nearly 800,000 in the private sector. At the same time, there were 86 MECAs covering 390,000 employees. Even this figure is doubtful, however, as it reflects figures reported in agreements or additional protocols that in most cases do not reflect current employment, mainly in the public sector. Employers' organisations do not promote supra-enterprise collective bargaining, fearing their members will leave in response, while the inability of such organisations to aggregate and represent the collective interests of their constituencies discourages potential members.

It is also crucial to recognise that many MECAs are de facto no different from single-employer agreements in terms of both their extent, covering only a very small number of employees, and their content, which is often modest and rarely exceeds the general provisions of the law. The MECA for non-teaching staff in public education, covering school bookkeepers, janitors and kitchen staff, illustrates this point. In their collective agreement, their 'employer', as defined by the Labour Code, is the school or kindergarten, or socio-therapy centre, but public education facilities are legally established and operated by local government, that is by a commune or *gmina* in Polish.

The main driver of the process leading to the conclusion of many such MECAs, culminating between 1995 and 1999, was the desire to compensate non-teachers employed in public education, who were not covered by the Teachers' Charter (Karta Nauczyciela). The Charter, as its name indicates, applies to teachers only, and is a legislative act providing specific entitlements for that occupational group. The act is a 'quasi industrial collective agreement' in functional terms and grants teachers a wide spectrum of entitlements not available to other occupations under the general regime of labour law. For example, municipal housing is guaranteed to teachers employed in rural areas or in towns of up 5,000 inhabitants. In the countryside those in the former category even have a right to a small piece of farm land as well. Teachers enjoy health benefits under the Charter, including the right to a year's sabbatical on health grounds, on condition the teacher has been employed full-time for at least seven years. Such MECAs were devised as a channel for advancing at least some of the benefits enjoyed by teachers to other staff. As far as their coverage is concerned, some MECAs concluded by local government with non-teachers stand out because even though they are multi-employer agreements in name they cover only a few workers; one agreement concluded in 2002, for example, covers only 20 persons.

There is a consensus on the reasons for the decline of collective bargaining in Poland. Czarnecki (2014: 116–17) writes that

for many years in the labour law literature dysfunctionalities have been highlighted in the Trade Unions Act, with emphasis on the fact that the model of trade unionism the legislation entails has a number of negative consequences for the development of collective bargaining. The problem is the existing regulation, which facilitates trade union influence at the establishment level and thus promotes a so-called establishment-centred trade union movement.

The author concludes that advanced autonomy of company- and establishment-level unions leads to the fragmentation of the labour movement and hinders coordination of collective action. Weak negotiations at the industry level, in turn, make the protection of competition issue irrelevant in enterprise-level bargaining. In other words, employers fear that voluntary adoption of additional obligations towards employees will undermine their competitive edge vis-à-vis their market rivals who stay out of collective agreements.

A concise review of binding, or recently revoked, collective agreements, which can be deemed significant due to their extent, may clarify inter-industrial variations in collective bargaining in Poland. In metal, there was a MECA for employees in the steel industry from 1996 until 2009, which was eventually terminated by the employers' side. The agreement was a unique regulation, first because of its extensive coverage as an industry-level agreement, and second because of its complexity. It had a 'standard' core content covering issues such as working time, basic, variable and extra pay, working safety measures, obligations of the parties in an employment relationship, and conditions of entering into and exiting the employment relationship. It also embraced 'soft' aspects such as social dialogue and communication, professional development, promotion and training, employment policy, with an emphasis on dealing with redundancies, as well as anti-discrimination in employment. Currently, there is still a SECA in ArcelorMittal Poland, covering over 10,000 employees. Interestingly, the agreement's structure is very similar to the former MECA for the industry. With the two other SECAs that are still reportedly in force, the coverage for the industry is estimated at 30–40 per cent. In banking, there are SECAs in major, national banks such as PKO BP, PEKAO SA, Bank Handlowy and Bank Gospodarki Żywnościowej. Approximately 30 per cent of employees in banking are covered by collective agreements.

Depth of bargaining

Depth of bargaining refers to the involvement of local representatives in the administration of collective agreements. As far as this dimension is concerned, collective agreements in Poland, both SECA and MECA, are fairly shallow, even though the very advanced decentralisation of bargaining appears to favour a deep engagement on the part of local union officers in the administration of agreements. The law grants trade unions a monopoly to negotiate collectively and enter into agreements with employers on behalf of employees. The law also restricts the right to negotiate at supra-enterprise

level to unions deemed representative: according to Clause 241/17 of the Labour Code, only unions that are active at supra-enterprise level are regarded as representative. In the case of SECAs, the administration of agreements is the responsibility of establishment-level unions. If they require particular expertise, such unions may consult their industry-level or national structures, but that depends on the organisational structures and culture of the federation or confederation to which the union is affiliated. With regard to a MECA, the industry-level unions or federations or national-level occupational unions that are party to the agreement are formally responsible for administration, although in practice, the burden falls mainly on the shoulders of workplace officials.

As for the employer side, it is the sole prerogative of the employer as a signatory party to administer SECAs. Administration of MECAs lies in the hand of either employers' organisations that are signatories to the agreement or the specific branch of local government in the case of MECAs for non-teachers in public education. Collective agreements are supposed to be registered, with, respectively, regional labour inspectorates (SECAs) or the Ministry of Labour (MECAs). Any changes to the content of agreements must be made in writing and retain a form of 'additional protocol', which must also be registered in the same way as an agreement.

Degree of control of collective agreements

Degree of control refers, first, to the extent to which collective agreements set the actual terms and conditions of employment and, second, to the different mechanisms of controlling and monitoring the implementation of collective agreements. In Poland, control of collective agreements is limited. For many years, the PIP, which is responsible for registering SECAs, has stated that the content of agreements registered each year is modest and rarely surpasses the general level of provisions guaranteed by labour law. It is symptomatic that the tone has remained stable over the years. In the 2004 Annual Report it is stated that it is 'striking that parties to agreements less and less frequently introduce provisions more beneficial to employees than those secured by the generally binding laws' (Sprawozdanie 2004: 59). Ten years later, the PIP observed that '[a]nalysis of the content of registered collective agreements and the additional protocols confirms the persistent tendency to erase previous favourable arrangements. Parties to agreements introduce amendments in such a way as to ensure that employees are only given minimum rights under the Labour Code and other generally applicable law' (Sprawozdanie 2014: 27).

Strike activity has been very low for nearly three decades in Poland. Unions call for strikes mainly at company level, whereas collective action at industrial level is almost always limited to the public sector. In the absence of open industrial conflict, it is pointless to discuss the role of grievances, disputes and arbitration procedures as means to ensure compliance with collective agreements. As for legal constraints, the law leaves wide autonomy to the parties as regards interpretation of the content: the parties may choose to establish, and subsequently include it in the agreement, a special body (permanent or ad hoc) to deal with any divergent views the parties may have on the agreement or set up interpretation procedures. In 2011 this was recognised by a Supreme Court ruling,

which, nevertheless, stressed that autonomous decisions taken by the parties are not binding in a court of law, should it come to that. In case of conflicting interpretations of an agreement's content, the collective dispute procedure may be activated.

Scope of bargaining

There is a close link between the existence of a collective agreement and the quality of working conditions and terms of employment (Czarzasty 2014: 174–177). A trade union presence has a favourable impact on the state of labour law observance and fair play on the part of employers vis-à-vis employees (Gardawski 2015).

A closer look at the content of collective agreements enables us to make the following observations. As the PIP asserts, the dominant topics of collective regulation via SECAs are pay and pay-related issues. Considering the overlapping of the dominant issues dealt with by collective agreements and the scope of pay regulations (so-called *regulaminy płac*), it is hardly surprising that the latter are increasingly preferred by employers over the former because processes of introduction, amending and termination of pay regulation are formally less complicated, and a decision on each can be taken by the employer unilaterally. A large proportion of collective agreements fall into the category of 'substantive agreements', as they deal mostly with terms and conditions for individual workers. Procedural agreements per se do not exist, as the issues of discipline, grievances and disputes are regulated by general laws. 'Agreements dealing with qualitative issues' are generally not encountered: only minor references to these issues can be detected in agreements, for instance, issues related to continuous vocational and general training. A typical catalogue of issues regulated by a collective agreement includes: employers' and employees' mutual obligations and entitlements; working time; pay structure, conventional pay, flexible elements of pay including awards, performance bonuses, seniority bonuses, death allowances and rules on determination; workplace safety rules and regulations; and holiday and other forms of leave. Outside the scope of 'typical issues', but covered by collective agreements with relative regularity, are provisions pertaining to collective labour relations and social dialogue.

In order to show the 'added value' of collective agreements for employment relations, it could be useful to examine one of the significant SECAs mentioned above, namely the SECA at ArcelorMittal Poland, whose structure bears a close resemblance to the former MECA in the steel industry. As far as mutual obligations and entitlements are concerned, the agreement states explicitly that the major form of employment arrangement to be used by the employer is a permanent contract. Specific conditions are laid down and amounts of compensation are to be awarded in case of occupational disease, injury or death. What is more, the agreement contains a clause stating the employer's obligation to offer employment to a family member or a guardian providing for a family of any employee who dies or suffers permanent damage to their health in a workplace accident that leaves them incapable of working. Former employees with disabilities incurred due to workplace accidents or occupational disease are entitled to additional regular payments that top up the state disability pension, so the total amount would be equivalent to the monthly wages last received. Through a collective agreement

a company social fund (zakładowy fundusz świadczeń socjalnych, ZFŚS), a major form of occupational welfare in Poland, can be established. In the absence of an agreement, it is established by the employer, and any employer with at least 50 employees on the payroll is required to set up such a fund.⁶ As for working time, no entitlements that would surpass the level of Labour Code provisions are included. Pay is the area subject to the most detailed regulation, including pay scales and bonuses.

Pay is also the subject of the central-level negotiations within the tripartite structures. In practice, the only statutory condition for wage bargaining is the minimum wage. It is a prerogative of the tripartite RDS (see Industrial relations context and principal actors) to determine the minimum wage level, based on the government's annual proposal. The decision is to be taken unanimously by the social partners and the government. The process is as follows. The figure originally proposed by the government must not be less than the current minimum wage, adjusted to the Consumer Price Index forecast for the next year. If the current minimum wage is below 50 per cent of the national average wage, the proposed minimum wage must be increased by two-thirds of the percentage growth in GDP forecast for the following year.⁷ If the RDS fails to reach consensus, the government makes the decision unilaterally, although the minimum wage decreed cannot fall below the level set by the original proposal.

Conclusions

As of 2018 collective bargaining in Poland appears to be on its last legs. In summing up the key characteristics of the collective bargaining system in line with Clegg's framework, we can state the following. Collective bargaining coverage is very low (18 per cent), the system is very decentralised, employers are reluctant to engage in collective bargaining and to sign collective agreements, claiming that they fear detrimental consequences for their competitiveness and that it might prove difficult to get out of obligations in the future. Where there are collective agreements (at establishment level), the involvement of local union officers is high, simply because trade unions hold a legal monopoly on collective bargaining, although the effectiveness and scope of collective bargaining is low (as reflected in the content, which in most cases merely repeats the letter of the law).

New prospects for a revival of the autonomous regulation of labour relations opened up after the double electoral victory, at both the presidential and the parliamentary elections, of the right-wing 'Law and Justice' party (Prawo i Sprawiedliwość party, PiS) in 2015. A very ambitious project of developing a two-part labour Code, divided into individual and collective sections, to replace the 1974 regulation was launched in late 2016. The 'collective labour code' is particularly relevant for the discussion here

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6. This statement is slightly oversimplified: formally, there are exceptions named by the law that allow employers meeting the employment threshold to avoid establishing a social fund. Employers holding the legal status of national budgetary units and local budgetary units (public entities that are neither enterprises nor parts of the administration) are obliged to establish a social fund, regardless of how many employees they have. Detailed discussion of this would go beyond the scope of this chapter, however.
 7. The minimum wage has remained below 50 per cent of national average pay, despite continuous pressure from national-level trade unions over the years, dating back to negotiations on the anti-crisis package in 2009. Currently, the minimum wage represents 47 per cent of average pay.

because it is supposed to provide the legal foundations for collective bargaining. The Labour Law Codification Committee (Komisja Kodyfikacyjna Prawa Pracy), the expert body charged with drafting the two parts concluded its work in March 2018. The end result has stirred up many controversies, however, for example, concerning proposed regulations on working time granting excessive control to employers, enhanced employment protection or extreme limitations on freelance work. In April 2018 the Minister of Labour declared that the government would not deliver the draft labour codes to the parliament for legislative review; instead an incremental strategy is to be attempted: some (uncontroversial) provisions of the drafts are to be extracted and presented to the parliament as amendments to the current labour code.⁸ Thus, while we cannot say with absolute certainty that the demise of collective bargaining is inevitable, neither can we predict its revival any time soon.

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8. Despite a general failure of the reform, it might useful to recapitulate major proposed provisions regarding collective bargaining: (i) a derogation mechanism was to be introduced. In SECA less favourable measures could be included than in MECA unless the parties to the latter explicitly rule out such an option; (ii) bargaining rounds were to be introduced, agreements were to be signed for 36 months and automatically prolonged for another 12 months, unless one of the parties objects; (iii) following dissolution of an agreement, its provisions remain binding for the next 12 months, with the exception of pay regulations, which remain binding for 18 months; (iv) the range of entities entitled to enter into a MECA was to be extended to cover not only employer organisations, government ministers and local government, but also 'groups of employers', economic chambers and craft chambers; (v) employers with at least 50 employees on the payroll with no collective agreement must initiate negotiations with a proposal comprising, at least, provisions on pay, equal treatment and professional development.

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Abbreviations

BCC	Business Centre Club
CBOS	Centrum Badania Opinii Społecznej (Public Opinion Research Centre)
FZZ	Forum Związków Zawodowych (Trade Union Forum)
GUS	Główny Urząd Statystyczny (Central Statistical Office)
MECA	Multi-employer collective labour agreement
OPZZ	Ogólnopolskie Porozumienie Związków Zawodowych (All-Poland Alliance of Trade Unions)
PIP	Państwowa Inspekcja Pracy (National Labour Inspectorate)
PKD	Polska Klasyfikacja Działalności (Polish Classification of Activities)
RDS	Rada Dialogu Społecznego (Social Dialogue Council)
SECA	Single-employer collective labour agreement
TK	Trójstronna Komisja do spraw Społeczno-Gospodarczych (Tripartite Commission for Social and Economic Affairs)
ZFŚS	Zakładowy fundusz świadczeń socjalnych (company social fund)
ZRP	Związek Rzemiosła Polskiego (Polish Crafts Association)