

Stages of the development of social dialogue in Poland at the national level

Pact on state enterprise in transition

Signed on February 22, 1993. The signatories to the *Pact on state enterprise in transition* agreed to set up a Tripartite Commission on Economic and Social Affairs. Its task was to develop, via dialogue, a common position on the directions and instruments of the state's socio-economic policy.

The Commission was set up by Resolution of the Council of Ministers No 7/94 of 15 February 1994, which also regulated the composition, organisation and powers of the Commission. Its tasks included monitoring economic processes and macroeconomic ratios, assessing mechanisms and instruments used in socio-economic policy, and presenting opinions and proposals on social and economic policy priorities, including in particular wage policy, employment policy, social benefits and consumption. Although the Commission itself did not have a statutory basis for action, it was indicated as an entity for social dialogue in several laws, including precisely defined tasks.

The composition of the Commission was established on a historical basis. The members of the Commission were the signatories of the *Pact on state enterprise in transition*. There were no representativeness criteria in the Council of Ministers' resolution giving other entities the right to obtain the status of a member of the Commission. The possibility of expanding the composition of the Commission existed, but a proposal from the Commission itself was required. However, the Commission never reached an agreement to expand its membership. The Commission consisted of:

- 1) representatives of the chief bodies of state administration (five, representing the Ministry of Labour and Social Policy, the Ministry of Industry and Trade, the Ministry of Ownership Transformations, the Ministry of Finance, the Central Planning Office),
- 2) trade unions (the National Trade Union Agreement and the 'Solidarity' Independent Self-governing Trade Union and one representative of each of the seven trade unions: the Federation of Trade Unions of PKP Employees, the Confederation of Trade Unions of Power Engineers, the 'Kadra' Association of Trade Unions, the Trade Union of Engineers and Technicians, the Trade Union of Train Drivers in Poland, the Trade Union of Urban Transport Employees, and the Trade Union of the Electromechanical Industry),
- 3) an employers' organisation (the Confederation of Polish Employers).

In addition, the Commission was attended by observers representing: the Central Statistical Office and the Ministry of Agriculture and Rural Development. The legal basis for the

Commission's action – a resolution of the Council of Ministers – was treated from the beginning as a temporary regulation, in force until the relevant law was adopted.

A total of 76 plenary sessions of the Commission took place over 8 years. Data on individual years (15 sessions in 1994, 18 in 1995, 12 in 1996, 10 in 1997, 8 in 1998, 9 in 1999, 4 in 2000), combined with the awareness that after the 1997 elections, the parliamentary majority consisted of members of Solidarity Electoral Action, a political bloc created by the 'Solidarity' Trade Union, show the changing role of the Commission.

Working groups played an important role in the Commission's work. In 2000, there were 7 of them: for social protection, for the reform of the social security system, for the labour market and regional policy, for trade union and employee rights, for a social impact assessment accompanying the implemented systemic reform in health care, for the territorial reform of the country, for the remuneration of public sector employees. These groups hosted in-depth discussions and analyses and served as a basis for drafting resolutions of the entire Commission. Representatives of all organisations that were members of the Commission participated in the groups.

The Tripartite Commission took positions by consensus and, in the event of disagreement, each party had the right to present its own separate position. The main issues on which the Commission has reached an agreement were:

- 1) establishing the maximum annual rate of increase of the average monthly salary in economic entities as well as the indicative rates of increase of the average monthly salary in the third and fourth quarters of 1994 and the subsequent quarters of 1995, 1996, 1997,
- 2) agreeing on the increase in the average wages of public sector employees in 1995,
- 3) agreeing on a position on the draft budget law for 1996 and determining the social partners' preference for allocating funds from the Council of Ministers' general reserve as planned in this budget,
- 4) agreement on the social security reform programme (December 1995 and April 1997).

The agreement concluded on 3 January 1995 regarding the level of funds for public sector salaries in 1995 included a social peace clause, in force during the implementation of the agreement, which enabled the end of a long-term hunger strike in the health service.

Due to the social partners' lack of willingness to cooperate, dialogue in the Tripartite Commission was not always possible:

- 1) no agreement was reached on the rate of increase in salaries in economic entities for 1998 or on shaping salaries for public sector employees in 1998, as the negotiations did not involve the representation of the 'Solidarity' Trade Union,
- 2) in April 1999 the National Trade Union Agreement suspended its participation in the Commission; after that, no agreements were reached in plenary.

Constitution of the Republic of Poland of 2 April 1997.

The issue of social dialogue found its place in the Constitution of the Republic of Poland of 1997. The preamble contains the following provision: 'Hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, **social dialogue** as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities.'

Article 20 of the Constitution also refers to the issue of social dialogue, stating that: 'A social market economy, based on the freedom of economic activity, private ownership, and solidarity, **dialogue and cooperation between social partners**, shall be the basis of the economic system of the Republic of Poland.'

Act on the Tripartite Commission for Social and Economic Affairs and voivodship social dialogue commissions

A special group of the Tripartite Commission, working in February and March 2000, prepared a draft law on the Tripartite Commission for Economic and Social Affairs. It served as the basis for the government bill adopted in June 2001 on the Commission for Socio-Economic Affairs and on the amendment of certain acts. In addition to this project, a parliamentary draft (the Alliance of the Democratic Left) was sent to the Sejm. On 6 July 2001 the Sejm adopted the law on the Tripartite Commission for Socio-Economic Affairs and voivodship social dialogue commissions. It was published on 18 September 2001, five days before the 2001 parliamentary elections, and entered into force one month after its announcement.

The Commission was composed of representatives of:

- 1) the government (appointed by the Prime Minister – usually ministers or deputy ministers),
- 2) workers' organisations (7 representatives of each representative trade union organisation),
- 3) employers' organisations (5 representatives of each representative employers' organisation).

National trade unions, national trade union associations (federations) and national inter-union organisations (confederations) meeting all the following criteria were considered to be representative trade unions under the Act:

- 1) associating over 300,000 members who are employees, with the maximum of 100,000 members employed in entities for which the primary activity is specified in one section of the Polish Classification of Activity (PKD).
- 2) operating in entities of the national economy whose basic activity is specified in more than half the sections of the Polish Classification of Activities (PKD).

The Act recognized the 'Solidarity' Independent Self-governing Trade Union and the National Trade Union Agreement as representing employees. Representatives of the Trade Union Forum were appointed to the Commission in March 2003, after judicial confirmation of their representativeness.

In practice, the Act prevented the 'double counting of members' (i.e., of the same persons by two organisations).

Organisations meeting the following criteria were recognised by the Act as organisations representing employers:

- 1) associating employers employing over 300,000 employees, with a maximum of 100,000 members employed in entities for which the primary activity is specified in one section of the Polish Classification of Activity (PKD),
- 2) having a nationwide reach,
- 3) operating in entities of the national economy whose basic activity is specified in more than half the sections of the Polish Classification of Activities (PKD).

The Act recognised the following organisations as representing employers: the Confederation of Polish Employers, the Polish Confederation of Private Employers and the Polish Crafts Association. Statutory representativeness criteria were confirmed in court proceedings, in June 2002, the Business Centre Club – Employers' Union.

In practice, the Act prevented the 'double counting of members' (i.e., of the same persons by two organisations).

Trade unions and employers' organisations were obliged to submit applications to be recognised as representative every 4 years.

In addition to government representatives and the social partners, representatives of: the Central Statistical Office, the National Bank of Poland, as well as representatives of local government units, delegated by the Joint Government and Local Government Commission, and since 2008 also a representative of non-governmental organizations representing the Public Benefit Activity Council.

The work of the Commission was led by the government representative (as Chairperson), each of the organisations nominated one person for the position of Deputy Chairperson of the Commission – usually the Presidents of these organisations. This body constituted the Presidium of the Commission.

Working groups played an important role in the Commission's work. Their number was gradually increased. In 2011, there were 10 permanent teams: for economic policy and the labour market, for labour law and collective agreements, for the development of social dialogue, for social insurance, for public services, for the budget, wages and social benefits, for cooperation with the International Labour Organisation, for the European Union structural funds, for the revised European Social Charter, and for the European Union.

A total of 74 plenary sessions of the Commission took place over 11 years. Year-by-year data (2 sessions in 2001, 10 in 2002, 8 in 2003, 7 in 2004, 5 in 2005, 5 in 2006, 3 in 2007, 6 in 2008, 6 in 2009, 4 in 2010, 6 in 2011, 8 in 2012, 4 in 2013) show a gradual decline in the Commission's import.

This is also indicated by an analysis of the resolutions adopted by the Commission – i.e., the positions agreed by agreement among all the members of the Commission. The Commission adopted a total of 43 resolutions, the last of which was adopted on 15 September 2010. Of these resolutions, only 13 may be considered substantive – i.e., those concerning important socio-economic issues and having a direct impact on the applicable legal norms:

- 1) Resolution No. 4 of 25 April 2002 on the draft Act on social insurance for workplace accidents and occupational diseases,
- 2) Resolution No. 5 of 26 June 2002 on the draft law amending the Act on the social security system and certain acts,
- 3) Resolution No. 8 of 24 July 2002 on the average annual rate of increase in public sector salaries and the indexation of pensions in 2003,
- 4) Resolution No. 10 of 13 December 2002 on the draft Act amending the Act on pensions from the Social Insurance Fund,
- 5) Resolution No. 11 of 13 December 2002 on the gradual abolition of the differentiation of the percentage the base amounts used in the calculation of benefits,
- 6) Resolution No. 14 of 20 February 2003 on the draft Act on social pensions
- 7) Resolution No. 16 of 20 February 2003 on the draft Act on the rules for employing temporary workers,
- 8) Resolution No. 19 of June 17, 2003 on the draft Act on the takeover by the State Treasury of Social Insurance Institution (ZUS) liabilities for contributions not transferred to open funds,
- 9) Resolution No. 20 of 10 July 2003 on the government's draft Act on social assistance,
- 10) Tripartate Commission Resolution No. 23 of 20 November 2003 on the rate of increase in the average monthly salaries of entrepreneurs for 2004,
- 11) Resolution No. 35 of 13 July 2009 on the amount of the minimum wage for 2010,
- 12) Resolution No. 37 of 24 June 2010 on the verification of the amounts of income criteria from 1 October 2010,
- 13) Resolution No. 41 of September 13, 2010 on establishing the amount of the minimum salary for work in 2011.

Other resolutions were of an internal nature (e.g., amendment of the rules of procedure, formation of working groups) or declarative (e.g., the Commission's will to work on a specific

issue was confirmed). As many as 10 of these resolutions were adopted during the first two years of the Commission's operation.

The Commission virtually ceased its activities on 26 June 2013 when the trade unions suspended their work, recognising that the dialogue in the Commission was fictitious and that the government was not taking their demands into account.

Act on the Social Dialogue Council and other institutions of social dialogue

In 2013, trade unions presented a proposal to the President of the Republic of Poland to change the model for social dialogue at the national level. After 2 years of work, the Sejm adopted on 24 July 2015, the Act on the Social Dialogue Council and other institutions of social dialogue. Compared to the previous model (Tripartite Commission), the Act brought a number of changes – both in terms of organisation and scope of activity.

The Act primarily defined the objectives of the Social Dialogue Council:

- 1) ensuring the conditions for socio-economic development and increasing the competitiveness of the Polish economy and social cohesion,
- 2) implementing the principle of participation and social solidarity in employment relations,
- 3) working towards improving the quality of the formulation and implementation of socio-economic policies and strategies and building social understanding around such issues through transparent, substantive and regular dialogue between workers' and employers' organisations and the government,
- 4) support for social dialogue at all levels of local government.

Members of the Social Dialogue Council are appointed and dismissed by the President of the Republic of Poland at the request of the relevant trade union or employers' organisation or the Prime Minister. In the current model, more emphasis is placed on three parties to the Council (employee, employers and government), leaving these parties room for their agreement. Currently, each social party has 24 representatives on the Council, while the government is represented by 11 people; representatives of the President of the Republic of Poland, the CENTRAL STATISTICAL OFFICE, the National Bank of Poland and the Chief Labour Inspector also participate in the Council's work in an advisory capacity.

The Act maintained the existing rules for recognizing employee or employer organizations as representative, and thus having the right to membership of the Social Dialogue Council.

Currently, the members of the Council are:

- 1) three trade unions ('Solidarity', the 'Porozumienie' National Trade Union, and the Trade Union Forum),
- 2) six employers' organisations (the 'Lewiatan' Employers' Confederation of the Republic of Poland, the Business Centre Club Association of Employers, the Polish Crafts Association,

the Association of Entrepreneurs and Employers, and the Federation of Polish Entrepreneurs.

An important change also concerned the way in which the work of the Council was managed, including the appointment of the Chairman of the Council. A rotating (between the three parties on an annual basis), Chairmanship of the Council was implemented, as was the principle that each organisation represented on the Council and a governmental party would appoint a Deputy Chairman of the Council (unless they serve as Chairman). This body will constitute the Presidium of the Council.

The Act provides for the Social Dialogue Council to have two levels of competencies. Some of these competences are reserved for the tripartite dialogue involving the three partners – employers – employees – the government, i.e. the whole Council, and some for the autonomous dialogue between the two sides – employers and employees.

Employers and trade unions were given the right to initiate statutory changes, subject to joint agreement on the draft or at least assumptions for the Act. Of course, they still have the opportunity to give opinions on bills and other legal acts. They may also submit joint inquiries to ministers, and request that a law be amended or passed, demand a public hearing, request that the Supreme Court interpret the provisions of law and request that the Constitutional Tribunal examine the constitutionality of laws.

On an annual basis, the Council also performs the tasks set out in five laws:

- 1) agreeing on the level of average annual salary growth rates in the public sector for the following year – in accordance with the Act of 23 December 1999 on the shaping of public sector salaries and amending certain acts,
- 2) agreeing on the amount of the minimum salary for work for the following year, in accordance with the Act of 10 October 2002 on the minimum salary for work,
- 3) reconciliation of income criteria in accordance with the Act of 12 March 2004 on social assistance,
- 4) agreeing to increase the indexation of pensions for the following year in accordance with the Act of 17 December 1998 on pensions from the Social Insurance Fund,
- 5) reconciliation of the amounts of family benefits in accordance with the Act of 28 November 2003 on family benefits.

Generally speaking, the Social Dialogue Council has been given more powers than the Tripartite Commission. While the Commission mainly dealt with employee-employee relations, the Dialogue Council was also given the right to express an opinion on all problems and regulations related to economic policy and entrepreneurship.

The process by which the Dialogue Council makes decisions (resolutions) has been made more flexible.

The Council's resolutions are adopted unanimously, with the agreement of each of the three Parties. The position of each of the parties representing the social partners shall require a simple majority of votes, with at least two-thirds of the members representing that party present. The position of the government party must be adopted unanimously by the representatives of the Council of Ministers present at the meeting.

There are Voivodship Social Dialogue Councils, created by the Marshal at the joint request of employers' and trade union organisations, in each voivodship. In addition to the local government, trade union and employer parties, representatives of the voivode participate in these Councils, and representatives of poviats and municipalities may be invited to participate in the meetings.

The minister responsible for labour was granted the right to appoint, at the request of the parties, teams independent of the Council for conducting social dialogue on a sectoral level.

Currently, there are 8 permanent working groups in the Social Dialogue Council (budget, wages and social benefits, labour law, economic and labour market policy, social security, development of social dialogue, European funds, public services, and international affairs).

To date, the Council has adopted 58 resolutions; in addition, a total of 110 joint resolutions of employers and employees have been adopted. This represents a significant quantitative change compared to previous model for social dialogue at the national level. It also reaffirms that the model for dialogue within the Social Dialogue Council can provide a good basis for further developing autonomous dialogue between the social partners in the future.

The same law also created the legal basis for the activities of the Voivodship Social Dialogue Councils, created by the Marshal, at the joint request of employers' and trade union organisations. In addition to the local government, trade union and employer parties, representatives of the voivode participate in these Councils, and representatives of poviats and municipalities may be invited to participate in the meetings.

The minister responsible for labour was also granted the right to appoint, at the request of the parties, teams independent of the Social Dialogue Council for conducting social dialogue at the sectoral level. Currently, there are 20 industry teams. They include trade unions operating in a given industry as well as employers' organizations from that industry, as well as representatives of relevant ministries – at the rank of secretaries and under-secretaries of state. Representatives of professional chambers and business groups, representatives of local government and institutions subordinate to the government are also invited to participate in the works.