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Summary

The report presents the results of the research on the tripartite dialogue in Poland. It is based on a fieldwork research conducted in July-August 2005. The object of the study and report is the performance of the Tripartite Commission after the adoption of the new law in 2001, and after the SLD/UP/PSL left-wing coalition government of Leszek Miller came to power in 2001. Compared to the 1990s, that period differed by a new legal and institutional environment, wider membership in the Commission (seven organizations), lesser presence of trade unions in politics, growing importance of employer organizations and the public economic sector, and a more active government policy toward the Commission than in the preceding decade.

The functioning and role of the Tripartite Commission is analyzed primarily using the example of negotiations surrounding the Labour Code reform in 2002 and public consultations accompanying government's public spending reform plan initiated by deputy prime minister Jerzy Hausner in 2004. The study analyses the functioning of the consultation system, the role played by social partners, their actual impact on decisions and the process of state policy development; and relations between new methods of governance and the old (hierarchical) ones. The extent to which consultations and associated innovations promoted the effectiveness and legitimization of the reform process has also been analyzed.

The research was based primarily on the in-depth interviews conducted with the present and former members of the Tripartite Commission. The minutes and communiqués from sessions of the Tripartite Commission and meetings of its taskforce teams, as well documents drawn up by organizations participating in the Tripartite Commission, press articles and literature referring to the functioning of the Tripartite Commission were also analysed.

The report is organized as follows: the introduction and the short description of the methodology are followed by executive summary with main conclusions, and then the short background presentation of the Tripartite dialogue in Poland. Then the issues chosen for analysis are discussed. The following parts deal with the issues of legitimacy, efficiency accountability, transparency.

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Abbreviations

BCC	Business Centre Club – employer association
FZZ	Forum Związków Zawodowych (<i>Forum of Trade Unions</i>)
KPP	Konfederacja Pracodawców Polskich (<i>Confederacy of Polish Employers</i>)
TC	Tripartite Commission
OPZZ	Ogólnopolskie Porozumienie Związków Zawodowych (<i>All-Polish Alliance of Trade Unions</i>)
PKPP	Polska Konfederacja Pracodawców Prywatnych „Lewiatan” (<i>“Lewiatan” Polish Confederacy of Private Employers</i>)
Solidarity	Niezależny Samorządny Związek Zawodowy „Solidarność” (<i>“Solidarity” Independent Self-Governing Trade Union</i>)
ZRP	Związek Rzemiosła Polskiego (<i>Polish Craft Union</i>) – small-enterprise owners’ association

“...I didn’t bother to include important things in the Tripartite Commission (...) as I wouldn’t have been able to reach an agreement with the others, although I was particularly interested in attracting employers... I decided that they can help me to authenticate and legitimize the project. Particularly employers. Trade unions much less so.”

Deputy Premier

“... achievements [of the Commission] are substantial considering that at the end we were able to obstruct a few pieces of legislation, a few regulations (...). The method of obstructing them was simple. All we needed to do was to suggest that [the matter at hand] be discussed by the Commission.”

Representative of an employer organization

“[In the Tripartite Commission] we just chat: I present my arguments, you present yours. We openly share our opinions and then we both call Jack or Frank who is a member of parliament and we explain the issue to him. And that’s OK.”

Representative of an employer organization

“Really big problems were settled outside the Tripartite Commission.”

Representative of a trade union

I. Foreword

The present report is a part of the project “Democratization, Capture of the State and New Forms of Governance in CEE Countries” conducted by the Institute of Public Affairs within the research consortium “New Modes of Governance”. The functioning and role of the Tripartite Commission is analyzed primarily using the example of negotiations surrounding the Labour Code reform in 2002 and public consultations accompanying government’s public spending reform plan initiated by Deputy Premier Jerzy Hausner in 2004. Jointly with study reports received from Estonia and Lithuania, it will constitute a report on the Tripartite dialogue in new EU member states.

The object of the study and report is the performance of the Tripartite Commission (TC) after the adoption on 6th July 2001 of the Law on the Tripartite Commission for Socio-Political Affairs and Provincial Social Dialogue Commissions, and after the SLD/UP/PSL left-wing coalition government of Leszek Miller came to power in 2001. Compared to the 1990s, that period differed by a new legal and institutional environment, wider membership in the Commission (seven organizations), lesser presence of trade unions in politics, growing importance of employer organizations and the public economic sector, and a more active government policy toward the Commission than in the preceding decade.

Study objectives

The study aimed at:

- Capturing the background of public consultations concerning the Labour Code and the Hausner Plan with partners in the Tripartite Commission, and motives that governed the players in each of these two cases;
- Analyzing the functioning of the consultation system, the role played by social partners, their actual impact on decisions and the process of state policy development; and relations between new methods of governance and the old (hierarchical) ones;
- Analyzing the extent to which consultations and associated innovations promoted the effectiveness and legitimization of the reform process.

Methodology and scope of research

The study was conducted in July/August 2005 and used the following research methods:

- In-depth interviews with representatives of employee and employer organizations – members of the Tripartite Commission: “Solidarity” Trade Union, All-Polish Trade Union Association (OPZZ), Forum of Trade Unions (FZZ), Confederacy of Polish Employers (KPP), “Lewiatan” Polish Confederacy of Private Employers (PKPP), Polish Craft Union (ZRP), and officials from the Ministry of Economy, Labour and Social Policy, who represented the government in the Tripartite Commission;
- Analysis of minutes and communiqués from sessions of the Tripartite Commission and meetings of its taskforce teams i/c social insurance and i/c budget, remuneration and social benefits;
- Analysis of documents drawn up by organizations participating in the Tripartite Commission (statements, position papers, programmes, correspondence);
- Making use of selected press articles and literature referring to the functioning of the Tripartite Commission.

II. Executive Summary

This report “Tripartite Commission and Governance in Poland” is based on a fieldwork research conducted in July-August 2005. The object of the study and report is the performance of the Tripartite Commission (TC) after the adoption on 6th July 2001 of the Law on the Tripartite Commission for Socio-Political Affairs and Provincial Social Dialogue Commissions, and after the SLD/UP/PSL left-wing coalition government of Leszek Miller came to power in 2001. Compared to the 1990s, that period differed by a new legal and institutional environment, wider membership in the Commission (seven organizations), lesser presence of trade unions in politics, growing importance of employer organizations and the public economic sector, and a more active government policy toward the Commission than in the preceding decade.

The Tripartite Commission for Socio-Economic Affairs operates in Poland since 1994. Since July 2001, its operation is legislated. The Commission is involved in a social dialogue on issues associated with wages and social benefits, participates in drafting the state budget and contributes to the work on wage increase and minimum-wage indicators. TC is relatively fragmented: in addition to government officials, its membership includes four employer organizations and three trade union associations. The work takes place at plenary sessions, within taskforce teams and in the presidium. It is based on the principle of consensus, which causes problems with reaching agreements, results in a small number of reached agreements and is prone to boycotts. The most important body of the Commission is its presidium composed of the government representative and leaders of participating organizations. The presence of leaders and the restricted number of members allows the presidium to make decisions quickly and flexibly, and the presidium is precisely the place where decisions are made. According to all respondents, plenary sessions, which constitute principal forums of the Commission, have only a ceremonial significance. In most cases, all decisions have been already made ahead of time at presidium sessions. At the same time, presidium work is most prone to politicization. During politically “hot” periods, at times of election campaigns, its work comes to a standstill. So even though the Tripartite dialogue is less politicized than before, the Commission work continues to be largely influenced by fluctuations of the political calendar.

Tripartite Commission recovery after 2001

After the Commission was legislated and the SLD/UP/PSL left-wing government took power, the Commission became more active and played a larger role than in the earlier period. Several factors contributed to that change: a new legal and institutional environment, greater interest by trade unions and employer organizations in participating and the more active government policy toward the Commission than in the 1990s. The high unemployment rate reaching 20% and the critical condition of public finances caused the government to be initially more interested in talking with social partners and legitimizing necessary reforms. Respondents interviewed for the study indicate that participating organizations have also begun to appreciate the prestige of TC membership, proximity to decision-makers, possibility of influencing legislation before it reached parliament and mass-media interest in TC. Interest group leaders appreciated the fact that, for the first time since 1989, the TC chairman was at once economy minister and deputy premier responsible for the entire social and economic policy of the government. For employer organizations, TC became an interesting forum for lobbying and debating the government, possibly even more so than for talking with trade unions. And after trade unions had partially withdrawn from party and parliamentary politics, they also became more interested in TC as a forum where they could influence policy.

Evolution of government attitude toward the Tripartite Commission

A key role in the social dialogue after 2001 was played by Jerzy Hausner, initially the minister of labour and then, in the SLD government, deputy premier and minister of economy. As one who chaired the Tripartite Commission, he was initially the main stimulator of TC activities. On one hand, he played up to union and employer representatives (who in turn considered him a reliable partner) and created conditions favourable to a bilateral one-on-one dialogue between these two sides without government involvement. On the other hand, he built up his position in the government as the main coordinator of contacts with social partners. But after the failure of TC talks on the government-sponsored Pact for Employment and Growth in 2003, Hausner began to marginalize the Commission. The government started to perceive TC as an instrument inadequate to the challenges facing the State during the period of transformations and one that was overly concerned with particular interests. In the case of the public spending reform of 2003-2004, the government decided that it would not be able to obtain support for its plan in the Commission and began to look elsewhere for its legitimization. It organized an *ad hoc* public debate grouping a larger number of organizations and experts, and, as confirmed in interviews with government officials, relegated the Tripartite Commission to playing a “ritualistic”, purely formal role.

Tripartite Commission and legitimization

The Tripartite Commission did not play a major role in contributing to the legitimization of reforms. While it is true that the atmosphere around the Tripartite dialogue clearly improved compared to the earlier period, that mechanisms and channels of expressing opinions concerning proposed legislation became more institutionalized, that the work of taskforce teams was formalized, and that a few minor agreements were reached, the Commission was not able to come to agreement on more important issues such as the Labour Code or the Hausner Plan. TC served the cause of reform legitimization only to a limited degree because organizations present therein were for various reasons more interested in their current impact on the legislative process and reinforcement of their position among their own members and *vis-à-vis* other organizations than in treaties and agreements (desired by the government as a source of a greater legitimization of proposed reforms). The low inclination to compromise was caused, among other things, by a competition for members between relatively weak member organizations and, in some cases, also by animosity among their leaders, which was an important factor considering the quite high level of personalization of the Tripartite dialogue in Poland. The attitude of the government, which marginalized TC in favour of other dialogue forums, also played an important role.

Tripartite Commission and effectiveness

An assessment of the TC impact on the effectiveness of governance is bound to be multifaceted. One of the main objectives placed before the Commission was to “contribute to social stability in Poland”. It is difficult to rate TC’s contribution to the prevention of major conflicts in the Polish industry or powerful expressions of social discontent. Trade union officials tend to believe that it was considerable. Employers, in turn, consider that TC was too busy “putting out fires”. A similar assessment is provided by members of the government of that time, who stress that conflicts in economic sectors and workplaces should be solved at the lowest possible level, in the workplace itself, with the independent court as the arbitrator, and not in the Tripartite Commission with government participation. Consequently, on one hand, TC plays a positive role by contributing to conflict resolution. On the other hand, by involving the government it weakens it to some extent and, at times, also places additional burdens on the State budget.

The second element in the assessment of the effectiveness of the Commission is found in the number of agreements reached under its auspices. Thus measured, TC effectiveness is low – very few agreements are concluded. Stakeholders use the Commission more as a tool for obstructing unfavourable legislation or actions than as an instrument for preparing joint proposals.

The next assessment criterion is to what extent consultations in TC slow down the governance process. The legislated requirement to consult government bills with partners in the Commission slows down government work and often makes it much more difficult, particularly when time is of essence. Government respondents stress, however, that it is better to consult legislative or regulatory proposals at an early stage of their development, as happens in the Tripartite Commission, than later risk a difficult debate in the Sejm, with protesters in front of the parliament building and lobbying going on in Sejm committees. Arrangements arrived at in the Commission also make it possible to accelerate the legislative process in the Sejm, where deputies are more inclined to accept projects supported by the parties in the Tripartite Commission and often even do so automatically.

The Tripartite Commission in Poland operates along the consensus principle. All members must agree with a given position before it can be recognized as the position of the Commission. Such consensus is reached rarely. For this reason, TC members are somewhat sceptical when it comes to assessing this type of TC effectiveness. Consequently, they try to convince deputies of the importance of partial agreements. In the presence of scepticism as to the possibility of reaching full agreements within the Commission, attempts are made to legitimize and give a higher rank to partial successes.

Tripartite Commission and pathologies of a weak State

In addition to creating a forum for discussion between various types of organizations, an effective Tripartite Commission should serve as a sort of channel for lobbying done by interest groups such as trade unions or employer organizations. When that mechanism is faulty and accompanied by crises, the weight shifts to less formal lobbying conducted in governmental offices and parliamentary corridors. It is a system of communicating vessels: when one mechanism breaks down, the players immediately take advantage of another. At the time when for some reason the discussion on the TC forum subsided, it was replaced by one-on-one talks or independent lobbying by individual organizations.

A crisis in negotiations on the TC forum brings about one-on-one talks between organizations or their individual talks with the government, during which organizations propose their solutions to the government or the government tries to sway them individually to support its plans. In the case of the Hausner Plan, the government accepted *de facto* this state of affairs and tried to sway employers to its project while circumventing the Commission. It should also be said that such situation suits those social partners who treat the Commission as a source of prestige and information, but prefer to lobby individually in the Sejm.

Independent one-on-one talks, indispensable and not sufficiently developed in Poland, were in Polish conditions often not as much expressions of social partners' will and ability to talk about labour relations without government involvement as expressions of problems with the functioning of the Commission. Indeed, some participants would shift to talks behind the scenes, largely closed to other organizations and not subject to full disclosure. Such talks are easier because they involve only those who are willing to talk. That was the case with negotiations concerning the Labour Code in 2001/2002, when the sceptical attitude of the "Solidarity" Trade Union provoked talks outside the Commission by OPZZ, PKPP and ZRP. Paradoxically, despite the one-on-one nature of these talks, a relatively significant role was

played therein by the government, keen on bringing about the amendment of the Labour Code. FZZ - which was willing to participate in those talks - was kept out because at that time it did not have the required status of representativity.

The presence of an organization in TC reinforces its social capital (via affiliation networks, contacts), which translates into power and an easier access to government officials. The same way as Jerzy Hausner was to some degree reinforcing his position in the government as TC Chairman, so did the impact of social partners on government policy depended largely on swaying the TC Chairman to their views and on the current strength of his position in the government. That strength grew when Hausner became Deputy Premier i/c Economy and Chairman of the Ministers' Council Committee. TC partners recognized new possibilities of impacting government policy associated with Hausner's rise and doubled their efforts to bring new initiatives to TC, sometimes only remotely connected with the Commission's direct tasks. Social partners also use the advantages of their TC membership to call and meet ministers and government officials. When this kind of lobbying takes place within the procedural framework of the Commission, it is easier to control by the government and the public opinion than if it were done outside.

Tripartite Commission and the position of social partners

The TC membership reinforces the position of social partners, builds up the prestige of the organizations. They treat their active involvement in the social dialogue as part of the strategy of building up the position of their organization. Often the very membership in TC is a desired asset as it reinforces the social capital in the form of giving access to a network of affiliations and contacts that can be transformed into power. The TC forum also provides an opportunity for becoming familiar with opinions held by others and for better preparing for lobbying the Sejm. In the eyes of trade unionists, their membership in the Commission makes them being treated more seriously by the government administration, in many cases allows them to prevent crises in sectors and workplaces, and gives them an opportunity to participate in the development of national socio-economic policy.

The study showed that trade unionists present in TC treat their membership and legal provisions governing the Commission almost as a guarantee of trade-union prestige and effectiveness. They say, for example, that "without the status of representativity nobody would take us seriously". The growth of the prestige of an organization by virtue of its participation in TC and the positive effect of the Tripartite dialogue having been legislated are underlined even by the representatives of old trade unions with a rich history and high prestige, such as "Solidarity". For employers, the Tripartite Commission is less of an element of their identity. They often state that the Tripartite dialogue does not need to exist at all and illustrate that statement by the example of the United States. They stress, however, that "since the Commission does exist, employers must be represented in it".

Conclusion

The study confirmed the perceivable weakness of the interest representation system in Poland. Firstly, there is insufficient contact between the leaders of organizations participating in TC and their rank-and-file members, as demonstrated during Labour Code negotiations. Secondly, Hausner Plan negotiations showed that representatives of member organizations are effective only when their demands coincide with government proposals. This results both from the weak nature of non-governmental organizations and government's dominant position in the dialogue system, and from government's quite manipulative attitude toward these organizations (as witnessed by the case of the Hausner Plan). Organizations whose opinions approximated government views found it much easier to operate in the consultation system.

Consequently, non-governmental organizations do not accomplish their objectives as much inside the social-dialogue institution as in the grey zone, as evidenced by coalminer protests in Warsaw and, also, by Labour Code negotiations. The Tripartite Commission and dialogue – weak in themselves – are in addition manipulated by the government, which instead of supporting the institutions engaged in the dialogue invests in new forums, designed to be short-lived and resting on a fragile institutional foundation, where the government position is even more dominant.

Studies of the Polish Tripartite dialogue prior to 2001 have shown that despite substantial efforts made by the AWS/UW government, its numerous meetings with social partners, visits to workplaces and other measures it had taken, it did not create any cohesive entity and did not help to institutionalize the dialogue (Gańczarz, Pańków 2001: 94-95). Conclusions are not as equivocal with respect to the period under the SLD government. There is no doubt that the law of 2001 helped to institutionalize the Commission. The government, and especially Minister Jerzy Hausner, put a great deal of effort into forming a cohesive dialogue system and institutionalizing it. The government also had an indirect impact on a new impetus given to bilateral one-on-one talks between trade unions and employers. Nevertheless, its manipulative approach to the Tripartite dialogue, which consisted in seeking support among social partners for its reform program and then, when it would not be accepted by all Commission members, appointing other dialogue forums, is in a longer term a threat to the quality and institutionalization of the social dialogue in Poland.

An ultimate assessment of the vitality and level of institutionalization of the Tripartite Commission in the conditions of the law of 2001 will be possible only after an analysis of its functioning under two or three successive governments and parliaments. This is particularly so due to the great influence that specific individuals have on the functioning of the dialogue in Poland. During the 2001-2004 period covered by the study, that role was played by Deputy Premier Jerzy Hausner.

III. Social dialogue and the Tripartite Commission in Poland after 1989

III.1. Evolution of the social dialogue in Poland

In the initial years after the fall of communism in Poland, there was practically no social dialogue conducted on the national level. That happened despite the tradition of “Solidarity” social movement and the role played by dialogue in the transformation from communism to free-market economy (“round-table” negotiations in 1989). The reticence of the players to engage in an institutionalized social dialogue was associated with several factors. Firstly, politicians with a Solidarity Trade Union pedigree were convinced that their presence in politics and a peculiar personal connection between the world of politics and the world of trade unions simply makes such institutionalized dialogue unnecessary (Gąciarz, Pańków 2001). Secondly, there was still fresh memory of a centralized and mainly propagandistic role played by the pseudo-dialogue initiated by the communist authorities in the 1970s and 1980s.¹ The third explanation for the unwillingness among the new elites to initiate and maintain a Tripartite dialogue can be found in the strong conviction present at that time that effective reform policies should ignore what the society thinks about them in the name of their rational and speedy implementation (Gąciarz, Pańków 2001: 32). Researchers of Polish transformations have given that strategy, adopted by Polish reformers led by Leszek Balcerowicz, the name of “imperative method” (Hausner 1995, see also Gąciarz, Pańków 2001:107). According to that strategy, it is the State and political elites who force through specific transformation directions as well as instruments and mechanisms of their implementation. Consulting the shape and directions of the reforms with community organizations is considered ineffective. This attitude toward the social dialogue was partly shaped by the intellectual love affair with neo-liberalism and the poor image of trade unions, presented in influential press of the 1990s as anti-reform or downright destructive (Kozek 2000). Such sceptical opinion of the Tripartite dialogue held by the elites of the Third Polish Republic dominated practically throughout the 1990s. At the same time, there was no certainty at all the Poland would choose the neo-corporative model of industrial relations.²

After a period of absence of an institutional formula for social dialogue between 1989 and 1992, the government proposed to trade unions and the only employer organization of that time – Confederation of Polish Employers (which grouped state post-socialist enterprises) - the Pact on an Enterprise in Transformation. It was supposed to partially neutralize problems associated with privatization and the collapse of ineffective state enterprises inherited from the communist times. Although its insufficient representativity and weak anchorage in public institutions was subject to criticism, the cooperation within the framework of the pact served as the beginning of the Tripartite dialogue in Poland.

The government appointed the Tripartite Commission in 1994. The stimulation of the dialogue was made possible, among other things, thanks to the personal involvement therein, between 1994 and 1997, by Minister Andrzej Baczowski, who earned a great deal of respect among social partners. After his death in 1997, TC reverted to sluggishness, thus confirming

¹ Such was indeed the character of talks conducted by Edward Gierek, First Secretary of the Polish Communist Party, with workers during the crises of the 1970s and by *Polski Ruch Odrodzenia Narodowego* (Polish National Resurgence Movement) – initiated by Wojciech Jaruzelski – which the authorities used as a façade of dialogue with society in the 1980s.

² Some employer representatives continue to have doubts as to whether Tripartite dialogue should have an institutionalized formula. One such representative, associated with a reform-minded political faction, admits in an interview conducted for this study that „there is no Tripartite commission in the United States” and that he personally would prefer that to be also the case in Poland.

the low level of the dialogue's institutionalization.³ There was also a growing criticism of the insufficient representativity of the organizations participating in the dialogue (Gardawski 2004) and politicization of the Commission. The latter was reflected in the ties existing between trade unions and political groups represented in the Sejm. Trade unions that had links to the current government tried to advance their interests via direct contacts with the government rather than via the Tripartite Commission. In turn, trade unions that were associated with the opposition boycotted the Commission and undermined its functioning (Frieske, Małchol-Zajda 1999). As a consequence, the effectiveness of Tripartite dialogue in Poland was critically assessed by scholars as compared to other countries of the region (Avdagic 2004). In the second half of the 1990s, even though the Tripartite Commission was formally in place, the dialogue was for the most part pursued outside of it. Plenary sessions of the Commission were often boycotted and its task force teams met rarely (Gańczarz, Pańków 2001). A relatively high level of activity demonstrated by the AWS government, supported by Solidarity, numerous meetings with social partners, visits to workplaces and other government measures did not create a cohesive whole and did not promote the institutionalization of the dialogue (Gańczarz, Pańków 2001: 94-95).

To sum up, in the 1990s, even after the appointment of the Tripartite Commission, successive governments did not try very hard to use Tripartite dialogue as a tool for raising the legitimacy of reforms. Despite the abrupt socio-economic changes after 1989, there was no tradition of involving social partners in the planning and implementation of reforms. While it is true that in the mid-1990s, at the initial phase of the existence of the Tripartite Commission, some politicians who were involved in social issues and industrial relations considered an institutionalized dialogue with trade unions and employer organizations as a potentially important instrument in gaining support for systemic transformations, they were uncommon and their position in politics was not very strong. According to Deputy Labour Minister Andrzej Bączkowski, chairman and one of the main promoters of the Tripartite Commission in the mid-1990s, the role of the Commission was precisely “to help get public acceptance of major reforms: healthcare, education...” (Kalukin 2001). That did not happen. Instead the Commission became a forum for negotiating the rate of wage increases at State-owned enterprises and the AWS/UW centre-right coalition government did not try very hard to use the Tripartite Commission as a forum for restoring its governing legitimacy and building up support for major reforms of the education, healthcare and pension systems.

III.2. Tripartite Commission after its legislation in 2001

In July 2001, the Sejm adopted the resolution on the Tripartite Commission for Socio-Political Affairs and Provincial Social Dialogue Commissions. Thus the Tripartite dialogue at the central level was legislated. Provincial forums for Tripartite talks on the level of Voivodships were also created (Provincial Social Dialogue Commissions – PSDC). The Tripartite Commission for Socio-Political Affairs is the main Tripartite dialogue institution in Poland. According to legislation, the objective of TC is to “achieve and maintain social stability”. The Commission is tasked, among other things, with maintaining a social dialogue in matters of wages and social benefits and in other social or economic matters; and with examining issues of major social or economic significance submitted for deliberation by a Commission member. TC participates in the work on the draft State budget: it gives its opinion on macroeconomic values selected as the basis for developing the budget and,

³ This problem is perceptible to this day. Tripartite dialogue in Poland is rather highly personalized. Its functioning largely depends on the involvement of specific individuals.

subsequently, on budgetary assumptions and the final version of the draft. It also sets the maximum annual rate of the average monthly wage increase in the private sector, wage increase rates in the public sector and the amount of minimum wage. The Tripartite Commission can also function under the bilateral formula: each of the three sides can assume a position on a social or economic policy issue jointly with another side or can request from another side to assume a position in a matter it considers socially or economically important.⁴

The Tripartite Commission is composed of government officials and negotiators from representative employer and employee organizations.⁵ During the period covered by the study, the Commission was chaired and the government was represented by Minister Jerzy Hausner (later deputy prime minister), whose impact on Commission work was significant. Employee organizations represented in TC are: All-Polish Trade Union Association (OPZZ), “Solidarity” Trade Union and Forum of Trade Unions. Employers are represented by: “Lewiatan” Polish Confederacy of Private Employers (PKPP), Confederacy of Polish Employers (KPP), Polish Craft Union (ZRP) and Business Centre Club – Employer Union (BCC). Other entities, such as territorial self-governments, National Bank of Poland, Supreme Office of Statistics or non-governmental organizations, can participate in TC deliberations as advisers or observers.

The Tripartite Commission does its work at plenary sessions, in taskforce teams and in the presidium. The latter is composed of the leaders of member organizations and a government representative. Plenary sessions take place as needed, but at least once every two months. Currently there are eight standing taskforce teams on: labour law and collective agreements; social insurance; budget, wages and social services; economic policy and labour market; social dialogue development; public services; cooperation with the International Labour Organization; EU structural funds.

The most important, decisive and key body necessary to the effective functioning of the Commission is its presidium composed of the chairman, who always represents the government, and leaders of member organizations. The fact that the presidium is reserved to organization leaders and limited to a few people provides for a speedy and flexible decision making. Plenary sessions, which are principal forums of the Commission, are considered by all respondents to have only a ceremonial significance. In most cases, decisions are made earlier, at presidium sittings. However, presidium work is also the most susceptible to politicization. During “hot” political times such as election campaigns, presidium work comes to a standstill. Consequently, even though the number of deputies to the Sejm who are also trade unionists is lower and, consequently, the politicization of the Tripartite dialogue is lesser than in previous terms, the work of the Tripartite Commission is still largely subject to fluctuations depending on the political calendar.

The law on the Tripartite Commission gave that body new entitlements, largely due to the involvement of OPZZ and Solidarity unionists, who at that time held numerous seats in the Sejm. Their goal was to make the Commission as powerful as possible. According to the new law, the Commission is entitled to give its opinion on the draft budget and not only on budget assumptions as was the case in the past. This is an additional problem for the government as it now needs to also deal with the Commission during the tense period of budget preparation.

⁴ Act of 6th July 2001 on the Tripartite Commission for Socio-Political Affairs and Provincial Social Dialogue Commissions, *Dziennik Ustaw* 2001, No. 100, Pos. 1080

⁵ The criterion of “representativity”, i.e. of representing a specific number of members (trade unions) or representing enterprises with a specific overall number of employees (employer organizations) as a condition for membership in the Commission is governed by law and is subject to judicial verification every four years.

The issue of TC entitlements in this field was the cause of disagreements as early as in 2001⁶. A government representative stated in an interview for the study that by basing Tripartite dialogue on consensus Poland chose the “most difficult form of social dialogue. (...) It is difficult and burdened with the risk of partners occasionally retreating from the dialogue. This is why there were crises in the negotiations on the one hand, and one-on-one talks on the other”. The minister sounded somewhat jealous when, for a change, he talked about the Dutch approach where “it is the government who selects elements which it wants to consult and get an opinion on (...), there is a possibility for the government to select issues for consultation” (interview with a high-ranking government official). This statement demonstrates government’s concern that TC in Poland reduces the effectiveness of governance and excessively limits government’s field of action. Ironically, the concern is present despite the fact that in Poland the government holds a really dominant position in social dialogue.

In the light of the law of 2001, the Tripartite Commission can be nevertheless formally treated as nothing else than a consultative body of the government. The law does not specify Commission tasks precisely enough. At the first Commission sitting in November 2001, Labour Minister Jerzy Hausner announced that he would turn to the Supreme Court to get an opinion on Commission powers (*Gazeta Wyborcza*, 24.11.2001). Under that law, the Commission can function properly without taking any major or spectacular initiatives besides what is compulsory: mainly setting wage increase rates and giving an opinion on the budget. Tripartite dialogue under such circumstances results principally in exchanging unbinding opinions. However, the government can use the Commission to carry out a more active and wider reaching reform policy. TC can also be a body where social dialogue serves to decide the shape of socio-political reforms often of a decisive significance to public governance. Particularly since that is what social partners want (or, at least, claim to want) as they are increasingly interested in areas that exceed the narrowly define area of labour law and wages (interview with a trade union representative).

IV. Labour Code reform of 2002 and the Hausner Plan as examples of Commission work

In the years 2001–2005, the most important challenges for the Polish SLD/UP/PSL coalition government were the high unemployment rate reaching 20% and the crisis of public finances. The Tripartite Commission, which resumed its activities in November 2001 under a new law, could play a significant role in increasing the legitimacy and effectiveness of reforms in these two areas. Everything pointed in favour of the Commission playing such role: the new institutional and legal framework of its functioning, attitude of the government set on an active collaboration within the social dialogue institution, greater willingness of trade union and employer organizations to participate in the Commission’s work.

Reference points for an analysis of the functioning of the Tripartite Commission are two reforms undertaken during the rule of the SLD government: the amendment of the Labour Code (LC) in 2002 and the debate concerning the so-called Hausner Plan in 2003/2004. In

⁶ A few months into the Commission term, Labour Minister Hausner stated publicly that the social dialogue did not cover the taxation law. However, under pressure from his partners in the dialogue, he was compelled to admit that taxes were indeed an element of the budget and after a few days invited social partners to discuss them. (*Gazeta Wyborcza* 273/2001).

both cases, we are dealing with reforms of a systemic nature. Talks about their ultimate shape took place also at other forums in addition to the Tripartite dialogue institution.⁷

The two cases differ from one another in several aspects. The nature of the amendment of the labour law in 2002, despite its effect on labour relations, was rather fragmentary. The Hausner Plan, on the other hand, was a complex strategy to overhaul public finances, which assumed multidirectional measures aimed at putting order in administration and social expenditures of the State. The Commission involvement in each of these reforms was also different. The 2002 labour law reform became object of detailed negotiations within TC statutory bodies (after the Commission resumed its activities in November 2001). The labour law is an area where the interests of both sides to labour relations represented in TC cross and is one of principal subjects of Commission work. Whereas the discussion of the Hausner Plan was pursued to a large extent outside the Commission. Finally, it is worth noting that the two issues were being debated at different points of the electoral cycle. The Labour Code amendment (July 2002) took place in the early period of the parliamentary term, when the SLD/PSL government still held a comfortable majority in the Sejm (the amendment was also supported by some members of the opposition). On the other hand, the voting on successive legislative proposals of the Hausner Plan was held at a time when the ruling camp was desintegrating and quickly losing public support, and under strong criticism of the opposition.

IV.1 Labour Code reform of 2002

The amendment of the Labour Code in 2002 introduced the widest changes since the Labour Code amendment of 1996. For several years, employers had been demanding more relaxed labour relations, but without success. However, at the beginning of the decade, that subject found its way to the centre of the public debate. That happened because of the growing unemployment, exacerbated by the economic slump. Between 1997 and 2001, the unemployment rate grew from 10.3% to 17.5%, whereas the annual GNP growth rate fell from 6.8% do 1.0%. Under such circumstances, employer demands took upon a new significance. In addition, the discussion was given impetus by parliamentary elections of Autumn 2001.

While employers were particularly interested in changes to the labour law, the need to relax labour relations was also becoming more clear to trade unions. In 2000, a group of deputies associated with OPZZ came forward with the “Pact for Employment” – a social agreement on legislative changes that would encourage job creation.⁸ In 2001, PKPP and OPZZ launched one-on-one talks (real autonomous bipartite dialogue)⁹ on the subject of changes that would motivate employers to create new jobs. They were subsequently joined by ZRP. These talks were conducted outside the Commission because at that time neither PKPP nor ZRP were its members, whereas OPZZ had suspended its participation in TC work in 1999. Although the draft law on the Tripartite Commission was already in the Sejm, unsolved contentious issues, such as representativity criteria, obstructed its adoption. It should be mentioned that

⁷ This refers both to the legislative process carried out in constitutionally empowered governing bodies and to negotiations conducted outside these institutions, particularly informal mutual contacts between social partners established on their own initiative.

⁸ See “Pakt dla Pracy” (pact for employment) legislative proposal, *Druk Sejmowy* No. 1877, Third Term Sejm of the Republic of Poland.

⁹ I use the terms “autonomous bipartite dialogue”, “one-on-one talks” and “one-on-one dialogue” interchangeably to describe talks conducted between trade union and employer organizations without government participation.

discussions on the reform of the Labour Code were to a large extent responsible for the reactivation of the Commission, because they included two organizations interested in joining the main stream of social dialogue.

During those bipartite talks, their participants worked out a series of joint positions on issues associated with changes in the labour law and with government economic policy.¹⁰ However, the end result of these talks was a failure as not all social partners in TC could be swayed to join the ultimate agreement.¹¹

After the 2001 election, job creation became one of the priorities of the SLD/UP/PSL government. Soon after the government was formed, Labour Minister Hausner disclosed its intention to amend the Labour Code. An important role in this was played by lobbying conducted by employer organizations, especially PKPP led by Henryka Bochniarz (see interview with a high-ranking government official). The minister also declared that, should social partners reach a consensus, he would recognize their joint position as a basis of the reform.

It seemed in the early 2002 that an agreement between the three sides was indeed possible. Ultimately, however, the OPZZ Council did not give its leader permission to put his initials on the document. In this situation, the government decided to bring forth its own project, which went farther than the changes acceptable to trade unions. At the same time, the opposition (Civic Platform) presented a more liberal draft of the Labour Code amendment. The threat of a liberalized Labour Code made it much easier for the OPZZ leader to convince his organization to support the agreement (interview with an OPZZ representative).

Social partners attempted to work out a new agreement, based on the government proposal. These efforts ended in a partial success – an agreement concluded by three organizations which had earlier participated in one-on-one negotiations (Solidarity and KPP did not join). The fight for a new shape of regulations began to spill over to the streets, although the scale of protests organized by trade unions was moderate.¹² The government kept saying that it was prepared to amend its proposal by provisions acceptable to all partners.¹³ Ultimately, at the final stage of deliberating the legislative proposal at the Sejm, the government withdrew the provision on termination of collective agreements - too controversial for trade unions.

The course of the legislative process suggests that the government indeed hoped for an agreement to be reached between social partners. The government side continued to declare its readiness to include their joint positions in the content of the legislation, even at an advanced stage of the work on the government proposal. The adoption of the new Labour Code in July 2002 was received with contentment by employers, whereas trade unions spoke about the amendment with reservation but expressed satisfaction with the withdrawal of its most contentious provisions.

¹⁰ “Protokół ustaleń stanowiących wynik dialogu [...] w okresie 27 II-21 XII 2001r.” (*Minutes of arrangements reached by dialogue [...] between 27.02.2001 and 21.12.2001*), *Kronika Związkowa* No. 13 (294)/2001

¹¹ One-on-one negotiations had not been totally unproductive as the resulting draft of the agreement on changes in the labour law was taken into consideration in the development of the government project.

¹² The Solidarity demonstration organized in April 2002 in protest of anticipated changes drew in excess of 20,000 participants.

¹³ “Kodeks pracy w poczekalni” (*Labour Code in Waiting Room*), *Rzeczpospolita*, 18 May 2002.

IV.1.1 Labour Code Reform 2002 – effectiveness and legitimization

Considering the high unemployment rate, the fact that the labour law was relaxed in 2002 was a success indeed. From the perspective of social dialogue, however, the assessment is not as unequivocal. The fact that trade union and employer organizations embarked on labour-law negotiations was a breakthrough in itself. At the beginning, trade unionists were not at all willing to talk about changes in the Labour Code or make compromises with employers. The taboo existing until then was broken by the talks between M. Manicki (OPZZ) and H. Bochniarz (PKPP). Those talks were risky particularly to the OPZZ leader, who exposed himself to criticism by the Solidarity Trade Union and by members of his own organization. The dialogue was far from “smooth sailing”. The Solidarity Trade Union decided not to participate, whereas the OPZZ leader negotiated on behalf of his organization but kept those negotiations secret from his colleagues in the OPZZ management. He now claims that it was the only strategy possible at the time. Industry trade unions grouped in FZZ were not allowed to participate. In the background there was a competition for members between weakening trade unions. A conflict was also simmering between two employer confederacies (among others of personal nature). KPP refused to participate in the dialogue, although it supported the direction of the discussed changes, because it did not want to recognize the supremacy of PKPP in this matter. From the perspective of the quality of social dialogue and quality of legitimization of the amended Labour Code, the reform seems to have resulted in a failure, particularly as concerns legitimization of the reforms, of the government and of the Tripartite Commission itself. Talks were held outside the Commission because, as one respondent has put it, “it was clear that no agreements would be reached within the framework of the Tripartite Commission. That was certain. In other words, things were discussed there but (...) they showed that it made no sense to come up with initiatives concerning the Labour Code on the Commission forum as nothing would come up of that. At the most, the Commission authority would suffer, and at the end we would have to announce publicly that we had been unable to find a common ground” (interview with trade union representative).

Even though, formally, the talks were conducted one on one without government participation, in practical terms the government played a major role. After the agreement ended in a fiasco, the government came forth with its own project, more radical than the changes agreed to between OPZZ and employers. The OPZZ representative estimates that, by coming forth with a stronger project than the one negotiated, Hausner made it easier for him to obtain consent of the OPZZ leadership. Here is how he describes why he decided to resume talking with employers: “We were aware that Hausner was going to force the project through because he had the support of employer organizations. So, to find a fix-all here, we agreed to talk with employers to neutralize the government proposal.” As a result, the Sejm adopted the government project with those “neutralizing” (softening) amendments brought forth by OPZZ which were acceptable to employers. The new law was adopted by the Sejm without any problem. Some credit for that ought to be given to the negotiations conducted between social partners, even if they took place outside the Tripartite Commission and without the Solidarity Trade Union.¹⁴ Political connections between OPZZ and the governing SLD party also played an important role. The OPZZ representative notes that his credibility was higher owing to his organization’s political connection to the government: “When we said that something would be like this, our employer colleagues knew that it would be indeed like this. (...) the

¹⁴ One of the respondents describes this situation: “In the Sejm committee, no matter what the government would say, the issue was always the same: is it agreed between trade unions and employers? If it wasn’t, there was nothing to talk about.”

Parliamentary Committee was headed by Kaniewski [an SLD deputy to the Sejm affiliated with OPZZ].”¹⁵

IV.2 Public Spending Reorganization Plan (Hausner Plan) 2003 – 2004

In the fall of 2003, the government prepared a public finance reform program (Hausner Plan). It assumed drastic cuts in public spending and its restructuring, particularly as concerned social transfers. The need for the reform was justified by Poland’s long-term objective – entering the Euro zone. The government planned to reduce the budget deficit and curb the growth of the public debt by reducing administrative and social expenditures.

Two key documents were published in October 2003: the Green Book “Racjonalizacja wydatków społecznych” (*Rationalization of Social Spending*) and “Program uporządkowania i ograniczenia wydatków publicznych” (*Public Spending Reorganization and Reduction Program*). As soon as these documents were published, the government opened a public debate on the proposed solutions.¹⁶ Submitting the reform plan to a broad debate (hence outside the Tripartite Commission) was not to the liking of TC participants, particularly trade union representatives.¹⁷ The only TC session devoted to the Hausner Plan took place in January 2004, already after the debate was closed (the debate had been conducted along two tracts – public and expert) and its results were summed up in reports prepared by specially appointed area teams.¹⁸

Hausner Plan implementation measures entered the decisive phase when the following legislative proposals were completed and submitted to the Sejm: the so-called “Winter Package” (legislative proposals on the indexation of disability and retirement pensions, on pre-retirement benefits, and on employment promotion) and the so-called “Spring Package” (proposals of amendments of the legislation on retirement and disability pensions paid out of the Social Insurance Fund, on the social insurance system /which assumed a different rate of social insurance premiums for persons running a business/¹⁹ and on sickness allowance).

After PSL left the governing coalition with SLD and UP in March 2003, Leszek Miller’s cabinet continued to function as a minority government. To get support for its proposals in the parliament, the government had to enter into compromises, which led to weakening the initial assumptions of the Hausner Plan. After the foredoomed resignation of the government in May

¹⁵ An employer representative describes: “The government said as follows: If you can find common ground with trade unions we will be ready to submit such a politically risky amendment. If not with all unions then at least with OPZZ. SLD was in power, had a large parliamentary caucus where OPZZ played an important role. And that’s how it happened - we found common ground with OPZZ (...). The government approved our changes, asked us only to have them consulted with OPZZ (so that a government project would not be rejected by Sejm committees – that would be humiliating). All points on which we had agreed upon with OPZZ were passed (in principle, deputies have no reason to reject provisions that were agreed upon by trade unions and employers).”

¹⁶ The debate was opened by Deputy Premier Hausner on 4th November 2003. There were five expert teams that included approx. 100 experts representing various NGOs, trade unions and employer associations. Their work ended on 13th December 2003. The Ministry of Economy, Labour and Social Policy opened a website (www.debatapubliczna.gov.pl) where it presented government proposals and expert reports. In August 2005 most of this information was no longer accessible.

¹⁷ An interview with a trade union representative.

¹⁸ The expert debate opened in early November 2003. It proceeded in teams divided into main thematic areas: women’s retirement age, professional activation of seniors, disability pensions, professional activation of the handicapped, and farmers’ social insurance.

¹⁹ Proposed solutions in this area were subject of deliberations of the TC Team i/c Social Insurance.

2004 and the appointment of what was announced as a provisional cabinet of Marek Belka, the future fate of the Hausner Plan became anybody's guess. The government successively abandoned dealing with "bridging" retirement pensions, equalization of men's and women's retirement age (and its possible raising), reform of farmers' social insurance, adjustment of work disability pensions and extension of the active professional life of pension recipients. In late March 2005, Minister Hausner resigned. In May, the Council of Ministers presented a report on the execution of the *Public Spending Reduction Program*, which showed that saving and additional revenue objectives had been reached in 56% (including 72% in administration and 46% in social services).²⁰

IV.2.1 Hausner Plan – the role of the Tripartite Commission from the government perspective

An important government initiative that preceded the Hausner Plan was the attempt to negotiate the Pact for Employment and Growth within the framework of the Tripartite Commission in the early 2003. Despite advanced talks and many concluded deals, the initiative failed mainly because of politically motivated objections of the Solidarity Trade Union.

The government was aware that the Hausner Plan – with certain of its parts socially painful and with weak support for it in the parliament – required broad consultation. The task was particularly important and difficult because at that time Leszek Miller's government was quickly losing public support. The Tripartite Commission as the only legislated institution of social dialogue in Poland seemed to be the place where this type of consultation with social partners would be possible. Trade union representatives also expected that.

But after the failure of the Pact for Employment and Growth, Hausner became disappointed with the Commission. A government official estimates that "as long as he hoped that the Pact would have an effect and end up in some grand social agreement, which would reinforce his position, he invested heavily in the Commission and was very much involved. He did a great deal for those partners, was ready to move heaven and earth for them. But when that failed, he seemed to have become disenchanted". Jerzy Hausner admits to have decided at that moment that "no deal could be made with trade unions" (interview with Jerzy Hausner).

Although the Tripartite Commission did meet to discuss the Hausner Plan in January 2004, it was already after a broad expert debate and the government intention was to formally present the outcome of the social debate to the Commission rather than debate the Plan with its members. It was clear that the bulk of the work was being done outside the Commission. The government selected its discussion partners in a way ensuring that their opinion on each debated reform would approximate the government position. According to a high-ranking government official, the marginalization of the Commission role in the debate on the reform plan "seemed to result from the fact that [Jerzy Hausner] was disenchanted with the Commission and did not believe in being able to achieve anything on that forum. He seemed to have decided that on the issue of women's retirement age, for example, his proposal may gain more support, or at least understanding, among feminist organizations, which spoke about it in terms of women's low retirement pensions, than among trade unions, for which raising women's retirement age equalled to an attempt at destroying the existing system."

²⁰ "Raport z wykonania Programu uporządkowania i ograniczenia wydatków publicznych" (*Report on the Execution of the Public Spending Reorganization and Reduction Program*), Warsaw 2005, Council of Ministers of the Republic of Poland.

The government represented by Hausner decided that even if an agreement with trade unions could not be achieved, it would be able to demonstrate via a broad debate that other organizations did support its plans. Consequently, the government strategy was a partly sociotechnical one: to show that there was no conflict between the government and the society on the subject of planned reforms and that, admittedly, the government had not been able to seal a deal with trade unions, but did have support of local self-governments or non-governmental organizations. The Tripartite Commission was by no means key in this government strategy to obtain legitimization of the Hausner Plan. “That ritual had to take place; the Commission had to be consulted, be it for legal reasons, but also for reasons of prestige and media interest, and to shut the Commission up, but the bulk of the work had been taking place in teams set up within the framework of a [broader] public debate [outside the Tripartite Commission]” (interview with a government official).

These teams included representatives of organizations present in the Tripartite Commission, but they were among many other representatives (and complained about it). In that room, the voice of a member of a trade union represented in the Commission weighted as much as the voice of an NGO association representative. The government reinforced its position additionally by hand-picking partners for the discussion of its reform plans and widely broadening their number. In other words, it used the debate to organize support for its plans rather than as a forum for consulting its reform program.

IV.2.2 Employers – principal partners of the government

The example of the Hausner Plan shows that employers or, more generally, businesspeople were becoming government’s principal partners. The deputy premier says himself that for him as the economy minister they were natural partners. And he has this to say about trade unions: “Nothing could be arranged with trade unions. (...) It was simply a dialogue with no effect.” In a way, the Deputy Premier was not as much trying to narrow the gap separating him from trade unions as to reinforce the business milieu: “A business representation appeared not out of the blue but owing to my deliberate initiative; I recognized that milieu as my very important partner.” A good cooperation between the government and PKPP is confirmed by a representative of that organization, who remembers consultations concerning the Hausner Plan in a much different light than trade unionists. He assesses the process of consultations concerning the Hausner Plan as exemplary: “A whole lot of legislative proposals associated with the Hausner Plan – they would find their way [to us] well ahead of time. The importance of this was not only that we had time to submit our comments to the government, which had sent those proposals to us (before they were adopted by the Council of Ministers, at the stage where they were just ministerial proposals) but that there was an opportunity to discuss them publicly. What that means is that when the government was making decisions at the Council of Ministers level, it already had feedback, for example in the form of public opinion reactions to its proposals. And that’s how I think it should be.” A trade union representative has a totally different opinion on this: “We decided that the government was trying to prevent a sober discussion in the Tripartite Commission (...), that by consulting many it did not consult anybody (...), that it did not want to discuss such unpopular decisions with us.”

V. Tripartite Commission and legitimization

Having assumed the form legislated in 2001, the Tripartite Commission had an opportunity to play a very significant role in raising the effectiveness and legitimacy of reforms. First and foremost, it became an attractive forum for its member organizations, which were motivated to use it for discussions with the government and between themselves. Respondent statements

collected for the study show that those organizations began to increasingly appreciate the prestige associated with TC membership, proximity to decision-makers, possibility of influencing legislation at a pre-parliamentary stage of the legislative process and media attention. The appeal of being a TC member is exemplified by the decision of one of business organizations to abandon its elite lobbying-club formula (in which it had functioned throughout the 1990s), formally transform into an association of employers, and attempt (successfully) to join the Tripartite Commission. Interest group leaders appreciated the fact that, for the first time since 1989, the government representative was at the same time the minister of economy and deputy premier responsible for the entire socio-economic policy of the government. For employer organizations TC became an important forum of lobbying and talking with the government, even more than for talking with trade unions. Trade unions too, after their partial retreat from party and parliamentary politics, turned their attention to TC as a place where they could influence policy. Despite that, the Tripartite Commission did not play as great a role in increasing the legitimacy of reforms as one could deduce from these measures. Attempts to achieve major treaties and agreements on the Commission forum, ones that would have a real impact on the legitimization of government measures and of the Commission itself, have failed. Secondly, even though the law of 2001 improved the functioning of the Commission, the strategy played out by actors ill disposed toward increasing government legitimacy or in rivalry with competing organizations created a situation where talks moved outside the Commission and did not involve all partners. Finally, the impact of TC on governance was reduced by the government forcing through new dialogue institutions. I will analyse successively the following issues: TC impact on the legitimization of reforms and effectiveness of governance, and, in subsequent chapters, TC impact on the transparency of governance and on the position of social partners. When I introduce the notions of legitimization and effectiveness, I usually refer to them from the perspective of a government that is in the process of implementing reforms.

The functioning of the Tripartite Commission in Poland is conditioned, on the one hand, by the characteristics of the actors – participants in Tripartite dialogue, and on the other, by the context of systemic reforms pursued by successive governments since 1989. When rules are unstable, weak actors are prone to see in TC an important source of increasing the legitimacy of their organization or actions. However, it is anybody's guess whether a new government is going to look for legitimization in consultations with interest groups or community organizations. Whether it will be looking for it specifically in the Tripartite Commission or, for example, within the framework of a wider *ad hoc* dialogue with another set of partners under a different institutional formula. For social partners too, the Tripartite Commission is not the only possible method of building up their position with respect of other organizations, their own members and the society.

Trade unions, employer organizations and the government look for more than legitimization in Tripartite dialogue. The Tripartite Commission can be also treated as a mechanism that increases the effectiveness of lobbying activities of a given organization or reforms pursued by the government, or promotes a better functioning of the entire system of governance. TC effectiveness can be analysed on several levels. Firstly, from the perspective of the entire system, when the question asked would be about the impact of the Commission on the legislative process or on social peace in Poland. In such case, we would want to know the quantity and quality of agreements reached and solutions proposed at the Commission forum. Secondly, from the perspective of individual actors. Here we would be interested in how much the membership in the Tripartite Commission helped to achieve the objectives set for itself by the given organization. This issue is particularly relevant with respect to the government and its reform plans. The question we would ask in such case is whether the

Tripartite Commission exerted an impact on the process of government planning and coordinating collective activities, what type of impact it was and was it effective.

The leaders of the dialogue after 2001 – Deputy Prime Minister Jerzy Hausner and the deputy minister in the SLD government responsible for social dialogue Dagmir Długosz – were saying that social dialogue in Poland was traditionally geared at overcoming crises rather than serving the philosophy of governance (Długosz 2005a: 7). They were declaring that the new government wanted to contribute to the stimulation and greater institutionalization of social dialogue. The strategy of the new SLD government was expressed in the program paper adopted in October 2002 entitled “Zasady dialogu społecznego” (*Principles of the Social Dialogue*). As stated by program initiators, it was to serve as the government political doctrine in the field of social dialogue (*vide* Długosz 2005a: 11). It underlined the particular role of the Tripartite Commission and pointed to its legislated status. At the same time, the Principles of Social Dialogue convey government’s wish to broaden the circle of partners in the discussion rather than limit it to trade unions and employer organizations. In 2002-2003, the government opened the Commission to various types of NGOs, particularly the Consumer Federation, which government officials explained by European Union requirements in this area.²¹ One of the paper’s main intentions was to widen the circle of discussion partners by territorial, corporative and non-governmental organizations, and to use the dialogue and entities participating therein to restore the legitimacy of the government to a greater extent than it was done under the AWS/UW coalition government (Frieske 2003).

Assuming that during the rule of the SLD government a well-defined and cohesive philosophy of governance stood behind government activities in the Tripartite Commission (the absence of such philosophy had been criticized by prospective members of the new government when the AWS/UP coalition was in power), then the elements of that philosophy, in addition to those included in the Principles of Social Dialogue, should be found primarily in statements made by Jerzy Hausner. A greater government involvement in social dialogue and its attempts to stimulate the Tripartite Commission were founded in Hausner’s conviction of the supremacy of “the interactive method of effecting social changes over the imperative method” (Hausner 1995, 1998, see also Hausner 2005), i.e. of a strategy of implementing socio-economic changes via broad consultations and negotiations with social partners. During the SLD rule between 2001 and 2005, the government attitude to the Tripartite Commission has evolved. At the beginning of the term, Labour Minister and TC Chairman Jerzy Hausner envisioned using the Tripartite Commission in the implementation of reforms and strongly involving the parties to Tripartite dialogue – trade unions and employer organizations – in the consultation process. That approach is exemplified by the issue of amending the Labour Code in 2002, when the government actively encouraged both sides to engage in autonomous one-on-one talks. That strategy is also perceivable in the attempt to conclude the Pact for Employment and Growth within the Commission in 2003. The failure of the latter initiative, which was close to Hausner’s heart, should be viewed precisely as an important element of the decision to change the strategy and look for other forms of dialogue than Tripartite. From then on, the government began to look for legitimization of its reform plans outside the Commission, reaching to a wider group of organizations via separate discussion forums and expert teams. It justified this new strategy by citing the inadequate effectiveness of Tripartite

²¹ This is how the deputy minister responsible at that time for social dialogue justified inviting consumer organizations to participate in Commission work: “This refers particularly to the Consumer Federation because consumer organizations are a full-fledged partner in the dialogue pursued in the European Union, where consumer protection holds a very high rank” (Długosz 2005a: 11).

discussions caused primarily by the uncooperative and anti-development attitude of trade unions (interview with Jerzy Hausner).

As a result, the government was unwilling in 2003 and 2004 to debate the Public Finance Reorganization Plan in the Tripartite Commission. “I decided to keep important things out of the Commission,” says Hausner. He describes his vision of social dialogue and, at the same time, government long-term strategy with respect thereto as a gradual departure from the formula of centralized Tripartite dialogue. Instead, he on the one hand advocates a broad public dialogue with participation of other social partners in addition to trade unions and employer organizations, and, on the other hand, promotes decentralization of traditional Tripartite dialogue from the level of the Tripartite Commission that includes the government to the lowest possible level, that of a single workplace, where it would assume the form of a one-on-one discussion with the court serving as the arbitrator.

The Tripartite Commission did not play as great a role in raising the legitimacy of reforms as the government had expected. Although, compared to the earlier period, the atmosphere around Tripartite dialogue perceptibly improved, mechanisms and channels for giving opinions on legislation and work of the taskforce teams were largely institutionalized, and a few agreements of secondary significance were reached, Commission members failed to come to agreement on issues of the rank of the Labour Code or Hausner Plan (vide the interview with a high-ranking government official). That was a result, among other things, of the high fragmentation of the Commission (three trade unions and four employer organizations). In 2002, the bias toward competition and obstruction of unfavourable solutions rather than toward reaching agreements and concluding treaties prevented Commission members from negotiating amendments to the Labour Code and signing a relevant agreement within its forum. But the process of negotiations and decision-making continued, albeit mostly outside the Commission.²² As for the reform of public finances in 2003-2004, TC did practically nothing to promote its support. In this case, the reason could be found in the evolution of the attitude of the government, which after deciding that it would not get any consent for its plans in the Commission began to look outside for their legitimization. It organized an *ad hoc* public debate involving a larger group of organizations and experts, and, as government representatives themselves admitted, reduced the role of the Tripartite Commission to one that by definition would be only “ritual” - purely formal.

To sum up, the Tripartite Commission could serve the legitimization of reforms only to a limited degree because the organizations within it were for various reasons less interested in signing resounding treaties and agreements (desired by the government as a source of higher legitimization) than in exerting current influence on the legislative process and building up their positions among their own members and with respect to other organizations. Their unwillingness to compromise was influenced by a competition for members taking place among relatively weak organizations and, in some cases, also by mutual dislike among their leaders – which was important considering a relatively high personalization of Tripartite dialogue in Poland. Finally, government attitude played a decisive role; the government began perceiving TC as a tool inadequate to the challenges facing the State in the period of transformations and argued that centralized Tripartite dialogue promoted forcing through sectoral interests, and, as such, was hindered development.

²² Nevertheless, the fact that trade unions embarked on talks with employer organizations about relaxing the labour law at all should be viewed as a success. At that time, it was an event without precedent which, by the way, contributed to resuming the activities of the Tripartite Commission and stimulating them. Indeed, labour law negotiations were accompanied by side talks about legislating the Tripartite Commission.

VI. Tripartite Commission and effectiveness of reforms

After the failure of the Pact for Employment and Growth initiative in 2003, an initiative that in the eyes of government officials was a nucleus of the Hausner Plan, Deputy Premier Hausner began to assess the usefulness of the Tripartite Commission to the planning and implementing socio-economic changes in Poland in a negative light. He considered that it would be very difficult to come to agreement with seven different organizations (whose interests and opinions were often at odds with those of the government). He also pointed out that the Commission was much better equipped for preventing reforms than promoting them: “The Tripartite Commission is a relatively flexible instrument. When it is headed by somebody with imagination, who knows what the Commission is for, has serious discussion partners, then he can prevent certain things and promote others. Prevent more than promote, because the Commission is not a good instrument. My experience shows that it is not a good instrument for planning significant social transformations. It is not possible to reach agreements in that system. Seven sides and every one needs to agree – there is no way that a grand plan for social change can be decided at that forum. It’s impossible. Impossible!” (interview with Jerzy Hausner).

Representatives of social organizations also admit that Commission achievements in terms of concluded agreements are modest. Their purpose for being in TC is not to reach grandiose agreements or sign social treaties. Respondents stress that the TC membership is associated first and foremost with a greater influence on the legislative process and the possibility to become familiar with opinions held by other organizations and with government proposals at an early stage of their legislation. That is where they see principal advantages of sitting in the Commission (interviews with trade union and employer organization representatives). Commission members most critical of its work consider that “principal decisions are made outside the Commission” and that “the Commission itself makes mockery of true dialogue” (interview with a trade union representative). Indeed, his opinion is shared rather widely and was dominant also before 2001. At that time, when there were long interruptions in TC operations, trade union representatives would explain their *de facto* acquiescence to a situation where Tripartite talks would not produce specific agreements by saying that “it was more important to participate in the legislative process than to reach agreements” (Gardawski 2004).

An assessment of the TC impact on the effectiveness of governance is bound to be multifaceted. One of the main objectives placed before the Commission was to “contribute to social stability in Poland”. It is difficult to rate TC’s contribution to the prevention of major conflicts in the Polish industry or powerful expressions of social discontent. Trade union officials tend to believe that it was considerable. One trade union leader stated that the Commission is “an indispensable body able to put out one half of the conflicts that would otherwise blow up in the industry, in workplaces, (...) since [its] teams are capable of working out certain compromise positions and react to crisis situations”. Employers, in turn, consider that TC is too busy “putting out fires” and that “important matters are pushed aside by urgent ones”. A similar assessment is provided by members of the government of that time, who stress that conflicts in economic sectors and workplaces should be solved at the lowest possible level, in the workplace, with the independent court as the arbitrator, and not in the Tripartite Commission with government participation.²³ Here, however, one must point at the

²³ According to Hausner, “the industry-wide (branch) dialogue should be totally eliminated. That typical form of social dialogue should be moved to the workplace and for the purpose of developmental initiatives it

weak condition of Polish courts, which by the way is one of the main indicators of a weak condition of the State and governance (World Bank 1997, 2000). When the State is weak, the proposition to decentralize the industry-wide dialogue and base it on court arbitration may lead in the right direction, but is difficult to accomplish. On the one hand, therefore, the Tripartite Commission plays a positive role by contributing to conflict resolution. On the other hand, by virtue of involving the government, it weakens it to some extent and sometimes also additionally burdens the State budget.

The second element in the assessment of the effectiveness of the Commission and how it contributes to effective governance is found in the number of agreements reached under its auspices. Thus measured, TC effectiveness is low – very few agreements are signed. Stakeholders use the Commission more as a tool for obstructing unfavourable legislation or government / social partner actions than as an instrument for preparing joint proposals and solutions. One employer organization representative stated that “the [Commission] has achieved a great deal – we were able to obstruct at least a few pieces of legislation, a few regulations” and then adds straightforwardly how that is done: “we block it in a very simple way, by proposing to discuss [the issue] in the Commission”. Jerzy Hausner drew attention to the same problem from the position of a high-ranking government official and Commission chairman: When the TC is headed by somebody with imagination, who knows what the Commission is for, has serious discussion partners, then he can prevent certain things and promote others. Prevent more than promote, because the Commission is not a good instrument. My experience shows that it is not a good instrument”. However, that TC ability to obstruct proved valuable also to the government. Hausner states that he wanted to use TC – and often did so with success – to block sectoral interests from being forced through by way of deals made between sector representatives and relevant ministers. From Hausner’s point of view, the problem was that, in the Commission itself, Tripartite dialogue “was either dead or would revert to corporative one”, preventing the needed restructuring and not being propitious to overcoming structural obstacles to economic growth.

The next assessment criterion is to what extent consultations in TC slow down the governance process. Government officials admit that the legislated necessity to consult government proposals with partners in the Commission slows down government work and often makes it much more difficult, particularly when it is being carried out under the pressure of time. They stress, however, that it is better to consult legislative or regulatory proposals at an early stage of their development, as happens in the Tripartite Commission, than later risk a difficult debate in the Sejm, with protesters in front of the parliament building and lobbying going on in Sejm committees. One should also bear in mind that at the stage of TC work, when the given proposal is not yet formally adopted and broadcast by the media, the government can still retreat from pursuing it further. In the assessment of that aspect of the Commission work, most respondents believe that “either way, social and economic issues must be somehow consulted with partners. So it is better to have the Commission with its legislated procedures”. Arrangements arrived at in the Commission also make it possible to accelerate the legislative process in the Sejm, where deputies are more inclined to accept projects supported by the parties in the Tripartite Commission and often even do so automatically. This is how even the partial agreement on the amendment of the Labour Code reached in 2002 between OPZZ and some of the employers could count on support in the Sejm. In this case, the political position of OPZZ, which translated into Sejm deputies’ votes, was not without significance. It was an

should be replaced by a public dialogue involving a wider circle of participants: NGOs, employers, scholars, experts and territorial self-governments” (interview with Jerzy Hausner).

important factor taken into consideration by PKPP representatives when they started talks with OPZZ and continued them even after the appearance of more attractive, more liberal, proposals submitted by the government and the Civic Platform opposition party.

The Tripartite Commission in Poland operates along the consensus principle. All members must agree with a given position before it can be recognized as the position of the Commission. Such consensus is reached rarely. For this reason, TC members are somewhat sceptical when it comes to assessing this type of TC effectiveness. Consequently, they try to convince deputies of the importance of partial agreements: “We must contact our partners, try to strike deals here and there, and finally say: look, we were not able to work out a joint agreement in TC, but this organization is in favour and that one is too. Deputies get the message. Of course, it does not have the same charm, it is not as strong, but I fear that, considering today’s state of awareness, working out a joint position on important issues in the Tripartite Commission is not possible” (employer organization representative). In the presence of scepticism as to the possibility of reaching full agreements within the Commission, attempts are made to legitimize and give a higher rank to partial successes. But partial successes have their effectiveness too.

In conclusion of the discussion about the effectiveness of the Tripartite Commission, it should be noted that TC may be looked at not only as an instrument in the hands of the government as a whole, but also as an instrument used by an ambitious politician for the purpose of pursuing his own economic policy plan and reinforcing his own position within the government and among political supporters. At the beginning of the term, Hausner – a politician whose ambition was to shape the government economic program - was only the minister of labour and social policy. The chairmanship of the Tripartite Commission gave him certain new opportunities for influencing government decisions and building up his position. At the Commission chairman, he had the title to request certain things from other ministers. One minister in the SLD government and Hausner’s close collaborator describes this thus: “The title of Tripartite Commission chairman gave him certain instruments for a *quasi* coordination of some areas in the government (...) [At TC sittings] the government side consisted most often of several deputy ministers and he as the head of the government side and Commission chairman was in position to *de facto* order them around: ‘Deputy minister, can you please look into this matter raised by social partners, can you please prepare the appropriate document...’ That was his way of getting his tentacles in other ministries. He had wider opportunities than those ensuing from his labour minister’s position” (interview with a government official).

VII. Tripartite Commission, systemic change, logic of transformation and pathologies of a weak State

The Tripartite Commission is functioning in Poland in conditions of systemic transformations. This means, among other things, that the government plays a greater role and has a greater responsibility as it is forced to make strategic decisions delineating the directions of transformations. It also means a rapidly changing legislation associated with Poland’s accession to the European Union. The challenges of transformations in Poland disclose certain government and governance weaknesses which, in turn, impact the functioning of the Tripartite Commission. One of the weak points of governance in Poland is the absence of strategic thinking, cohesive growth strategy and coordination at the government and public administration level (Grosse 2004). It should be noted that the lack of cohesive government activities transposes on the work of the Commission. As one respondent has put it: “The government functions like a federation of ministries and not like a single body. You cut a deal

with one minister and then you talk with another and hear something completely different” (interview with employer representative). This, however, is not a result of the poor performance of the Commission but of inadequate organization of work in the government and administration. Some of the weakness of the Commission comes from the weakness of the government and the system of governance. The Commission is effective not only by virtue of an effective representation of interests by its member organizations but also by virtue of a decisive and reliable government. One has to admit that Hausner’s reliability among social partners was high. Respondents agree that the TC chairman was a serious partner. However, the relatively instrumental government approach to dialogue, one that seeks support for a predetermined reform plan and then appoints new institutions to continue the discussion on a different forum when some of its current partners disagree, is a threat to the quality and institutionalization of social dialogue in Poland.

The chaotic manner of government conduct is partly associated with the peculiar situation of incomplete transformations. It is also a result of specific “post-communist” organizational culture among government officials. That creates substantial problems for organizations in the Commission when they wish to scrutinize government proposals. As one respondent has put it: “Some legislative proposals pass through as quickly as an express train. Sometimes the government gives us a week to come up with an opinion. Organizations like ours cannot issue an opinion in a week – first it must be drawn up by an expert, then we want to consult it with members and, finally, it needs to be given to the board so that it can elaborate a position. Obviously, all this cannot be done in one week.” The short time given to becoming familiar with government bills affects the quality of dialogue – makes it shallow.

A high-ranking government official recognizes the reasons for that phenomenon both on the side of the government and in the nature of systemic transformations: “Work organization is poor – from political planning to drawing up legislation. A total disorder, nobody is planning anything. (...) Secondly, the reality of life in a transformation period is such that new issues can suddenly appear requiring immediate action. And thirdly, (...) we are changing the entire system and that requires an overhaul of its legal instrumentation within five years. In other words, the amount of legislation crossing our desks is huge and our personnel simply cannot keep up with it.” Respondents stress in particular the enormous amount of legislation associated with European integration.

European integration influences the functioning of Tripartite dialogue in Poland mainly at the level of TC members’ overall conviction that it is the “European standard” with which “we must comply, we must continue the discussion.” Poland’s accession to the EU also influenced the expansion of certain discussed issues. An European integration taskforce team was appointed. Organizations want to participate in the European discussion. For example, some have opened offices in Brussels. As one government official involved in the Tripartite discussion puts it: “participation in the discussion at the European level, even if only for reasons of prestige, contaminates [organizations] with certain ideas. They find out, for example, that there is now a new approach to the Lisbon Strategy”. A strong interest in European issues is confirmed in statements made by trade union respondents.

Sectoral interests come out stronger in the conditions of post-communist transformations and at times when entire branches of the economy are being overhauled. In this context, a reverse dependence can become subject to an analysis: the impact of the Tripartite Commission on governance and transformation conditions. In Hausner’s view, a well functioning Tripartite Commission was supposed to serve as a safety screen against an excessive influence of sectoral interests. As the chairman of the Tripartite Commission, Hausner was trying to prevent a sectoral dialogue at the central level and counteract attempts by sectoral interest

groups to cut deals with relevant ministers at the expense of the State budget. Hausner considers that social partners often tried to make deals directly with relevant ministers and circumvent the Commission: “Tripartite dialogue is very politicized. Important issues disappear from the negotiation table and reappear in sectoral deals. I did not allow sectoral dialogue in the Commission (...), I tried to keep on top of not allowing that dialogue to dominate us. I was not always successful. [Social partners] kept trying to find their own partners in ministries. I had to intervene and block all those ministers.”

Consequently, the question emerges to what extent does the Tripartite Commission – a formalized Tripartite-dialogue institution regulated by legislation for the past four years – help to channel that sectoral dialogue and individualized lobbying, and contributes to a higher transparency of governance in Poland.

In Polish, the term “interest groups” has a qualitative and slightly negative connotation. Polish political-science literature prefers mostly to refer to members of the Tripartite Commission by a more neutral and even slightly positive term - “social partners”. This does not change the fact that social partners continue to be “interest groups” and lobby on behalf of the interests of specific sectors and social groups. Trade union and employer organizations lobby in TC in favour of solutions favourable to their leaders and members. The Law on the Tripartite Commission places that lobbying in a procedural framework.

In this respect, the functioning of the Tripartite Commission impacts the pathologies of a weak State. In addition to creating a forum for discussion between various types of organizations, an effective TC also channels lobbying activities conducted by interest groups such as trade unions or employer organizations. When that mechanism is faulty and accompanied by crises, the weight shifts to less formal lobbying conducted in governmental offices and parliamentary corridors. It is a system of communicating vessels: when one mechanism breaks down, the players immediately take advantage of the other. At the time when for some reason the discussion on the TC forum subsided, it was replaced by one-on-one talks or independent lobbying.

One-on-one talks, indispensable and not sufficiently practiced in Poland, were in Polish conditions not as much expressions of social partners’ will and ability to talk about labour relations without government involvement as expressions of problems with the functioning of the Commission, whereby some participants would shift to talks behind the scenes, largely closed to other organizations and not subject to full disclosure. Such talks are easier because they involve only those who are willing to talk. That was the case of negotiations concerning the Labour Code in 2001/2002, when the sceptical attitude of the Solidarity Trade Union provoked talks outside the Commission by OPZZ, PKPP and ZRP. Paradoxically, despite the one-on-one nature of these talks, a relatively significant role was played therein by the government, keen on bringing about the amendment of the Labour Code. Its role exceeded moderating the discussion. Wishing to reduce the importance of the talks in the media, Minister Hausner called a press conference and announced that an agreement was about to be reached (which, in turn, provoked a negative response from the OPZZ leader who feared the reaction of other members of his organization’s leadership unaware of the details of the talks). The government also tried to accelerate the negotiations and push them in the desired direction by presenting its own project, which in a way amounted to blackmailing its partners in the discussion. FZZ, which was willing to participate in the talks, was kept out because at that time it did not have the required representativity status. A FZZ representative says in the context of the amendment of the Labour Code in 2002 that it was precisely the wish to counter the agreement between OPZZ and PKPP that prompted the decision to establish FZZ and attempt to enter the Commission: “We established the Forum of Trade Unions (FZZ) in 2002 for the

specific purpose of becoming representative and preventing deals [about the Labour Code] being made by our colleague Maciek Manicki [OPZZ] and Ms. Bochniarz [PKPP]. They have already entered into some excessive compromises – that first day without pay and those other things... Only when we became representative, the proposal was already in the parliament at the final stage, so the first thing we did was to try to stop these changes in the Senate”.

A crisis in negotiations on the TC forum brings about one-on-one talks or individual talks with the government, during which organizations propose their solutions to the government or the government tries to sway them individually to support its plans. As one respondent has put it, “when things go wrong in the Commission, when somebody is boycotting its work (...), they let it go, play the pretend game of discussing various orders and decrees, while the weight shifts to talks behind the scenes and bilateral agreements”. In the case of the Hausner Plan, the government accepted *de facto* this state of affairs and tried to sway employers to its project by circumventing the Commission. Deputy Premier Hausner says that at that time *Rada Przedsiębiorczości* (Enterprise Council) – an informal forum grouping various business milieus – became a more important partner for him than the Tripartite Commission. That indicates that the government was not as much looking for an effective institutionalized forum as for support for its plan from a community that it has itself supported for that very purpose.²⁴ Indeed, one of the employers present in the Commission who holds a relatively high position in the business milieu says about the Enterprise Council that “it functions badly, (...) there are no terms of operating, financing, decision-making (...) and that absence of specified procedures [creates a situation] where organizations just meet, without anything substantial coming out of those meetings”. What such meetings do provide is an opportunity to lobby and exert informal influence on government decisions.

Of course, the Tripartite Commission also provides such opportunities. However, owing to its more formal procedures and inscribed transparency principles, it also gives more hope for putting order into lobbying activities. The period when the Commission was chaired by Hausner shows that it can be an attractive forum for interest groups. The presence of an organization in TC reinforces its social capital (affiliation networks, contacts), which translates into power and an easier access to government officials (Bourdieu 1986). The same way as Jerzy Hausner was to some degree reinforcing his position in the government as CT chairman, so did the impact of social partners on government policy depended largely on swaying the TC chairman to their views and on the current strength of his position in the government. That strength grew when Hausner became economic deputy premier and chairman of the council of ministers committee.²⁵ TC partners recognized new possibilities of influencing government policy associated with Hausner’s rise and doubled their efforts to bring new initiatives to TC, sometimes only remotely connected with its direct tasks. Organization leaders in particular were perfectly aware of the fact that they now had access to the primary decision-maker in the area of economic and social policy, and that was important to them since they represented in-

²⁴ Jerzy Hausner admits that his intention was to create “milieus supporting development”: “A business representation appeared not out of the blue but *owing to my deliberate initiative*, a milieu which I recognized as my very important partner (interview with Jerzy Hausner; italics mine - mf).

²⁵ The Council of Ministers Committee is a consulting and advisory body appointed by the Prime Minister inside the government. Its task is to “prepare and present to the Council of Ministers or the Prime Minister solutions to projects and to express opinions on or recommend government documents” before they become subject of government deliberations (Prime Minister’s Directive No. 127 of 25th October 2001). According to a government official, “the Committee is the narrow gorge of the government. If you can’t squeeze through you won’t reach the Council of Ministers. Consequently, the committee chairman holds a very high position in the government.

terest groups. The presence in the Tripartite Commission facilitated social partners' access to the government "both formally, in committees or presidia, and in informal contacts – they could call him, make an appointment, visit him to discuss their own matters". Respondents also draw attention to the frequent practice of "focusing on particular issues" in taskforce teams, when the future of a given sector is discussed on behalf of an organization by lobbyists belonging to that very sector. Social partners also use the advantages of their TC membership to call and meet ministers and government officials. When this kind of lobbying takes place within the procedural framework of the Commission it is easier to control by the government and the public opinion than if it were done outside.

A new law governing lobbying activities was adopted in Poland in recent years, partly as a result of disclosed scandals and corruption cases. In the context of TC operations, the problem waiting to be solved is how to relate the Law on the Tripartite Commission to the new lobbying law, which makes no mention of TC at all. These regulations are not clear. For example, it is not clear what status should be given to a visit paid to a minister by a trade union or employer organization representative. When a minister receives such representative in his office, should he treat the visitor as a social partner in accordance with the Law on the Tripartite Commission or as a lobbyist pursuant to the lobbying law (and, in such case, note down that visit in the public register)? In this context, the Tripartite Commission can be seen as a sort of way out of the regime of the Lobbying Law and a method of dimming the transparency.

In conclusion of my discussion of the important thread of the relationship between the Tripartite Commission and pathologies of a weak State, I will analyse the openness of TC work to the public: both its resolutions and positions, as well as the decision-making process itself. That will be followed by an analysis of the accountability of TC partners, understood as being the actual voice of their milieu, having the consent of their members with respect to decisions made and opinions expressed in TC by their representatives, and, finally, compliance with regulations.

VII.1 Openness

Reports from TC plenary sessions are available on the internet. Member organizations also speak about TC work in their bulletins and newsletters. Talks concerning the Labour Code held in 2002 were followed quite closely in major daily newspapers such as *Gazeta Wyborcza*, which published a few large articles about that subject. Leaders of organizations which in the past were not in the Commission, such as FZZ, admit that they had no difficulty accessing information about TC work and, in addition, OPZZ members would report to them on talks concerning the Labour Code. Still, the Tripartite Commission of that time was quite exclusive and its members did a great deal to keep other organizations away. An FZZ representative states that his organization wanted to participate in these talks but "we were kept out. The government and all others were saying that we would be welcome to join when the court confirmed our representativity, then would be a partner, but meanwhile absolutely not. We know best, they said."

The successive dimension of the absence of openness of the Tripartite Commission is that TC informs the public about the outcome of its work but not about the dilemmas occurring while that work is in progress, about the diversity of positions and solutions. In other words, TC does not initiate any debate about the issues on its agenda, does not invite comments about these issues. Minutes from presidium sittings, plenary sessions, expert team meetings are not available. Most issues are made public after the fact via communiques, position statements and interviews. TC members justify this strategy by their concern for the effectiveness of the

talks. It is easier to negotiate in the privacy of the office and leaders sitting in TC find it easier to sway their organizations to projects that have been talked over.

VII.2 Accountability

The representativity of organizations and accountability of its leaders, and contacts between leaders and members of their organizations are a significant problem in Polish social dialogue. It is an open question whether organizations included in TC are truly representative. Respondents doubt both the fact of all member organizations having the statutorily required number of members and the very procedure of verifying organization declarations concerning their membership numbers. From that point of view, the law and the accompanying representativity verification procedure are a step in the right direction. Still, the situation needs to be further specified. According to respondents, “the court [that was verifying representativity] acted formally, automatically accepting applications from any organization that claimed representativity.” Moreover, an employer organization representative notes that at present one enterprise can belong to several organizations. It is unfair that it can have a vote in each – it should be limited to only one.

The second element of accountability important to the transparency of the system is the decision-making process within member organizations. Decisions worked out in TC member organizations are most often not talked over with their members, but only by their leaders. Members are separated from their representatives. This raises suspicions as to the legitimacy of decisions made at the TC level. Again, however, that problem seems to refer mainly to talks conducted outside the Commission. The amendment of the Labour Code in 2002 is a good example. Bringing discussions to the TC forum may create positive changes.

The third aspect of accountability lies in leaders’ favouritism with respect of certain branches of the economy at the expense of taxpayers and members of other branches. Social partners sometimes use the TC forum to lobby in favour of narrow economic branches, which is not necessarily in the interest of the entire group they represent. An employer organization representative draws attention to that issue and blames it mainly on TC taskforce teams, which at times are made up of lobbyists belonging to the same branch.

Finally, there exists one more element: politicization. It dims the transparency of decision-making and downright causes unfavourable interruptions in TC work. This refers mainly to the work of the TC presidium, which includes organization leaders who are often closely associated with the world of politics. Political affiliations make it more difficult to assume common positions. They also cause a certain imbalance between the parties.

VIII. Tripartite Commission and the position of social partners

A distinctive feature of the social dialogue in Poland lies in a relatively weak position of social partners representing the interests of both sides of labour relations.²⁶ That weakness stems mainly from the limited ability to influence the group whose collective interests these organizations are meant to represent. Consequently, they experience problems with an effective articulation of those interests.

The waning importance of trade unions is a result of several factors: privatization, insufficient ability to expand into the private sector, falling confidence among the citizens in the ability of trade unions to effectively protect employee interests (CBOS 2005b), identity crisis among

²⁶ Data relative to organizations represented in the Tripartite Commission, Annex 1.

trade unions which are burdened by history and entangled in politics, and the “conflict-creating” pluralism resulting from low entry requirements for new organizations (Gardawski 2003).

Employer organizations have been developing very rapidly in the 1990s. However, due to the fact that they did not exist at all prior to 1989, that process required time. The space available for such organizations was gradually expanding as privatization set in and the role of the State as the employer diminished. Yet employer organizations have to deal with the problem of representativity, something that their leaders are well aware of (interview with a representative of an employer organization). Their members constitute a minority of registered enterprises active in Poland. Reasons for the limited reach of these organizations are found in the fact that the majority of enterprises operating in Poland are one-person companies (more than 80% of private firms).²⁷ Only 10% of enterprises that employ more than 15 people belong to an employer organization. A question is often raised in the discussion on the representativity of Polish employer organizations to what extent the opinions represented in social dialogue institutions constitute a result of an authentic aggregation of the interests of members of those organizations. Do employer organizations recognized as representative actually “represent” the interests of employers or only “express” them?²⁸ It can be assumed that employer organizations in Poland have filled the institutional void but they lack a deeper rooting in the environment whose interests they aspire to represent.

VIII.1 TC membership as a way of reinforcing the position of social partners?

The membership in the Tripartite Commission reinforces the position of social partners and builds up prestige of member organizations. They treat their active involvement in the social dialogue as a part of the strategy of building prestige of their organization and influencing government macroeconomic policy. Often the membership in TC is a desired asset as it reinforces the social capital in the form of giving access to a network of affiliations and contacts that can be transformed into power. The TC forum also provides an opportunity for becoming familiar with opinions held by others and for better preparing for lobbying the Sejm. In the eyes of trade union leaders, their membership in the Commission makes them being treated more seriously by the government administration, in many cases allows them to prevent crises in sectors and workplaces, and allows them to participate in the development of national socio-economic policy.

The study showed that trade unionists present in TC treat their membership and legal provisions governing the Commission almost as a guarantee of trade-union prestige and effectiveness. They say, for example, that “without the status of representativity nobody would take us seriously”. The growth of prestige of an organization by virtue of its participation in TC and the positive effect of having legislated the Tripartite discussion are underlined even by representatives of old trade unions with a rich history and high prestige, such as Solidarity Trade Union. For employers, the Tripartite Commission is less of an element of their identity. They often state that the Tripartite discussion does not need to exist and illustrate that statement with the example of the United States. They stress, however, that “since the Commission does exist, employers must be represented in it”.

Social partners suffer from an inadequate expert support. This is understandable considering the ever-widening substantive range of macro-social and macro-economic issues taken up by

²⁷ REGON, status at the end of 2002, in “Zmiany strukturalne grup podmiotów gospodarki narodowej w 2003 r.”, 2004, Warszawa: GUS.

²⁸ Raport o Rozwoju Społecznym Polska 2004 “W trosce o pracę”, 2005, Warszawa: UNDP, pp. 157-158.

the Commission. Organizations are increasingly interested in these issues but not all have a sufficient pool of specialized experts at their disposal. Still, there is improvement. More than 10 years of the functioning of social dialogue contributed to the development of a group of good experts participating in the Tripartite Commission. A member of the government administration considers that they are often better than government officials and attributes that state of affairs to a lower personnel turnover in member organizations than in the administration. The requirement for expert opinions forces in a way cooperation between employer and trade union organizations. Indeed, they sometimes jointly decide which organization will prepare an opinion on the given issue depending on the availability of specialized experts (*vide* the interview with the ZRP representative). However, the inadequate expert support does contribute in general to the frequently low quality of TC deliberations and, in the opinion of some respondents, also to the reluctance by some TC members to give these deliberations a wider visibility.

IX. Conclusion

The study confirms the visible fragility of the system of interest representation in Poland. Within the framework of the social dialogue institution, representatives of member organizations are effective as far as their demands coincide with government proposals. This results both from the weak nature of social organizations and dominant government position in the discussion system, and from a rather instrumental policy followed by the government, as witnessed by the Hausner Plan case. Those organizations whose opinions approximated government views found it much easier to operate in the system of consultations. Consequently, social organizations do not accomplish their objectives as much inside the social dialogue institution as in the grey zone. The Tripartite Commission and Tripartite dialogue – weak in themselves – are in addition instrumentalized by the government.

Studies of the Polish Tripartite discussion during the period preceding the law of 2001 showed that despite substantial efforts made by the AWS-UW government, numerous meetings with social partners, visits to workplaces and other implemented measures, they did not create a cohesive whole and did not help to institutionalize the dialogue (Gańczarz, Pańków 2001: 94-95). Without any doubt, the law of 2001 helped to bring about such institutionalization. The government, particularly Minister Jerzy Hausner, put a great deal of effort into creating and institutionalizing a cohesive dialogue system. Nevertheless, the somewhat instrumental government approach to the discussion and continuous creation of its new forums, in a situation where the government is the dominant party in every discussion, can be a sign of the troubles to come.

The significant personalization and politicization of dialogue also continues to be a problem. During politically “hot” periods, at times of election campaigns, the work comes to a standstill. So even though the Tripartite discussion is less politicized than during preceding parliamentary terms when counting, for example, the number of Commission members who are deputies to the Sejm and, at the same time, trade unionists, its work continues to be largely influenced by fluctuations dependent on the political calendar. The ultimate assessment of the vitality and institutionalization level of the Tripartite Commission operating in accordance with the law of 2001 will be possible after an analysis of its performance under two or three successive governments and parliaments. Particularly in the light of the significant role played in the functioning of dialogue in Poland by specific individuals. In the analysed period between 2001 and 2004, that role was reserved to Deputy Prime Minister Jerzy Hausner.

X. Appendixes

X.1 References

- Avdagic, Sabina (2004) 'State-Labor Relations in East-Central Europe: Explaining Variations in Union Effectiveness', *Socio-Economic Review* 2 (3)
- Bourdieu, Pierre (1986). Forms of Capital, in: *Handbook of Theory and Research for the Sociology of Education*. John G. Richardson, ed. Westport, CT: Greenwood Press, pp. 241–60
- CBOS (1999). Opinie o związkach zawodowych, 1999, Warszawa: Centrum Badania Opinii Społecznej.
- CBOS (2003). Związki zawodowe: liczebność, skład, postawy, 2003, Warszawa: Centrum Badania Opinii Społecznej.
- CBOS (2005a). Przestrzeganie praw pracowniczych i „szara strefa w zatrudnieniu”. Związki zawodowe w zakładach pracy, 2005, Warszawa: Centrum Badania Opinii Społecznej.
- CBOS (2005b). Przestrzeganie praw pracowniczych w zakładach pracy i skuteczność związków zawodowych w ich egzekwowaniu, 2005, Warszawa: Centrum Badania Opinii Społecznej
- Cichomski, Bogdan oraz W. Kozek, P. Morawski i W. Morawski (2001). Sprawiedliwość społeczna. Polska lat dziewięćdziesiątych, Warszawa: Scholar
- Długosz, Dagmir (2005a). System dialogu społecznego w latach 2001 – 2003. Analiza uczestnika. Część I, „Polityka społeczna”, 4/2005
- Długosz, Dagmir (2005a). System dialogu społecznego w latach 2001 – 2003. Analiza uczestnika. Część II, „Polityka społeczna”, 5-6/2005
- European Commission (2001). European Governance. A White Paper, Commission of the European Communities, Brussels, 25.7.2001. COM(2001) 428 final
- Frieske, Kazimierz (2003). Zasady Dialogu Społecznego, „Polityka Społeczna”, 5/2003
- Frieske, Kazimierz i Lucyna Machol-Zajda (1999). Instytucjonalne ramy dialogu społecznego, in: K. Frieske (ed.) Dialog społeczny, IPSS, Warszawa
- Gąciarz, Barbara and Włodzimierz Pańków (2001). Dialog społeczny po polsku. Fikcja czy szansa?, ISP, Warszawa
- Grosse, Tomasz (2004). Polska w Unii Europejskiej: wyzwanie dla polskiej administracji. ISP, Analizy i Opinie
- Hausner, Jerzy (1995). Imperative vs. Interactive Strategy of Systemic Change in Central and Eastern Europe, *Review of International Political Economy*. Vol. 2, No 2
- Hausner, Jerzy (1998). The State and the Post-Socialist Economic Transformation. *Emergo. Journal of Transforming Economies and Societies*. Vol 5, No 4
- Hausner, Jerzy and Mirosława Marody (2000) Polish Talkshow
- Gardawski, Juliusz (2003). Konfliktowy pluralizm polskich związków zawodowych, 2003, Warszawa: Fundacja im. Friedricha Eberta.
- Gardawski, Juliusz (2004). Evolution of Social Dialogue in Poland, The Industrial Relations Research Association, Proceedings of the 56th Annual Meeting, San Diego 2004, <http://www.press.uillinois.edu/journals/irra/proceedings2004/10gardawski.html>
- Kozek, Wiesława (2000) Destruktorzy. Obraz związków zawodowych w tygodnikach politycznych w Polsce, Kongres PTS, Rzeszów, 20-23 września 2000

Meardi, Guglielmo (2004). Social Pacts on the Road to EMU: A Comparison of the Italian and Polish Experiences. <http://www.warwick.ac.uk/fac/soc/complabstuds/russia/Intas/eid-lse.doc>

Rada Ministrów (2005). Raport z wykonania Programu uporządkowania i ograniczenia wydatków publicznych, Warszawa, Rada Ministrów RP.

Raport o Rozwoju Społecznym (2005). Raport o Rozwoju Społecznym Polska 2004 „W trosce o pracę”, 2005, Warszawa: UNDP

Zasady Dialogu (2002). Zasady Dialogu Społecznego. Dokument programowy rządu. Warszawa, Rada Ministrów, październik 2002

X.2 Interviews

Fourteen in-depth structured interviews were conducted between July – August 2005 with leaders of all organizations represented in the Tripartite Commission, and officials from Government including Former Deputy Prime Minister and Chairman of the Tripartite Commission Jerzy Hausner.

X.3 Social partners in the Polish dialogue system

X.3.1 Trade unions

Trade unions remain the strongest social body in Poland even though their membership is steadily dropping. In the early 1990s, 19% of adult Poles belonged to a trade union (unionization of approx. 40%), by the end of the decade – 11% (20% of all professionally citizens). In 2002, the unionization ratio fell to 18% (7.5% of adult citizens). Studies show that, at the end of 2004, trade unions were absent from more than one half of all workplaces (CBOS 2003, 2005a).

Table 1. Trade union membership (1993-2003)

Name	Number of members (trade union figures)			Change (1993-2003)
	1993	1998	2003	
OPZZ	4,500,000	2,000,000	800,000	-82.2%
Solidarity	2,000,000	1,200,000	780,000	-61.0%
Forum Związków Zawodowych	-	-	320,000	-
Total	6,500,000	3,200,000	3903	-70.8%

Source: EIRO (2004). Note: 1990s figures provided by trade unions were significantly higher than unbiased estimates (particularly in the case of OPZZ).

X3.2 Employer organizations

Data provided by employer organizations indicates that they group enterprises with the total number of employees approximating 3.4 million. In 2004, that translated into 27% of all working citizens (12.7 million) and 37% of all citizens employed full-time (9.3 million). However, when assessing the strength of employer organizations in Poland one needs to bear in mind that Polish regulations allow enterprises to be members of more than one employer

organization. Consequently, the number of employees in enterprises grouped in employer organizations is probably lower than the number shown below.²⁹

Table 2. Employer organization membership (2000-2004)

Name	Number of members (2000)	Number of persons employed by members (2000)	Number of members (2004)	Number of persons employed by members (2004)	Comments
Konfederacja Pracodawców Polskich (KPP)	63	1,700,000	53	approx. 2,000,000	
PKPP „Lewiatan”	26	300,000	54	approx. 500,000	
Związek Rzemiosła Polskiego (ZRP)	Directly: 27 craft chambers + 1 cooperative; via chambers: 485 guilds and 220 cooperatives.	376,288	Directly: 27 craft chambers +1 cooperative; via chambers: 481 guilds and 190 cooperatives.	approx. 300,000	No specific data. Employment status update – end 2005.
Business Centre Club (BCC)		-	714 enterprises	approx. 600,000	Not all members belong to BCC – Employer Union (BCC-ZP)

Source: Social Dialogue Capacity Building – national report for Poland (2005). Data provided by organizations.

²⁹ This situation may be eliminated as a result of an amendment to the Law on the Tripartite Commission for Socio-Economic Affairs and Provincial Social Dialogue Commissions, which prohibits including in the total employment status of a representative employer organization those employees who work in enterprises belonging to another representative organization.