STUDY REPORT
COLLECTIVE BARGAINING
IN MULTINATIONAL COMPANIES

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PREFACE

The National Commission of NSZZ "Solidarność" has undertaken, in cooperation with the Norwegian Confederation of Trade Unions LO Norge, a major project aiming at strengthening collective bargaining in private companies in Poland. This report[1] summarises the first stage of the project, which focused on barriers and experiences related to negotiating collective labour agreements in private companies of various sectors of Polish economy.

The project covered 81 companies, selected by target screening and, in a large majority, owned by multinational companies. The sample included a small number of companies with Polish capital as well[2]. The companies examined represent five sectors (trade, construction and wood, metal, food processing sectors and services of general interest). The study covered three specific groups of respondents: members of executive bodies in company trade unions (the enterprise commissions and their executive committees) constituted the first group, while two other groups, serving as a frame of reference, included: members of executive bodies of trade unions who are not members of the enterprise commissions or management boards) and representatives of management boards of companies, mainly the heads of HR (human resources) departments[3].

The study consisted of several modules. The first module comprised an analysis of the current institutional and legislative framework of industrial relations. The second one embraced an analysis of existing data, in particular the content of collective labour agreements (hereinafter referred to as CLAs) in force in the studied companies. The ensuing modules are based on the analysis of empirical data collected in the course of field studies (interviews with representatives of the three aforementioned populations). Out of these modules, the one devoted to sociological interviews with representatives of executive committees of trade union organisations, and pertaining to the existence and permanence of CLAs, carries the biggest load. The report is concluded with recommendations based on trade union members' opinions, as to what conditions need to be meet so that CLAs could function and thrive as a permanent element of industrial relations in companies.

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[2] The examined entities are interchangeably referred to in the report as "workplaces", "companies" and "enterprises".
[3] It should be emphasized that only the enterprises with trade unions in place were picked for this study. Thus, the picture obtained cannot serve as the overall vision of industrial relations – whereby the trade unions, unfortunately, are often hindered by employers in their efforts to organise employees.

INTRODUCTION: CHARACTERISTICS OF INDUSTRIAL RELATIONS AND COLLECTIVE AGREEMENT LAW ENVIRONMENT IN POLAND

1. Conditions affecting the evolution of collective bargaining in Polish private enterprises

In 1989, when the NSZZ "Solidarność" trade union reinstated as a legal organisation and became the leader of the social change movement which led to the collapse of an authoritarian political system, hardly any trade union members or researchers, pondered over the future of CLAs in industrial relationships in the now sovereign Poland. In the initial phase of the transformation, attempts were made at preserving the key role of employee self-governance bodies (which succeeded in Slovenia at that time) and introducing employee ownership schemes inspired by the American employee stock ownership plans (ESOP). However, the top Polish reformers adopted the idea of market economy based on the Anglo-Saxon model, considered as the most economically viable. Such stance was not without some support from the executives of the National Commission of NSZZ "Solidarność" - the only political force which could significantly influence the Polish model of capitalism at the early stage of reforms. The decisions of the National Commission were taken with a complex context behind them: on the one hand, the post-Soviet trade union movement (the All-Poland Alliance of Trade Unions, OPZZ) were on principle opposed to any reforms whereby the labour side would have to bear any costs (a demand to fully compensate for the effects of inflation), on the other hand the labour force had grown tired of the economy of chronic shortages, thus allowed, although to a limited extent, for pursuing liberal reforms . The majority of Poles of company trade union leaders, members of NSZZ "Solidarność," accepted this reform but they expected its negative impact to be short-term . A clear change of the position of NSZZ "Solidarność" was noted at the beginning of 1991 – however, the central office was too weak to be able to change the direction of system changes[6].

Relations between trade unions played a key role in shaping the Polish model of capitalism. After 1989, unlike in other countries of Central and Eastern Europe (CEE), there were in Poland two relatively populous TUs: NSZZ "Solidarność" (approximately 2.7 million members, according to the data of the Public Opinion Research Centre (CBOS) as of 1991) and the All-Poland Alliance of Trade Unions (OPZZ) (approximately 1.7 million members). Those two unions stood at the core of conflict plurality which with time weakened the labour side in relation to the capital side and negatively affected the Polish social dialogue[7]. Poland was the only CEE country to introduce market economy without establishing an institutionalised social dialogue. The economic system was modelled on the neoliberal market economy promoted by the leading global institutions – the International Monetary Fund (IMF) and the World Bank (the model referred to as the 'Washington Consensus' by John Williamson in 1989")[8]. In line with this model, the economy was to be privatised, deregulated and liberalised to the greatest extent possible. It needs to be added that adoption of the principles of the Washington Consensus was the prerequisite of reduction of a massive debt by Western banks, both state-owned and private ones, but the solutions applied by the Polish reformers went even further than those required by the IMF[9].
Apart from the adoption in 1991 of the legislative Act on trade unions and Act on resolving collective disputes which legitimized the activity of independent employee organisations, no special role for institutionalised corporatist practices was envisaged in the new system. Borrowing from the concept of the Varieties of Capitalism, it one can state that the Polish economy was re-directed onto a path of "liberal market economy" and not the "coordinated market economy" (according to the typology proposed by Hall and Soskice[10]). Poland followed the peculiar to the Anglo-Saxon countries and receded from neo-corporate solutions, typical of most Western countries of Continental Europe.

[4] D. Ost, Klęska „Solidarności". Gniew i polityka w postkomunistycznej Europie, Warszawa 2007; T. Kowalik, www.polskatransformacja.pl, Wydawnictwo Literackie MUZA, Warszawa 2009; J. Gardawski, Przyzwolenie ograniczone. Robotnicy wobec rynku i demokracji, PWN, Warszawa 1996. [D. Ost, The Defeat of Solidarity. Anger and Politics in Postcommunist Europe, Warsaw 2007; T. Kowalik, www.polskatransformacja.pl, Wydawnictwo Literackie MUZA, Warsaw 2009; J. Gardawski, Limited consent. Workers and the market and democracy, PWN, Warsaw 1996.]

[5] The authors of the reform initially referred to a few months and later to a period of six months of sacrifice after which the benefits of the report were to be observable. That period turned out to be much longer, but it transpired from the study that the working class still supported market economy.

[6] J. Gardawski, A. Mrozowicki, J. Czarzasty, Historia i teraźniejszość związków zawodowych w Polsce, Dialog. Pismo Dialogu Społecznego, 2012, nr 3, s. 9. [J. Gardawski, A. Mrozowicki, J. Czarzasty, History and the present of trade unions in Poland, Dialog. Pismo Dialogu Społecznego, 2012, No.3, p. 9.].

[7] J. Gardawski, Konfliktowy pluralizm polskich związków zawodowych, Fundacja im. Eberta, Warszawa 2003. [J. Gardawski, Conflict pluralism of Polish trade unions, Ebert Foundation, Warsaw 2003.]

[8] S. Adamczyk, Polityka ekonomiczna wicepremiera i ministra finansów Leszka Balcerowicza, (w:) Z zagadnień integracji i transformacji, J. Kaliński (red.), SGH, Warszawa 2013. [S. Adamczyk, Economic politics of Vice-Prime Minister and Minister of Finance Leszek Balcerowicz, (in:) Issues of integration and transformation, J. Kaliński (ed.), Warsaw School of Economics, Warsaw 2013.]

[9] T. Kowalik, op. cit.

[10] P. Hall, D. Soskice, Introduction (in) P. Hall, D. Soskice, Varieties of Capitalism

At the same time, it needs to be noted that earlier - until the very collapse of the authoritarian state socialism, Poland had been the closest to the neo-corporate system from among all the post-soviet countries (except Slovenia). That was due to the development of the institution of the employee self-governance, which was a great achievement of NSZZ "Solidarność" of 1981[11].

As soon as in 1992, it turned out that a profound transformation of the system required a certain level of cooperation with trade unions. Surging waves of strikes led to the development of institutional ground for social dialogue, including the legal framework for collective bargaining. In 1993, the Pact on State-Owned Enterprises in Transformation was signed – a tripartite social agreement the parties of which included the State, the trade unions and the arising representation of employers. The provisions put in the Pact were to contribute to gaining public acceptance of the process of economic restructuring[12].

The adoption of completely overhauled chapter XI of the Labour Code in September 1994 was a milestone for industrial relations in Poland. That stirred hopes among the trade union members of developing a system reflecting the West-European social compromise[13].

While discussing the development of social dialogue in post-1989 Poland, it needs to be emphasised, that social dialogue was indicated as one of the systemic features in the Constitution of the Republic of Poland (1997), and in 2001 the conduct of activities of the Tripartite Commission for Social and Economic Affairs, as well as regional commissions for social dialogue[14], was regulated by statute.

High expectations were held especially for multi-establishment collective labour agreements (hereinafter referred to as MECLAs). MECLAs were to contribute to the development of social dialogue at sectoral level. Initially, those hopes seemed justified. Some sectors of economy were beginning to conclude such agreements. These were, however, mostly modifications of the old 'post-Soviet' sectoral agreements, while the employers associations that were parties thereto represented state-owned entities. The first MECLA developed completely anew was concluded in 1996 in the smelting sector. Starting from 1997, in order to promote the idea of sectoral social dialogue, NSZZ "Solidarność" began to organise annual reviews of MECLAs together with employers, academics and politicians. But as the dynamics of negotiating new or amending existing MECLAs became nil, the reviews were suspended five years later.

With privatisation of the economy progressing, and the influx of multinational corporations increasing, it became evident that without clear stimuli of the public authorities the future of an institutionalised sectoral social dialogue did not augur well. In the privatised sectors, MECLAs began to disappear or their role was being limited. The symbolic loss of hopes for sectoral agreements occurred in 2008, when the employers' association (dominated by multinational capital) terminated the MECLA for the smelting sector. Out of over one million of employees covered by MECLAs the end of the 20th century, merely around 400 thousand are now left. Despite the attempts of trade unions, not a single MECLA was concluded nor any negotiations towards concluding a MECLA took place in a sector that had been entirely privatised.

Such a turn of events should not be surprising. According to the "liberal market economy" model, the top reformers in Poland regarded the sectoral level of social dialogue as a potential source of rigidity of employment relationships, contrary to the requirements of the market economy. It was only because of the relative power trade unions enjoyed in the Parliament in the mid 1990s that the sectoral dialogue was introduced in the Labour Code.

For these reasons, the system of collective bargaining in private economy, currently existing in Poland, is nearly entirely decentralised[15]. Negotiations run at the enterprise level have the most importance. At

[11] J. Gardawski, Degradacja i wykluczenie klasy pracowniczej [w] M. Jarosz (red.) Wykluczeni. Wymiar społeczny, materialny i etniczny. Instytut Studiów Politycznych PAN, Warszawa 2008. [J. Gardawski, Degradation and ostracism of the working class [in] M. Jarosz (ed.) The Ostracised. Social, material and ethnic aspects. Institute of Social Sciences of the Polish Academy of Sciences, Warsaw 2008.]

[12] J. Hausner, Formowanie się systemów stosunków pracy i reprezentacji interesów w Polsce w warunkach transformacji ustrojowej, (w:) T. Kowalik (red.) Negocjacje- droga do paktu społecznego. Doświadczenia, treść, partnerzy, formy, Warszawa 1995. [J. Hausner, Formation of systems of employment relationships and representation of interest in Poland in the situation of system transformation (in:) T. Kowalik (ed.) Negotiations – path to social contract. Experience, content, partners, forms, Warsaw 1995].

[13] J. Wratny, Nowe układy zbiorowe. Przełom czy kontynuacja? Warszawa 1998. [J. Wratny, New collective bargaining. Turning point or continuation? Warsaw 1998.]

[14] Positive assessment of work of the Tripartite Commission for Social and Economic Affairs may be found in: J. Męcina, Wpływ dialogu społecznego na kształtowanie stosunków pracy w III Rzeczypospolitej, Warszawa 2010 [J. Męcina, Impact of the social dialogue on shaping labour relationships in the Third Republic of Poland, Warsaw 2010].

[15] It needs to be underlined that underdevelopment and decentralisation of collective bargaining in Poland are not commonly assessed as unfavourable, however, sometimes its functionality for the Polish model of liberal market economy is indicated. For example, W. Kozek says that "the key problem of institutionalisation – conclusion and negotiating of agreements in employment relations and functioning of effective procedures for conflict solving – may be referred to as unsolved. Any criticism seems groundless. It is possible for such a defective system of collective bargaining to be functionally necessary for the economic system". W. Kozek (ed.), Institutionalisation of employment relationships in Poland, Warsaw 2003, p. 40.

first sight, the dynamics of their development does not seem to arise any concerns. The total number of CLAs registered since 1996 exceeds 13 thousand. Every year, between one and two hundred new CLAs are registered. For example, in 2011, 136 CLAs were registered, covering 50 thousand employees[16], and in 2012, despite only 92 company CLAs being registered, they still covered 61 thousand employees[17].

These numbers, however, do not represent the whole story. Statistics on the number of truly "active" agreements, that is, those which are still binding, is lacking[18]. Nonetheless, the annual reports of the Chief Labour Inspector suggest that the dynamics of new CLA registrations has been decreasing continuously. What is more, registration of new agreements does not mean that the subjective scope of collective bargaining is being extended. New agreements are in most cases signed with those employers who have been already subject to such regulation or with their legal successors. The tendency to introduce only remuneration regulations when the agreement is terminated is more common. Each year, the National Labour Inspectorate, states in their reports that a significant number of provisions in CLAs are simply copies of the statutory or implementing provisions.

A particularly difficult situation can be observed in the sectors dominated by foreign capital. As it has already been indicated, multinational corporations effectively avoid establishing sectoral dialogue mechanisms, in most cases justifying their approach with the need for a greater flexibility at the enterprise level. This does not mean, however, that they notice and acknowledge the need for collective bargaining "in their own patch". In many analysed cases, foreign employers were clearly reluctant to conclude a CLA.

If, however, such an agreement is already in force and affects the labour environment, another problem occurs – the trade unions lack the ability to share experience and negotiation achievements as well as being unable of and sometimes even reluctant to mutual coordination of their actions. There are increasingly more cases in the private economy referred to by David Ost as "mexicanisation" of trade unions, whereby TUs become part of the corporate culture of competition[19]. To make matters worse, the strategies of the main trade unions lack elements of agreeing negotiating goals consistently transferred down to lower levels of negotiation, as it is the case in Western Europe.

In its 2010 report, the European Commission put Poland in the group of countries with decreasing number of collective bargaining, though Poland still has a relatively high level of 38%[20]. It seems, however, that this percentage due to the fact that the Tripartite Commission negotiations on remuneration in the national budget sectors were included in the calculations.

Small number of strikes in the private sector is a characteristic feature of Poland's industrial relations. It should not, however, serve as a proof of stability of employee relations in enterprises or of responsibility for and bonds with their place of work demonstrated by employees. It is more of a warning sign that natural channels of expression of employee dissatisfaction are disappearing[21].

Trade unions operating in the subsidiaries of multinational corporations relatively quickly began to seek for external support, taking advantage of the institutional arrangement of the European Work Councils (EWC) introduced in 1994. The admission by those bodies of the representatives of employees from the CEE region, long before the formal accession of CEE countries to the EU, stimulated development of cross-border trade union cooperation. Currently, Polish employees are represented in approximately 200 EWCs. An ostensible difference between the wages and the quality of organisation of trade union movement results in the fact that the mutual trust and coordination of actions of trade unions from new and old EU Member States is not impressive.

[16] Report of the Chief Labour Inspector on the activities of the National Labour Inspectorate in 2011, http://www.pip.gov.pl/html/pl/sprawozd/12/pdf/d_02_dzialalnosc_kontrolna_i_prewencyjna_informacje_ogolne.pdf

[17] http://www.pip.gov.pl/html/pl/sprawozd/12/pdf/d_02_dzialalnosc_kontrolna_i_prewencyjna_informacje_ogolne.pdf

[18] In accordance with the Regulation of the Minister of Labour and Social Policy of 4 April 2001 on actions taken ex officio in cases of registration of collective labour agreements, keeping a register of collective labour agreements and registration files and templates of registration clauses and registration cards, a collective labour agreement shall be stricken off he register only in the case referred to in Article 241(11) §5 (4) of the Labour Code. In other cases, amendments to the registered data are introduced at the request of the applicant. It needs to be emphasised that in the case of change of ownership of a company (Article 23(1) of the Labour Code), the agreement shall be effective at the new employer for the period of one year (Article 241(8) of the Labour Code). That is why, registers kept by the National Labour Inspectorates, if the parties fail to take any action, may contain "dormant" collective labour agreements.

[19] D. Ost, The Weakness of Strong Social Movements: Models of Unionism in the East European Context, (in:) W. Kozek, Institutionalisation of employment relationships in Poland, Warsaw 2003.

[20] European Commission, Industrial Relations in Europe 2010, Brussels 2011.

[21] Guglielmo Meardi, Social Failures of EU Enlargement. A Case of Workers Voting with their Feet, New York –London 2012, Routledge.

In particular, the lack of efficiently and effectively operating structures for pay negotiations in Central European branches of multinational corporations is a serious problem. That, in turn, generates increasingly more frequent accusations of the so-called social dumping practices by the Western European trade unions.

In its latest report on industrial relations in Europe, the European Commission is clearly critical of the current state of affairs in the field of collective industrial relations in CEE countries[22]. The report points to narrow scope of collective bargaining, lack of dialogue at sectoral level and frequently superficial nature of tripartite relations. The Commission is of the opinion that all this lead to the escalation of conflict situations in the countries in question when they had to react to the consequences of the economic crisis that was still being felt. For the first time the EC report voiced an open criticism of multinational corporations. Contrary to expectations, their inflow in the CEE region has not brought Western standards of social dialogue. Quite the opposite: corporations contributed to an even greater fragmentation of already weak national collective bargaining systems.

As a conclusion, it is worth noting that far-reaching negative changes to employment stability have recently been observed in Poland. The phenomenon of a soaring number of people employed on unstable, fixed-term contract was followed by a growing number of those working without any contracts at all. The self-employed who are nonetheless economically dependent and wouldn't be able to make a living without the only company the work for, are not protected by the Labour Law, nor have they the right to join a trade union. Members of both groups, unlikely to join trade unions, are pouring to private companies, where they destabilize employment standards and hinder effective collective bargaining.

Given the picture presented above, the need to study circumstances which affect the scope and the quality of collective bargaining in the private sector in Poland should not be contested. The authors of the study discussed in the report claim that even in the case of the liberal market economy model CLAs are a key institution protecting employees and should be defended from extinction. This is where we see the role of the trade unions and that is the goal this report is to serve.

[22] European Commission, Industrial Relations in Europe 2012, Brussels 2013.

2. Collective labour agreements. Background information on specific sources of labour law.

As only a small percentage of employees are covered by CLAs, these agreements play an insignificant role, despite their high position from the point of view of labour law axiology. Pay regulations which employers have to agree with trade unions serve as a kind of substitute for CLAs.

In accordance with Article 239 § 1 of the Labour Code, a CLA is concluded for the benefit of all employees covered by its regulations unless the parties resolve otherwise in the CLA. Due to the statutory authorisation of trade unions to obligatorily represent all employees in class actions, it is inadmissible to include in a CLA, under current legislation, a differentiating clause, which would limit the application of the agreement only to the members of the trade union organisation which signed it. Exclusions from CLA may be based on other substantive criteria (e.g. the type of work performed). The parties to a CLA may decide that not only employees are covered by the agreement, but also other persons carrying out work (e.g. contractors or self-employed persons) as well as retired people and pensioners. CLAs are not concluded for the selected group of persons employed in the administration and the judiciary, namely members of the civil service, government officials employed on the basis of appointment and nomination, local government officials employed on the basis of election and appointment, judges and public prosecutors. The current Polish regulation pertaining to subjective exemptions set out in Article 239 § 3 of the Labour Code raises substantive doubts as to its compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular in light of the judgements in the cases of Demir and Baykara as well as Enerji[23].

Only entities enjoying the so-called collective agreement capacity may become parties to a CLA. Collective agreement capacity allows to negotiate, conclude and be a party to a CLA. On the part of employees, trade unions have this capacity (Polish law vests the competence to conclude a CLA solely with trade unions, and as such excludes various non-trade union representatives, such as workers' councils or other representatives of the staff), however, on the part of employers, the collective agreement capacity is vested with the employer, an employers' association (in the name of employers associated in this organisation), a minister or another governmental body or self-governance body (in the case of government budgetary units).

The collective bargaining capacity is granted to all trade unions which represent employees, regardless of their size. In order to limit the difficulties in that area (due to trade union plurality at the company level), the Labour Code introduces the principle of representativeness which privileges larger organisations.

In the event when employees for whom a collective agreement is to be concluded are represented by more than one trade union organisation, collective agreement negotiations are conducted by their common representation or individual trade union organisations acting jointly. If within the time limit set by the entity initiating the conclusion of a CLA, no shorter than 30 days, not all the trade union organisations join the negotiations, then trade union organisations which joined the negotiations are authorised to conduct them, provided that there is at least one representative organisation among them. A collective labour agreement (single- or multi-establishment) is concluded by all trade union organisations which conducted the negotiations or at least all the representative organisations participating in the negotiations.

Representativeness of a trade union organisation mainly depends on the number of associated members. Two types of representativeness may be distinguished: company representativeness and supra-company one[24]. At the company level, a representative trade union is an organisation which associates at least 10% of staff of a given company, as compared with the entities being part of multi-establishment representative structures within the meaning of the provisions on the Tripartite Commission[25] this requirement is lowered to 7%. If none of the company trade union organisations complies with the above requirements, then it is the organisation associating the largest number of employees that becomes the representative trade union organisation.

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[23] W. Sanetra, Wyrok przeciwko Turcji a sprawa polska, Pi ZS 5/2009, str. 2. [Judgment against Turkey and the Polish case], Pi ZS 5/2009, p. 2].

[24] At the supra-company level, a representative trade union organisation is an organisation which complies with at least one of the following conditions:
1. It participates in the works of the Tripartite Commission for Social and Economic Affairs (i.e. it associates at least 300,000 employees, but no more than 100,000 from one sector and represents at least half of sectors).
2. It associates at least 10% of all employees covered by the statute, but no fewer than 10,000 employees.
3. It associates the largest number of employees for whom the multi-establishment collective labour agreement is to be concluded.

[25] Currently, it is the Independent Self-Governing Trade Union Solidarność (NSZZ Solidarność), All-Poland Alliance of Trade Unions (OPZZ) and the Trade Unions Forum (Forum Związków Zawodowych).

Representativeness is established on the basis of statements submitted by trade union organisations. If the employer or another organisation voices concerns regarding compliance with the representativeness criteria, the organisation in question may the organisation may file a motion with the labour court to have its representativeness declared.

A collective labour agreement consists of three parts:
1. The normative part which determines what provisions the content of the employment relationship should refer to;
2. The obligation part which specifies mutual obligations of the parties to the collective agreement;
3. The social part.

The content of a CLA may not violate the rights of third parties. The content of a CLA may not be less advantageous for the employees than the generally applicable provisions of law (acts and regulations). In accordance with the case law of the Supreme Court, assessment of advantageous nature of CLA provisions is made with regard to each single term and condition of employment separately[26]. Moreover, provisions of the single-establishment collective labour agreement may not be less advantageous for the employees than the provisions of the multi-establishment collective agreement.

A collective labour agreement is concluded through collective bargaining. All trade union organisations representing employees for whom the CLA is to be concluded are informed about the initiative. The parties sign it if they reach an agreement on all its provisions. The employer cannot refuse to enter into negotiations in three cases: first of all, if there is no collective agreement binding; secondly, when the demand is justified due to a change in the financial situation of the employer or deterioration of material situation of employees; thirdly, if the demand was voiced no sooner than 60 days prior to the lapse of the period for which collective agreement was concluded or following the day on which the agreement was terminated.

Collective bargaining should be conducted in good faith and with respect for justified interests of the other party. The legislator indicates that the employer should acknowledge the demands of trade union organisations justified by the economic situation of the employees; trade unions should refrain from voicing demands the addressing of which clearly exceeds the financial possibilities of the employer, the parties to the agreement should respect the interest of employees who are not covered by the CLA.

During the bargaining process, the employer is obliged to provide information about the financial standing of the company, necessary to conduct the negotiations in a responsible manner, and trade unions are obligated not to disclose information obtained from the employer which constitutes trade secret. Both parties to the negotiations may use the assistance of experts.

A collective agreement is concluded in writing for an undefined or defined term. Under current legislation, termination of the agreement means that it ceases to apply. Such legislation has been in place since 26 November 2002, i.e. since the announcement of the judgement of the Constitutional Tribunal of 18 November 2002 repealing Article 241(17) § 4 of the Labour Code. The repealed article stipulated that the provisions of a terminated CLA apply until a new agreement is concluded, unless the parties to the agreement decided on a new time limit of their application. The judgement was based on the fact that the Tribunal considered the provision as contrary to o Article 59 clause 2 and Article 20 of the Constitution of the Republic of Poland, Article 4 of the International Labour Organisation Convention 98 and Article 6 clause 2 of the European Social Chart. In fact, it is in violation with the principle of freedom to enter into collective bargaining and the principle of economic freedom for two reasons. Firstly, the entity bound by the agreement may not free itself from it following its term or following the notice period without the consent of the other party. As a result – and this is the second reason – entrepreneurs may be unable to respond adequately the change in conditions in which they carry out economic activity.

A collective agreement enters into force when it is registered by the ministry competent for labour law (in case of multi-establishment collective agreements) or a district labour inspector (in case of single-establishment collective agreements). The registration body verifies compliance with the law of the content of the CLA and the manner in which it was concluded. In the case of non-compliance with the

[26] Resolution of the Supreme Court of 15.09.2004. III PZP 3/04, OSNP 2005, No. 4, item 49.

law of the provisions of the CLA it may – with the consent of the parties – enter the agreement in the register without those provisions or request that the parties make appropriate changes within 14 days. The decision of the registering body may be appealed against to the labour court.

The Labour Code provides for the possibility of challenging the agreement (within 90 days of its registration) by the entity that has legal interest in it (e.g. a trade union excluded from collective bargaining). In the case of deeming that the agreement was concluded in breach of the provisions on concluding CLAs, the registering body requests that the parties to the agreement remedy the irregularities unless it is not possible, and then it takes a decision on striking the agreement off the register. This is the only legal manner to question the validity of a registered CLA. As it has been pointed out by the Supreme Court, the court procedure to declare invalidity of the CLA (based on a claim under Article 189 of the Code of Civil Procedure, claim for establishment) following its registration is inadmissible[27].

The agreement is terminated on the basis of the unanimous statement of the parties, after the lapse of the period for which it was concluded or after the lapse of the period of notice made by one of the parties. The notice period for a CLA is 3 calendar months unless the parties to the agreement resolve otherwise.

Amendments to a CLA are introduced by additional protocols to which relevant provisions concerning the CLA apply. When a CLA enters into force, more advantageous provisions automatically, by virtue of law, supersede the terms and conditions of the employment agreement ensuing from the current provisions of the labour law[28]. However, less advantageous provisions are introduced by way of termination amending the employment contract. As indicated by the Supreme Court, in the case of termination of the CLA, the employer may, by way of termination amending the employment contract, amend the terms and conditions of employment ensuing from such an agreement also when it was not superseded with a new CLA or the remuneration regulation[29].

Social peace principle

In accordance with Article 4 § 2 of the Act of 23 May 1991 on resolving class actions when a class action pertains to the content of a collective labour agreement or another arrangement whose party is a trade union organisation, instigation of and conducting a dispute to amend a CLA or agreement may occur no earlier than on the day of its termination. The indicated provision provides for social rest clauses in employment relationship[30].

2.1 Multi-establishment collective agreements

In accordance with Article 241(15) of the Labour Law the right to initiate conclusion of the multi-establishment collective labour agreement (hereinafter referred to as MECLA) is vested with: the organisation of employers authorised to conclude the collective labour agreement on the part of employers and any supra-establishment trade union organisation representing employees for whom the agreement is to be concluded. The condition for collective bargaining is the participation of at least one representative organisation within the meaning of Article 241(17) of the Labour Code. A MECLA is concluded by all trade union organisations which took part in collective bargaining or at least all the representative trade union organisations (within the meaning of Article 241(17) of the Labour Code). Should the organisation of employers or all trade union organisations that are parties to the MECLA. A be dissolved, the employer may withdraw from applying the MECLA in whole or in part after the lapse of a period at least equal the notice period of the collective labour agreement.

2.2 Extension of the collective labour agreement

In accordance with Article 241(18) of the Labour Code, upon a joint application of the organisation of employers and the supra-establishment trade union organisations which concluded a multi-establish-

[27] Resolution of the Supreme Court of 23.05.2001. III ZP/00, OSNP 2001, No. 23, item 684.

[28] Or any other act constituting basis for entering into employment relationship. (In the Polish legal order, employment relationship is formed based on the employment contract but also based on non-contractual forms such as election, appointment and nomination).

[29] Resolution of the Supreme Court of 29.09.2006. II PZP 3/06, OSNP 2007, No. 13-14, item 181.

[30] B. Wypchło- Grymek, Idea zachowania pokoju społecznego w zbiorowych stosunkach pracy w Polsce i w krajach demokracji zachodniej (w) Studia z zakresu prawa pracy i polityki społecznej, A. Świątkowski (red.), Kraków 1994. [B. Wypchło- Grymek, The idea of maintaining social peace in collective labour agreements in Poland and Western democracy countries (in) Studies in labour law and social policy, A. Świątkowski (ed.), Kraków 1994]

ment collective agreement, the minister of labour may, by decree, extend – when overriding social interests so require – the application of such an agreement in whole or in part to employees working with the employer to whom no MECLA applies and who carry out economic activity which is the same or similar to the activity carried out by employers subject to the agreement. The minister consults such an employer or organisation of employers as well as the company trade union organisation if one operates in the company in question. In practice this provision is a dead letter and has never been applied.

2.3 Collective agreements

Current legislation does not provide any definition of a collective agreement. Article 9 of the Labour Code includes them in the category of sources of labour law when two premises are satisfied: their wording must specify the rights and obligations of the parties to the employment relation and they must be based on the act. Initially, the view in the doctrine was that the obligation of being based on an act meant a strict obligation for a given act to provide for the possibility to enter into an agreement. The category of named collective agreements of a normative nature includes: agreement on group layoffs, the so-called suspension agreements (Article 9(1) of the Labour Code and 241 (27) of the Labour Code, agreement on teleworking (Article 67(7) of the Labour Code) and agreements concluded during a collective dispute. Isolated views in the doctrine also pointed to the arrangement ensuing from the process of consultations of the employer with the workers' council (Article 14 clause 2 item 5 of the Act on informing the employees and carrying out consultations with them).

As early as in the 1990s, there appeared a problem of the legal nature of unnamed collective agreements, that is arrangements concluded by social partners in the situations and in the cases not specified by the acts in force. Most doubts concerned the legal nature of social packages containing various guarantees (e.g. connected with the stability of employment or the amount of remuneration) concluded during the process of privatisation of state-owned companies. It needs to be underlined that Polish labour law still applies the management and not the ownership definition of the employer. It has provoked many complications when an agreement is concluded not with the employer (within the meaning of the Labour Code) but with the current or future investor. Without going into details, it needs to be emphasised that there is a large gap between the case law of the Supreme Court in terms of the legal nature of social packages and views of numerous representatives of the labour law doctrine[31].

2.4 Work regulations

Work regulations are an act of obligatory nature for employers employing at least 20 employees. The regulations are introduced to set out organisation and order of work. The employer with whom trade union organisations operate should agree with such organisations the work regulations. This agreement is not of absolute nature, i.e. it is not necessary for the regulations to enter into force.
The regulations indicate, among other things, systems and schedule of work and adopted settlement periods, definition of night time, time limit, place and frequency of payment of the remuneration, list of works forbidden to under-aged employees and women, obligations in the area of occupational health and safety and fire protection.

Work regulations enter into force following 2 weeks of the day of their announcement to employees in the manner adopted at the employer. The employer is obligated to familiarise the employee with the content of the work regulations before the employee starts work for them.

Pay regulations is an obligatory act for employers employing at least 20 persons. This act is not introduced if there is a single-establishment or multi-establishment collective labour agreement in force in the company in question, which provides for the matters covered by the CLA. The employer is obligated to agree the remuneration regulations with the company trade union organisation[32].

[31] More on this topic in: L. Florek, Umowa a ustawa w prawie pracy, Warszawa 2010 [Agreement and act in the labour law, Warsaw 2010].
[32] Judgement of the Supreme Court of 12.02.2004. I PK 349/03, OSNP 2005, No. 1, item 4.

2.5 Debates on the legal nature of collective labour agreements

In accordance with Article 9 of the Labour Code[33], whenever the Labour Code mentions labour law it means the provisions of the labour law and the provisions of other acts and implementing acts which set out the rights and obligations of employees and employers as well as the provisions of collective labour agreements and other group agreements, regulations and statutes based on the act, which stipulate the rights and duties of the parties to the employment relation.

After the Constitution of the Republic of Poland of 1997[34] came into force, experts in the labour law voiced doubts as to compliance of Article 9 of the Labour Code with the Constitution and in particular its Article 87. In accordance with Article 87 of the Constitution, the commonly binding sources of law in the Republic of Poland are: the Constitution, acts, ratified international agreements and regulations. Moreover, the commonly binding sources of law in the Republic of Poland are local laws, binding in the area of bodies which enacted them. For example, in the debate which became heated after the entry into force of the Constitution in 1997 it was indicated that the provision of Article 87 of the Constitution without doubt creates a closed catalogue of sources of law of the commonly binding nature. Thus, CLAs, regulations and statutes provided for by the Labour Code in Article 9 may not be ascribed the status of commonly binding sources of law, with all the consequences, they will not be able to pro iure affect the content of the employment relationship and they will only be treated as a substitute for statements of intent of the parties[35]. Some polemic voices to the above view have appeared[36]. Representatives of the doctrine indicated that rejection of the normative character of CLAs would be against the axiological fundaments of labour law[37].

It is stated that for deeming of the normative status of collective agreements the provisions of the Constitution which refer to the role and the importance of those acts in the social system of the Republic of Poland apply. Article 59 clause 2 of the Constitution stipulates that trade unions and employers and their organisations have the right to collective bargaining, in particular to resolve collective labour disputes and to conclude CLAs and other arrangements. Article 20 of the Constitution emphasises the social dialogue and cooperation of social partners as the fundament for the social market economy. Thus, it is underlined that it would be difficult to negotiate the normative character of CLAs which without this feature would play a far less significant role as an instrument of social dialogue[38].

In this concise account, there is no room to present the entire debate on the Polish labour law doctrine. One may however mention, that there has recently been some serious criticism concerning the views about the normative character of the collective agreement, the critics pointing out, among other things, that the normative character of CLAs is not connected with the social dialogue principle. It is indicated that there is no argument to consider correct the thesis that dialogue needs to consist in creating law. It is also emphasised that the employees' interest may be effectively secured without adopting the concept of the normative nature of CLA[39].

To summarise those comments, it is worth reminding that Article 9 of the Labour Code also points to regulations and statutes. Both regulations and statutes may be created without any participation of trade unions or any other form of employees' representatives. Thus, it is difficult to seek the source of their normative nature in the indicated articles of the Constitution (Article 59 and 20) which provide for mechanisms of social dialogue. From the purely formal point of view, the problem with regard to statutes was resolved by a judgement of the Constitutional Tribunal[40] which in its judgement of 10 June 2003 stated that Article 9 § 1 of the Labour Code in the scope in which it refers to statutes complies with Article 59 clause 2 and Article 87 clause 1 of the Constitution[41].

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[33] In the currently wording in force since 02. 06. 1996.

[34] It needs to be added that neither the Constitution of 1952 nor did the Small Constitution of 1992 introduce any closed catalogue of commonly binding sources of law. Contrary, the constitution of 1997, in its Article 87, introduced – in the opinion of most experts in the constitutional law – a closed catalogue of sources of law.

[35] Kaczyński, Wpływ artykułu 87 Konstytucji na swoiste źródła prawa pracy (Uwagi wstępne), PiP 1997, zeszyt 8. [L. Kaczyński, Impact of Article 87 of the Constitution on specific sources of labour law (Initial remarks), PiP 1997, issue 8].

[36] L. Florek, Zgodność przepisów prawa pracy z Konstytucją PiZs 1997 r., nr 11; W. Sanetra, konstytucyjne prawo do rokowań, PiZs 1998 nr 12 [L. Florek, Compliance of the provisions of labour law with the Constitution, PiZs 1997, No.11; W. Sanetra, Constitutional law to negotiate, PiZs 1998 No.12].

[37] T. Zieliński, Podstawy rozwoju prawa pracy, Warsaw- Kraków 1999, str. 121; L. Florek, Demokratyczne (zbiorowe) stosunki pracy, Studia Iuridica 1992 r. nr 23, str. 21 [T. Zieliński, Introduction to the development of labour law, Warsaw - Kraków 1999, page 121; L. Florek, Democratic (collective) industrial relations agreements, Studia Iuridica 1992, No. 23, page 21].

[38] Prawo pracy, J. Stelina (red.), Warszawa 2013, str. 64 [Labour Law, J. Stelina (ed.), Warsaw 2013, page 64].

[39] A. Sobczyk, Prawo pracy w świetle Konstytucji RP, Tom II, Wybrane problemy i instytucje prawa pracy a konstytucyjne prawa i wolności człowieka, Warszawa 2013, str. 125 [A. Sobczyk, Labour law in light of the Constitution of the Republic of Poland, Volume II, Selected problems and institutions of labour law and constitutional rights and freedoms of a human being, Warsaw 2013, page 125].

[40] SK 37/02, OTK-A 2003, No. 6, item 53.

[41] In their statement, the Tribunal declared that in light of the provisions of the Constitution, acts of interior law many not constitute basis for individual decisions for the benefit of individuals, and may not set out their rights. In the case in question, one needs to take into account the context created by the employment relationship. Rights of employees are closely connected with the obligation to follow instructions of the company managers. In the scope in which the statute pertains to the rights of employees, it constitutes a form of intentional self-binding of an entity in the relations with employees of a given company and does not constitute a source of law within the meaning of the provisions of the Constitution despite the fact that it binds the parties to those relations. Also in this case, the obligations of the company are based on employment relationships

2.6 Summary

Articles 9 § 2 and 3 of the Labour Code set out the hierarchy of sources of labour law and mutual relations between them. Statutory law (including implementing acts) ranks highest in this hierarchy, lower rank collective labour agreements and other group arrangements based on the act, and regulations and statutes rank lowest. Acts which rank lower in the hierarchy may be less advantageous for employees than acts which rank higher in the hierarchy. Such principle of advantage is supplemented by referring it to the relation between CLAs at two levels: single-establishment collective labour agreements may not be less advantageous than the multi-establishment ones.

The relation between the single-establishment and multi-establishment collective labour agreements may seem stiff (and from the very legal point of view it is). Polish law does not provide for a possibility to include in a multi-establishment collective labour agreement clauses allowing for less advantageous regulation in a single-establishment collective agreement. Currently, the process of extension of those clauses is not underway (as was recently the case, for instance, in the Italian legal order). One should not forget that the number of multi-establishment collective agreements in Poland is minimal and is decreasing, hence the relations between agreements are of increasingly lesser practical importance.

Finally, it may be emphasised that Article 2 clause 4 of the Act on the Tripartite Commission for Social and Economic Affairs and provincial commissions for social dialogue provides for the possibility to conclude the multi-establishment collective labour agreement by the employees and employers in the Commission, which would cover all the employers or a group of employers, and employees employed by those employers. Articles 239-241[13] of the Labour Code with the exclusion of 241[2] § 2 and 241[9] § 3-5 of the Labour Code are applied to such an agreement. Assessing this institution, M. Włodarczyk indicates that such agreements would deviate from the classic agreement as:

- their content would be of more general nature than other multi-establishment agreements,
- they would regulate matters pertaining to the entire Polish labour environment,
- the fact that government representatives in the commission assist in their conclusion enables to assume that their role would be different than ordinary multi-establishment collective agreements, as those agreements, due to their scope of reference, may adopt many features of nationwide social agreements, however, they would undoubtedly be different than such agreements by the normative status equal to other collective labour agreements[42]. So far, in practice, such an agreement has never been concluded.

3. Legal barriers to collective bargaining in the private sector in Poland

Discussing the topic outlined in the title requires explanation of at least two initial issues. One needs to refer to the definition of the terms used in the title: i.e. “legal barriers” and “collective bargaining”. With regard to the first term, we would like to explain that when writing about barriers we mean above all the existing regulations which are suboptimal from the point of view of promotion of collective bargaining.

As barriers we will perceive those legal solutions which in comparison with alternative ones to a smaller extent enable to fuel the willingness of social partners to conduct collective bargaining or such which even decrease or thwart this willingness. Obviously, to some extent also the lack of regulations which could increase the willingness to conduct collective bargaining may be deemed a barrier to such actions. However, this issue falls within the scope of my interest only supportively, hence not as a separate area of discussion but as a hypothetical point of reference which is necessary to lend some perspective to assess the existing legal regulations.

For similar reasons, we exclude from the discussion those aspects of statutory regulations in the area of labour law which, although not directly linked with collective bargaining, affect industrial relations in Poland as a whole and are an indirect cause of poor quality of collective bargaining in Poland. As a result, we do not attempt to mention all the factors related to labour law currently in force which in-

[42] M. Włodarczyk, w Zarys sytemu prawa pracy tom I Część ogólna prawa pracy, pod. red K.W. Barana, warszawa 2010, str. 405. [M. Włodarczyk, in: Outline of the labour law system, Volume I, General part of the labour law, Ed. K.W. Baran, Warsaw 2010, page 405].

directly contribute to unsatisfactory quality of collective bargaining. Here, we only wish to signal that among those factors one should mention popularisation of fixed-term employment agreements, proliferation of temporary work, lack of effective actions combating excessive use of the civil-law contract employment or freedom to divide a company into a number of companies related in terms of capital and cooperating with one another, each of them being a separate employer.

Supplementing the above, we wish to point out that discussion of the issue of barriers to conducting collective bargaining requires making an assumption that collective bargaining is positive per se, and is not justified by the benefits it may offer from the point of view of some other goals. Obviously, the greater the scope of collective bargaining, the smaller the room for unilateral actions of employers – thus, the very fact of conducting collective bargaining may constitute a barrier to e.g. quick change of a remuneration scheme or fast restructuring of a company[43]. We acknowledge the fact that in the literature dealing with this issue, the timeless value of collective bargaining is sometimes questioned. It is noticed that its development is typical of specific economic period. In that respect, with the passing of economic eras, collective bargaining may also go out of date[44].

Conscious of those complications, we assume in this paper that collective bargaining is positive by nature.

A few introductory remarks should be made on the notion of collective bargaining. This notion covers both negotiations undertaken in order to conclude a collective labour agreement and bargaining which may lead to conclusion of other agreements between the employer and the representation of the employees. The scope of research outlined in the title of this chapter covers both the issue of CLAs, other collective arrangements, remuneration regulations, sometimes referred to as a substitute for CLAs[45], bonus and awards regulation, work regulations, etc[46] In each of those cases, representation of employees may seek to reach an agreement with the employer. In this context, collective bargaining means negotiations between the employer (or employers) and representatives of employees, preceding adoption of a legally binding document. One may always refer to them when agreement on a legal document is required. In this manner, collective bargaining refers to the so-called collective agreement sources of labour law[47].

The suggested framework excludes from the scope of our interest the issues related to cooperation of employee representatives with an employer in the course of execution of the collective right of the employees to information and the issue of consulting employees.
Due to the complex nature of the problem of collective bargaining in the private sector in Poland, an analysis of the existing barriers needs to be synthetic. We therefore suggest discussing the issue highlighted in the title in the following order:

- legal barriers to conducting collective bargaining in the regulations pertaining to the parties to the bargaining,
- legal barriers to conducting collective bargaining in the regulations pertaining to the subject of collective agreement,

[43] Por. np. J. Stelina Refleksje na temat kondycji układów zbiorowych pracy w Polsce [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, s. 102. [Cf. e.g. J. Stelina Reflections on the status of collective labour agreements in Poland [in] Z. Góral (ed.) Issues of contemporary labour law. Jubilee book of Professor Henryk Lewandowski, Warsaw 2009, p. 102].

[44] J. Stelina Refleksje na temat kondycji układów zbiorowych pracy w Polsce [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 104.

[45] Por. np. J. Stelina, hasło układ zbiorowy pracy [w:] J. Stelina (red.) Leksykon prawa pracy. 100 podstawowych pojęć, Warszawa 2011, s. 346 [Cf. e.g. J. Stelina, entry collective labour agreement [in:] J. Stelina (ed.) Lexicon of labour law. 100 basic terms, Warsaw 2011, p. 346] and J. Stelina Refleksje na temat kondycji układów zbiorowych pracy w Polsce [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 98, see also J. Wratny Porozumienie zakładowe. Stan obecny w Polsce, doświadczenia niemieckie, wnioski de lege ferenda, Warszawa 1999 s. 11 [J. Wratny Collective labour agreements. Current status in Poland, German experience, de lege ferenda conclusions, Warsaw 1999, p. 11] and M. Włodarczyk, „Swoiste" źródła prawa pracy – kilka refleksji na temat ich genezy i funkcji [M. Włodarczyk, Specific sources of labour law – some reflections on their origin and function [in:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 115. See also M. Włodarczyk Swoiste źródła prawa pracy [w:] K. W. Baran (red.) Zarys systemu prawa pracy. Tom I Część ogólna prawa pracy, Warszawa 2010, s. 390-391 [K. W. Baran (ed.) Outline of the labour law system. Volume I General part of labour law, Warsaw 2010, pp. 390-391- the author explains that regulations were to some extent the prototype of collective labour agreements but they had a different function at the beginning.

[46] There is no need to list the provisions which de lege lata refer to this type of agreements – such lists were often cited in the literature dealing with this issue, cf. e.g. K. Baran Autonomiczne prawo pracy – de lege lata i de lege ferenda [w] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, s. 86-87. [K. Baran Autonomous labour law – de lege lata and de lege ferenda [in] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (ed.) Collective labour law in 21th century, Gdańsk 2010, pp. 86-87.

[47] M. Włodarczyk „Swoiste" źródła prawa pracy – kilka refleksji na temat ich genezy i funkcji [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, s. 108; patrz też M. Włodarczyk Swoiste źródła prawa pracy [w:] K. W. Baran (red.) Zarys systemu prawa pracy. Tom I Część ogólna prawa pracy, Warszawa 2010, p. 389 et seq.

- legal barriers to conducting collective bargaining in the regulations pertaining to the procedure of collective bargaining.

Specific dysfunctions of the regulation adopted by the legislator with reference to all the above-mentioned scopes are pointed out in the literature.

3.1 Legal barriers to conducting collective bargaining in the regulations pertaining to the parties to the agreement

Barriers of this type of may be discussed separately with regard to the employee and the employer part of collective bargaining. Beginning with the issue of the representation of employees, one may point out again the classic asymmetry between the parties of the employment relationship. In the context of collective bargaining, it consists in the fact that whereas one party to labour relations – i.e. the employer, always exists (when there are some employees), the partner representing the collective interests of the employees must be created or at least appointed in some way. This observation leads to a conclusion that legal regulations pertaining to creation and functioning of representations of employees is of great importance for the development of collective bargaining. Barriers are to be seen here, above all, if development of collective agreement differs from expectations.

Defining the employee representations and the Polish model of trade union movement.

The labour law doctrine has emphasised for many years the imperfections of the Trade Unions Act[48] indicating that the "statutory" model of trade union movement entails a number of negative consequences for the development of collective bargaining. The nature of the problem is that the binding regulation concentrates on the rights of trade unions at the level of the single-establishment trade union organisation and in that manner it favours development of the so-called company model of trade union movement. This model is at the same time opposed to the sector model, which is assessed higher[49].

The Polish regulation forces trade unions to develop structures at the company level. Those structures, owing to the law in force, enjoy great autonomy[50]. As a result, company trade union organisations become the sense of trade union movement[51]. That occurs at the cost of weakening the sectoral structures[52].

Greater autonomy of establishment structures results in fragmentation of the trade union movement and difficulties in coordinating actions of employees at a larger scale. Poor sectoral bargaining (which is in consequence conducted at the company level) also leads to the loss of very important element of bargaining logic – protection of competition[53]. As a result, conducting collective bargaining and concluding collective

[48] Act of 23 May 1991 on trade unions (Journal of Laws of 1991, No. 55, item 234).

[49] What is the most important here is chapter 4 of the Trade Unions Act, which regulates the competences of a company trade union organisation, and Article 251 clause 1 of the Act, which stipulates that those competences can be performed by a company trade union organisation provided it associates at least 10 members; cf. J. Piątkowski Związek zawodowy jako podmiot zbiorowego prawa pracy [w:] G. Goździewicz (red.) Aktualne problemy zbiorowego prawa pracy w Polsce i w Niemczech, Toruń 2012 r., s.71; Z. Hajn Ustawowy model organizacji polskiego ruchu związkowego i jego wpływ na zbiorowe stosunki pracy [w:] M. Matey-Tyrowicz, L. Nawacki, B. Wagner (red.) Prawo pracy a wyzwania XXI-go wieku. Księga jubileuszowa Profesora Tadeusza Zielińskiego, Warszawa 2002, passim, patrz również Uchwała Składu Siedmiu Sędziów Sądu Najwyższego - Izba Administracyjna, Pracy i Ubezpieczeń Społecznych z dnia 24 kwietnia 1996 r. I PZP 38/95, opublikowana OSNAPiUS 1996, nr 23, poz. 353 wraz z glosą Z. Hajna opublikowaną w OSP 1997, nr 5, s. 254. [J. Piątkowski Trade union as an entity of collective labour law [in:] G. Goździewicz (ed.) Current problems of collective labour law in Poland and Germany, Toruń 2012, p.71; Z. Hajn Statutory morel of organisation of the Polish trade union movement and its impact on collective labour law relationships [in:] M. Matey-Tyrowicz, L. Nawacki, B. Wagner (ed.) Labour law and challenges of the 21th century. Jubilee book of Professor Tadeusz Zieliński, Warsaw 2002, passim, see also Resolution of the Panel of Seven Judges of the Supreme Court – Chamber of Labour, Social Insurance and Public Issues of 24 April 1996, I PZP 38/95, published in OSNAPiUS 1996, No. 23, item 353 with a gloss of Z. Hajn published in OSP 1997, No. 5, p. 254.

[50] Z. Hajn Organizacje pracodawców i pracodawcy. Regulacja prawna i znaczenie w zbiorowych stosunkach pracy w Polsce [w:] G. Goździewicz (red.) Aktualne problemy zbiorowego prawa pracy w Polsce i w Niemczech, Toruń 2012 r., s. 64. [Z. Hajn Organisations of employees and an employer. Legal regulation and importance in collective labour relationships in Poland [in:] G. Goździewicz (ed.) Aktualne problemy zbiorowego prawa pracy w Polsce i w Niemczech, Toruń 2012 r., p. 64.]

[51] In this context, the regulation of Article 24123 of the Labour Code needs to be deemed a barrier. The article stipulates that a collective labour agreement is concluded by an employer and an company trade union organisation. More on unfavourable consequences of this regulation in, e.g., M. Włodarczyk Swoiste źródła prawa pracy [w:] K. W. Baran (red.) Zarys systemu prawa pracy. Tom I Część ogólna prawa pracy, Warszawa 2010, p. 410.

[52] J. Piątkowski Związek zawodowy jako podmiot zbiorowego prawa pracy [w:] G. Goździewicz (red.) Aktualne problemy zbiorowego prawa pracy w Polsce i w Niemczech, Toruń 2012 r., pp.70-71.

[53] G. Goździewicz Układy zbiorowe pracy jako podstawowy instrument działalności związków zawodowych [w:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, s. 92-93; J. Męcina Wpływ dialogu społecznego na kształtowanie stosunków pracy w III Rzeczypospolitej, Warszawa 2010, s. 301. [G. Goździewicz Collective labour agreements as a basic instrument of operations of trade unions [in:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (ed.) Collective labour law in 21th century, Gdańsk 2010, pp. 92-93; J. Męcina Impact of social dialogue on development of labour relations in the Third Republic of Poland, Warsaw 2010, p. 301.]

labour agreements (at the company level) may easily become burden for the employer, which is likely to lessen its chances on the competitive market.
This is not the only complication connected with the promotion of the company model of the trade union movement. It seems that in this model trade unions are assigned a different role than their natural role as they are required not to fight for the interests of employees[54] but rather to resign from the conflict approach and adopt a joint responsibility for the individual company at the level at which they operate. The pluralised and partly conflicted trade union movement is not able to perform this role. Such a task can be successfully imposed only on institutionalised and non-trade union representation of all employees of a particular company. Conflict approach of trade unions, which is their inherent feature, may be best executed at the level of the sector. The conflict at the company level may easily go out of control and may turn out destructive for the employer. The decision to go on strike is more difficult to take at the sectoral level since it has to be subject to wider agreement. It seems that to a large extent the promotion of the company model of the trade union movement was the cause of the need to introduce to Polish law restrictive regulations limiting the right to strike.

Plurality and atomisation of trade unions results in the importance of making classifications of trade union organisations and it forces the legislator to use the criterion of representativeness. That obviously leads to complications of legal regulations and problems in applying them. Such a situation does not favour collective bargaining.

Unfortunately, it seems that most labour law experts believe that a goal to promote sectoral bargaining would be too ambitious and focus on voicing postulates aiming at improvement of functioning of collective bargaining at the company level. In this context, the need to abolish privileges for establishment structures of large trade unions, increasing the representativeness threshold, introduction of joint representativeness and introduction of clear rules for representativeness certification together with introduction of its validity period are voiced[55].

A natural consequence of the regulation adopted in Poland according to which a company trade union organisation should associate at least 10 persons is obviously the fact that many employees are not covered by the scope of operation of trade union. The problem is particularly significant due to the process of movement of the workforce to smaller employers where the headcount is less than 10 persons[56].

Ad-hoc employee representations

The absence of trade union organisations in many companies caused the legislator to decide on designing an alternative representative as it saw the need for collective bargaining on certain issues at the company level. In doing so, the legislator did not take the possibility to refer to the institution of a trade union delegate[57]. It was decided that representation of employees should be appointed on an ad hoc basis and such representation with certain capacity in collective bargaining was provided. Currently, we deal with such non-trade union representatives of employees authorised to conclude various agreements in numerous provisions of the Labour Code as well as in other provisions outside the Code. One may even refer to a number of such representations[58].

[54] See M. Włodarczyk Swoiste źródła prawa pracy [w:] K. W. Baran (red.) Zarys systemu prawa pracy. Tom I Część ogólna prawa pracy, Warszawa 2010, pp. 393 -394.

[55] J. Stelina Nowa koncepcja reprezentatywności organizacji związkowej, „Praca i Zabezpieczenie Społeczne" 2008, No. 6, pp. 3-5 and J. Stelina Trade unions in the system of collective representation of employees – current status and directions of changes] [in:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, s. 171-172; J. Piątkowski Związek zawodowy jako podmiot zbiorowego prawa pracy [w:] G. Goździewicz (red.) Aktualne problemy zbiorowego prawa pracy w Polsce i w Niemczech, Toruń 2012 r., s. 82.

[56] K. Walczak Zbiorowe prawo pracy. Aspekty prawa międzynarodowego, europejskiego i polskiego, Warszawa 2004, s. 136. [K. Walczak Collective labour law. Aspects of international, European and Polish law, Warsaw 2004, p. 136.]

[57] The starting point would be to deem that employees which were not associated with the company trade union organisation can turn to certain trade union for representing their interest towards the employer. It is proposed in the literature to introduce this solution, cf. e.g. J. Szmit Oczekiwania zmian ustawodawstwa pracy w zakresie statusu prawnego pracowników zatrudnionych przez małych pracodawców z perspektywy związków zawodowych [w:] G. Goździewicz (red.) Stosunki pracy u małych pracodawców, Warszawa 2013, s. 386. [Expectations of amendments to labour law with regard to the legal status of employees employed in small companies from the perspective of trade unions [in:] G. Goździewicz (ed.) Labour relations in small companies, Warsaw 2013, p. 386.] Similar solution is now de lege lata under Article 3 clause 4 of the Act of 23 May 1991 on termination class actions (Journal of Laws of 1991, No. 55, item 236), this provision stipulates that in the name of employees of the establishment where no trade union operates, a class action may be conducted by a trade union organisation which was requested by employees to represent their collective interests.

[58] Situations in which Polish law provides for establishing an ad hoc representation are mentioned e.g. by A.Sobczyk: Przedstawicielstwa pozazwiązkowe w systemie zbiorowej reprezentacji pracowników - stan obecny i kierunki zmian [w:] [Non-trade union epresentations in the system of collective representation of employees – the current status and directions of changes] [in:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, s. 213-214.

Development of this type of regulations was possible owing to a certain interpretation of Article 59 clause 2 of the Constitution of the Republic of Poland. This provision reads that trade unions and employers and their organisations shall have the right to bargain, particularly for the purpose of resolving collective disputes, and to conclude collective labour agreements and other agreements. The commonly accepted interpretation of the constitutional norm referred to above assumes that it does not establish the monopoly of trade unions with regard to concluding collective labour agreements but only constitutes their priority[59]. Given that in the period following entry into force of the Constitution there were raised significant doubts as to the normative nature of collective labour agreements concluded by trade unions (whose high status is recognised in international law[60]), the current position that collective agreements of normative nature may be concluded by any representation of employees needs to be assessed as more than liberal.

At the same time, the development of collective bargaining achieved thanks to empowering non-trade union representation appointed on an ad hoc basis is ostensible. In fact, what is evoked here is not the development of collective bargaining but its degeneration. In the current legal status it is difficult to find justification for the view that non-trade union representation of employees appointed on an ad-hoc basis may play the role of a real partner for the employer[61].

Literature on the subject has long pointed to barriers in this regard which consist in lack of desired regulations. The basic issue is a very a succinct regulation of the manner of selection of such a representation which often refers to the customs adopted in the company. Naturally, the reference in the act to an existing custom does not itself create such a custom. Stating that Polish employees adopted certain customs in this regard is to a large extent contrary to facts. Moreover, non-trade union representatives of employees are not covered by any form of specific protection of durability of employment relationship, which in the situation of common use of fixed-term employment contracts completely disqualifies this representation. One should also mention the substantive weakness of non-trade union representatives and their weak legal position – non-trade union representative is not allowed to instigate a class action and it has no legal capacity (as a result it has no capacity to act in court proceedings)[62]. In fact, it has no possibility to request that the employer execute the agreement that was concluded, nor can it assume liability towards the employees for improper representation of their interests – e.g. when "crisis" agreements are concluded and it turns out that the financial standing of the employer was not that difficult

Although literature points to the plurality of non-trade union representations appointed on an ad hoc basis, they are all but a facade. In this context, a barrier to collective agreement is the lack of a structure which would be capable of playing the role of the representation of employees, and could be the alternative to the company trade union organisation.

Overcoming the existing barriers may go in two directions, as one may either try to remove the imperfections pertaining to the ad hoc representations – in this context, it is put forward in the literature to introduce protection of representatives of employees[63], introducing regulations concerning selection – direct and secret ballot[64], granting non-trade unions representations the capacity to act in class actions[65] and granting them the capacity to enter into collective labour agreements[66].

[59] J. Wratny Porozumienie zakładowe. Stan obecny w Polsce, doświadczenia niemieckie, wnioski de lege ferenda, Warszawa 1999, s. 17 oraz K. Baran Autonomiczne prawo pracy – de lege lata i de lege ferenda [w:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, s. 80-81.

[60] Arguments of functional nature and long tradition also show that the capacity to conclude collective labour agreements should be reserved for trade union representation, see M. Włodarczyk Swoiste źródła prawa pracy [w:] K. W. Baran (red.) Zarys systemu prawa pracy. Tom I Część ogólna prawa pracy, Warszawa 2010, p. 406

[61] See J. Stelina Refleksje na temat kondycji układów zbiorowych pracy w Polsce [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, pp. 104-105.

[62] In reality, only the works council (which remains in the scope of this paper to a limited extent) may request that the employer disclose some confidential information, cf. L. Florek: Porozumienia zbiorowe dotyczące informacji i konsultacji pracowniczej [Collective bargaining pertaining to information and workers' consultations] [in:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, pp. 74-75.

[63] A. Sobczyk: Przedstawicielstwa pozazwiązkowe w systemie zbiorowej reprezentacji pracowników – stan obecny i kierunki zmian [w:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, p. 225.

[64] K. Baran Autonomiczne prawo pracy – de lege lata i de lege ferenda [w:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, p. 88; A. Sobczyk: Przedstawicielstwa pozazwiązkowe w systemie zbiorowej reprezentacji pracowników – stan obecny i kierunki zmian [w:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, p. 225.

[65] See B. Cudowski Reprezentacja zatrudnionych w sporach zbiorowych pracy (de lege lata i de lege ferenda) [Representation of the employed in labour class actions (de lege lata i de lege ferenda [in:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, p. 247. The author justifies this postulate by referring to negative trade union freedom.

[66] K. Walczak Zbiorowe prawo pracy. Aspekty prawa międzynarodowego, europejskiego i polskiego, Warszawa 2004, p. 139.

Another solution may be the development of an institutionalised representation of employees similar to a works council[67] whose competencies would exceed informing and consulting employees. Suggestions in this regard have long been put forward in the labour law literature[68].

When discussing barriers to collective bargaining linked to the issue of capacity of representation of employees in collective bargaining, two more issues need to be addressed.

3.2 Legal barriers to collective bargaining stemming from the regulations pertaining to the subjectivity of employee representation

The first one is connected with the ban on using in collective labour agreements of the so-called differentiating clauses which would exclude from the scope of application of the collective labour agreements persons who are not members of the trade union that enters into the agreement. This ban is very harmful from the point of view of promotion of collective bargaining. This results in weakness of trade union movement as it deprives trade unions of a fundamental instrument of attracting new members. Additionally, the mentioned barrier to collective bargaining should not be affiliated with the ban on discrimination based on trade union membership. The ban on using differentiating clauses should not be construed on the basis of Article 239 § 1 of the Labour Code in conjunction with Article 183a § 2 of the Labour Code in conjunction with Article 18^{3a} § 1 of the Labour Code in conjunction with Article 9 § 4 of the Labour Code. A differentiating clause does not divide employees into those affiliated and not affiliated with a trade union but into members and non-memebers of a specific trade union. The membership in a trade union (referred to in Article 18^{3a} § 1 of the Labour Code) is not a criterion of differentiating since as a result of applying a differentiating clause employees who are members of another trade union may remain beyond the scope of application of a collective labour agreement. It also needs to be remembered that European Union anti-discrimination law does not include an absolute requirement that differences in the legal situation of employees were always justified in terms of the quantity and quality of the work they render or the duties imposed on them. One should also remember that despite general provisions of Article 11^2 of the Labour Code, Article 18^{3c} of the Labour Code or Article 78 § 1 of the Labour Code, Polish Labour Code includes many detailed provisions which directly differentiate the situation of employees on the basis of criteria other than quantity and quality of the work they render. This is an important principle of differentiation which constitutes the specific nature of labour law. In this context, Article 239 § 1 of the Labour Code may be interpreted as another provision of this kind and may be deemed an explicit admission of use of differentiating clauses.

The source of the ban on using differentiating clauses is solely Article 7 clause 1 of the Act on trade unions[69]. This provision stipulates that with regard to common rights and interests trade unions represent all employees regardless of their union membership. The removal of the discussed barrier could consist in a simple supplementation of this provision by stating that the general principle is not contrary to the fact that the collective labour agreement – if the parties so resolve – be effective only towards members of the trade union which concludes the agreement.

Allowing trade unions to conclude collective labour agreements solely for their members does not prevent keeping the general rule that trade unions represent all employees – e.g. on the forum of the Tripartite Commission for Social and Economic Affairs[70]. It may, however, be possible that such changes would result in the need to regulate the issues related to the rules of membership in trade union organisations in more detail so that statutes or resolutions of statutory trade union bodies do not limit too much the possibility of joining them[71]. One should also refer to the issue that has been raised in the

[67] This pertains to workers' council referred to in the Act of 7 April 2006 on informing employees and conducting consultations with them (Journal of Laws of 2006, No. 79, item 550).

[68] Cf. J. Wratny Porozumienie zakładowe. Stan obecny w Polsce, doświadczenia niemieckie, wnioski de lege ferenda, Warszawa 1999 p. 35 and p. 40 et seq.; see also J. Wratny Niezwiązkowe przedstawicielstwa pracowników w prawie polskim. Stan obecny i perspektywy zmian [Non-trade union representation of employees in Polish law. Current state and perspective of changes] [in:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 234 and p. 246; cf. also K. Baran Autonomiczne prawo pracy – de lege lata i de lege ferenda [w:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, p. 81.

[69] J. Stelina Związki zawodowe w systemie zbiorowej reprezentacji zatrudnionych – stan obecny i kierunki zmian [w:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, pp. 163-164.

[70] See the Act of 6 July 2001 on the Tripartite Commission for Social and Economic Affairs and provincial commissions on social dialogue (Journal of Laws of 2001, No. 100, item 1080).

[71] The analysis of all the possible legal and non-legal consequences of introduction of the possibility to conclude collective labour agreements by trade unions only for people associated with those trade unions falls beyond the scope of this paper. It seems that the issue, due to its importance, should be the subject of a separate interdisciplinary research.

literature for long, namely that of limiting the right of the workforce employed on civil law contracts to associate[72].

Polish regulation in this scope is, in the opinion of the Committee on Freedom of Association of the Administrative Council of the International Labour Office of the International Labour Organisation and the majority of experts in Polish labour law, contrary to Article 2 of Convention 87 of the International Labour Organisation[73]. Limiting the freedom of association that is observable here may obviously be deemed a barrier to conducting collective bargaining.

However, from the point of view of promotion of collective bargaining – this postulate of covering the persons rendering work on the basis of civil law agreements with the full right to associate[74] should be approached with care. It seems that it could cause a number of trade union organisations to cease meeting the criterion of representativeness. Moreover, one should not overestimate the support those persons could give to the employees' party.

The need for caution in this regard stems also from the fact that the problem of freedom to associate of a broadly understood category of workers should be resolved only following satisfactory solution of the problem of demarcation of the employment relationship. A discussion on whether various types of civil law contractors should have the possibility to associate with trade unions in a situation when the majority of them render work on the basis of civil law agreements as a result of ostensible breach of the provision of Article 22 § 12 of the Labour Code may lead to hasty conclusions which in future will provoke many complications[75].

Some dysfunctions are also noticeable in the regulation of the capacity of employers in collective bargaining. Above all, de lege lata, there are no provisions which would allow to conclude collective labour agreements at the level of the dominant company. Such a situation prevails – paradoxically – with the simultaneous preservation of the capacity to conclude collective labour agreements of the so-called internal employers.

It is worth mentioning that foreign literature pertaining to labour law points to the fact that the scope of its interest in the course of historic development continuously changed and covered increasingly higher levels, starting with the company level (place where labour meets production means) to the level of the group of companies[76]. The Supreme Court of the Republic of Poland put forward a suggestion with regard to conducting collective agreement at this last level. The problem of capacity of dominant companies in labour relations was particularly relevant in 1990s due to the processes of privatisation and a practice of concluding of the so-called privatisation agreements which pertained to various social guarantees. It was not uncommon for negotiations to be conducted by the future investor – the entity not being the employer but undoubtedly having an interest in participating in negotiations and making certain agreements with representatives of employees. Significant doubts were raised by the fact whether or not the agreements concluded by the investor and representatives of employees was of a normative nature. Those doubts were the subject of a resolution of the Panel of Seven Judges of the Supreme Court – The Labour, Social Insurance and Public Issues Chamber of 23 May 2006[77,78].

[72] Cf. e.g. Z. Hajn Prawo zrzeszania się w związkach zawodowych – prawo pracowników, czy prawo ludzi pracy? [Right to assiociate with trade unions – right of employees or right of the workforce?] [in:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, p. 175-183, in particular the last page. More on this problem see E. Podgórska-Rakiel Rekomendacje MOP dotyczące wolności koalicji związkowej i ochrony działaczy [Recommendation of the ILO pertaining to freedom of trade union coalition and protection of activists], „Monitor Prawa Pracy" 2013, No. 2, pp. 69-71 and p. 72.

[73] Freedom of Association and Protection of the Right to Organise Convention of 9 July 1948 ratified by Poland on 14 December 1956 (Journal of Laws of 1958, No. 29, item 125).

[74] Cf. e.g. K. Walczak Zbiorowe prawo pracy. Aspekty prawa międzynarodowego, europejskiego i polskiego, Warszawa 2004, p. 136.

[75] The signalled issue is very complex and falls beyond the scope of this paper. One may only signal that it is connected with choosing the criterion decisive in determining who should enjoy full freedom of associating in trade unions. Giving up the formal criterion (for instance being a party to employment contract) and the attempt to refer to a material criterion which can not be that easily verified (for instance "working to earn one's own living") would significantly complicate the legislation. It would result in the need to apply supplementing criteria (e.g. the formal criterion of not being an employer). As a result burdensome paradoxes are likely to occur – it is sufficient to point out here that similar problems occur in civil law with regard to the persons authorised to use the protection granted to consumers.

[76] M.-L. Morin, Labour law and new forms of corporate organization [w:] Working for better times. Rethinking work for the 21st century, J.-M. Servais, P. Bollé, M. Lansky, Ch. L. Smith, International Labour Office 2007, p. 635 and p. 637-638.

[77] Resolution of Resolution of the Panel of Seven Judges of the Supreme Court – Chamber of Labour, Social Insurance and Public Issues of 23 May 2006 III PZP 2/2006, published in OSNP 2006, No. 3-4, item 38, LexPolonica No. 408314.

[78] The legal issue which was presented to the enlarged Supreme Court concerned the legal nature of the agreement concluded between the future purchaser of shares in Domy Towarowe Centrum S.A. and a trade union operating there. The Supreme Court in its resolution resolved that although the future investor was not (and did not become) the employer, the arrangement concluded between him and the representation of employees is of a normative nature. The Supreme Court in the justification of its position referred to a large extent to the arguments of the functional nature, underlining beneficial effects of concluding agreements connected with privatisation. The Supreme Court deemed Article 59 clause 2 of the Constitution of the Republic of Poland in conjunction with its Article 20 as the legal basis for granting the investor the ability to act as an employer in labour relations.

A slightly different solution to the discussed issue is signalled in the labour law literature. It is sometimes suggested that the legal basis for concluding collective labour agreements at the level of holdings could be Article 241^{28} § 1 of the Labour Code[79]. This provision stipulates that a single-establishment collective labour agreement may cover more than one employer, if those employers are part of the same legal person. Advocates this provision seem to believe that in the case of some capital groups relations between the dominant company and subsidiary companies are so strong that from the economic point of view those companies in a way "become a part" of the dominant company (in particular when the dominant company owns 100% of the initial capital of subsidiary companies). Although this statement is correct to some extent, one should not forget that the terms of holding, capital group or dominant company also refer to the situation when "ownership penetration" is a lot weaker. This is why the legislator did not intend to grant – by means of this provision – the capacity to dominant companies in collective labour relations[80].

It is certain that the mere absence of clear legal regulations in the scope under discussion constitute barrier to collective bargaining. Thus, the postulates voiced in the literature that collective labour agreements should be concluded by groups of employers other than organisations of employers should be deemed positive[81]. Those postulates gain in importance with the development of practice of adopting various declarations or drawing up specific documents jointly by central management boards of large capital groups and representations of employees (often non-trade union ones).

3.3 Legal barriers to conducting collective bargaining in regulations pertaining to the subject of agreement

Another field which has usually been indicated in the discussion of legal barriers to collective bargaining in Poland refers to restrictions in the area of the subject of collective bargaining.

Generally speaking, one needs to point out that there are not many restrictions. The freedom with regard to the subject of collective labour agreements is very wide[82], it even encompasses (according to some interpretations) the possibility to make the existing individually agreed terms of employment contracts the subject of collective bargaining[83]. Some restriction appears regarding the subject of class action which may be taken only with regard to the terms and conditions of work, remuneration or social benefits and rights and trade union freedoms. This catalogue, provided for in Article 1 of the Act of 23 May 1991 on resolving class disputes is assessed as contrary to international agreements binding Poland[84].

Despite this wide freedom, the labour law literature has long pointed out that the barrier to collective bargaining is the very high density of statutory regulation in the area of labour law in Poland[85] and the Article 9 § 2 of the Labour Code which stipulates that the provisions of collective labour agreements and other collective agreements as well as regulations and statutes may not be less advantageous for employees than provisions of the labour code and other statutes and implementing acts (the principle of advantage)[86], As a result, the literature often proposes introduction of a greater freedom with regard to collective bargaining, namely a solution whereby the employer with the representation of employees could by collective agreements deteriorate the terms of employment[87]. It is emphasised that in the current situation employers are not willing to involve in collective bargaining as they practically cannot

[79] J. Stelina, commentary to Article 24128 of the Labour Code [in:] U. Jackowiak (red.) Kodeks pracy z komentarzem, Gdynia 2004, s. 872 [U. Jackowiak (ed.) Labour Code with commentary, Gdynia 2004, p. 872] and J. Piątkowski, commentary to Article 24128 of the Labour Code [in:] K. W. Baran (red.) Kodeks pracy. Komentarz, Warszawa 2012, s. 1287 [K. W. Baran (ed.) Labour Code. Commentary, Warsaw 2012, p. 1287].

[80] This view was voiced more than ten years ago by U. Jelińska, see U. Jelińska Układy zbiorowe pracy. II Inicjatywa układowa, „Służba Pracownicza" 1998, nr 1, s. 12 [U. Jelińska Collective bargainin agreements. Second bargaining initiative, „Służba Pracownicza" 1998, No. 1, p. 12, it needs to be underlined that, in my opinion, this view is correct with regard to the law currently in force , but it should be assessed as too strict as far as we take into consideration the law in force before 1 January 2001 (an agreement could be concluded for a few employers when they belonged to one economic organisation) – more in M. Włodarczyk Swoiste źródła prawa pracy [w:] K. W. Baran (red.) Zarys systemu prawa pracy. Tom I Część ogólna prawa pracy, Warszawa 2010, s. 414.

[81] K. Walczak Zbiorowe prawo pracy. Aspekty prawa międzynarodowego, europejskiego i polskiego, Warszawa 2004, s. 139

[82] Cf. Article 240 § 1 of the Labour Code in the context of amendment to Article 240 § 3 of the Labour Code made under Article 1 item 3 letter b of the Act of 9 November 2000 on amendments to the act – Labour Code and certain other acts (Journal of Laws of 2000, No. 107, item 1127).

[83] The crisis arrangement under Article 231a of the Labour Code is meant here.

[84] M. Seweryński Autonomia partnerów społecznych w stosunkach pracy i jej ograniczenia [Autonomy of social partners in labour relations and its limitations] [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 65

[85] J. Wratny Porozumienie zakładowe. Stan obecny w Polsce, doświadczenia niemieckie, wnioski de lege ferenda, Warszawa 1999 p. 10; J. Stelina Refleksje na temat kondycji układów zbiorowych pracy w Polsce [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 103; similarly G. Goździewicz Układy zbiorowe pracy jako podstawowy instrument działalności związków zawodowych [w:] A. Wypych-Żywicka, M. Tomaszewska, J. Stelina (red.) Zbiorowe prawo pracy w XXI wieku, Gdańsk 2010, p. 98.

[86] J. Wratny Porozumienie zakładowe. Stan obecny w Polsce, doświadczenia niemieckie, wnioski de lege ferenda, Warszawa 1999 pp. 9-10.

[87] Cf. e.g. J. Męcina Wpływ dialogu społecznego na kształtowanie stosunków pracy w III Rzeczypospolitej, Warszawa 2010, p. 360.

gain anything – they can only undertake more obligations in addition to those already imposed on them by the binding provisions of statutory law.

Obviously, pointing to the above factors as barriers to collective bargaining may be justified. It is however difficult to agree with the assumption being the fundament of those postulates that statutory labour standards are too high in Poland. It is also difficult to deem correct the belief that in lieu of lowering the labour standards, the employer is able to offer its employees something that would be more valuable for them than the standards. At the same time, claiming that employees could avoid unemployment as a result of lowering the labour standard is to omit two important circumstances. The first one is connected with the fact that unemployment is a social problem of a complicated nature and lowering the labour standards as a solution leading to lowering the risk thereof may turn out ineffective or even counter-effective. The other circumstance emphasises that minimum labour standards have been established also in the public interest and for this reason they should be the subject of negotiations to a limited extent. One of the functions of introducing minimum labour standards is to ensure that the particularly valuable good, such as human resources, was not subject to excessive and premature exploitation. In the situation of the current demographic problems this argumentation cannot be ignored.

It also needs to be pointed out that the agreement model of labour law presented as an alternative to the statutory model is well developed in countries where industrial bargaining is good condition. This model of labour law will not develop as a result of promotion of the collective bargaining at the company level referred to in, among others, anti-crisis act[88] or crisis arrangements in the Labour Code. As a result, the postulate to allow that collective agreements (collective labour agreements in particular) are used to adopt terms below the statutory minimum with the tendencies for increase in the role of non-trade union representations (operating at the company level) will not probably lead to promotion of the collective agreement model of labour law but rather to promotion of the collective agreement model of liberalisation of labour law. Standards may be lowered directly by introducing legislative amendments unfavourable for employees. An alternative would be maintaining standards in the code connected with introduction of a possibility of their non application under collective agreements (concluded with a weak non-trade union representation of employees). For those reasons, it seems that the idea of giving up the principle of advantage connected with the idea to grant more importance to non-trade union representations in the course of concluding agreements should not be considered as a way of promoting collective bargaining. In fact, this is a manner of solving the problem of legitimisation of unfavourable for employees amendments to labour law and decreasing the political costs of reforms of that kind.

A barrier to conducting collective bargaining, in particular at the national level, is the fact that the issues related to industrial relations may be the subject of lobbying activity. The Act of 7 July 2005 on lobbying activity in the law enactment process (Journal of Laws No. 169, item 1414) does not include any restrictions. As a result, the issues which should be the subject of collective bargaining on the forum of the Tripartite Commission for Social and Economic Affairs – a body of a corporatist nature – become the subject of negotiations of a lobbying organisation and the government[89].

3.4 Legal barriers to conducting collective bargaining in the regulations pertaining to the procedure

The current regulation of the procedure of concluding collective labour agreements is generally assessed positively[90], although in the context of minimalistic regulations pertaining to the procedure of concluding other collective arrangements, in particular those concluded by non-trade union representations, it may seem too extensive and thus unclear[91]. Disproportion is surprising as – as it is emphasised above – non-trade union representatives of employees do not enjoy any protection.

[88] Act of 1 July 2009 on mitigating the consequences of the economic crisis for employees and employers (Journal of Laws of 2009, No. 125, item 1035).

[89] The literature signalled competitiveness of those two models of presenting interests, cf. M. M. Wiszowaty Ustawa o działalności lobbingowej w procesie stanowienia prawa, „Przegląd Sejmowy" 2006, nr 5 (76) s. 44 [M. M. Wiszowaty Act on lobbing activity in the law enactment process, "Przegląd Sejmowy" 2006, No. 5 (76) p. 44. .

[90] J. Stelina Refleksje na temat kondycji układów zbiorowych pracy w Polsce [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, pp. 96-97. See also M. Włodarczyk Swoiste źródła prawa pracy [w:] K. W. Baran (red.) Zarys systemu prawa pracy. Tom I Część ogólna prawa pracy, Warszawa 2010, p. 404 – the author signals that the need for a relatively detailed procedure of concluding collective labour agreements resulted from historical reasons and no practice established in this scope.

[91] J. Stelina, Refleksje na temat kondycji układów zbiorowych pracy w Polsce [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 103.

A barrier to conducting collective bargaining, in particular in the situation of poor development of trade unions, is the principle of freedom of negotiations. However, it needs to be stated that the barrier is not created by Polish law but by international law[92]. Much as we respect international standards in the area of freedom to conduct collective bargaining it needs to be considered whether in Polish circumstances they are not interpreted too restrictively. What needs to be mentioned is a judgement of the Polish Constitutional Tribunal of 18 November 2002 K. 37/2001[93], whereby Article 241^7 § 4 of the Labour Code was repealed. The article stated that a terminated collective labour agreement remained in force until a new one was concluded. The mentioned judgement, in conjunction with Article 4 clause 2 of the Act on resolving class actions, surely have not contributed to the promotion of collective bargaining (the provision of the Act on resolving class actions referred to stipulates that if the dispute concerns the content of a collective labour agreement or another agreement, instigation and conducting the dispute for amending the agreements may occur no earlier than on the day of its termination). It seems that the current legal status may too easily lead to squandering the long-standing achievements of social partners[94].

From the point of view of promotion of collective bargaining, the regulation pertaining to the procedure of generalisation of collective labour agreement needs to be deemed a barrier. Article 24118 of the Labour Code in its current wording does not fulfil the role which it could play if it did not introduce such a complicated and burdensome procedure of extending of application of collective labour agreements on employers who did not conclude them. It seems that in this scope, fundamental simplifications are possible. For instance, one should consider abandoning the requirement that the application for generalisation be filed jointly by all the parties to the **pertaining to multi-establishment** labour collective agreement. It also seems that too great a role in the generalisation procedure is given to discretion of the minister competent for labour matters. Moreover, it could be considered to move this competence from the minister competent for labour matters to the minister competent for economy.

The way of establishing whether the particular collective labour agreement is beneficial to workers may require some redefining as the manner of putting it into effect depends on that. Currently, such an assessment is made separately with regard to each provision of the agreement[95]. However, one may imagine a situation that in the case of a collective labour agreement or remuneration regulations agreed with trade unions, which is in its entirety more favourable for employees (it was deemed such by the trade union), it would not be required to introduce it by way of notice of change. It needs to be noted that a similar procedure already applies in the case of crisis agreements, even when a trade union did not participate in their conclusion.

With regard to the procedure of conducing collective bargaining other existing problems may be outlined. Some of them are closely related to the issues approached above, such as the problems connected with the plurality of the trade union movement and applying the criterion of representativeness. It is pointed out in the literature that using this criterion violates the principle of equality of trade unions. It also seems that the regulation of representativeness is overcomplicated. The provisions of law separately regulate representativeness of trade unions with regard to collective bargaining covering one employer, collective bargaining covering a few employers, multi-establishment bargaining and collective bargaining aiming at conclusion of a collective labour agreement referred to in Article 2 clause 4 of the Act of 6 July 2001 on the Tripartite Commission for Social and Economic Affairs and provincial commissions for social dialogue[96].

Some other problems are of specifically complex nature (among others, the issue of lack of possibility to instigate class actions by the employer[97]). It seems that improvement within that scope may be achieved by changes aiming at unification and systematisation[98].

[92] See Article 4 of the Right to Organise and Collective Bargaining Convention (98) adopted in Geneva on 1 July 1949, ratified by Poland on 14 December 1956 (Journal of Laws of 1958, No. 1958, No. 29, item 126)..

[93] OTK ZU 2002/6A item 82..

[94] Certain doubts with regard to the correctness of the judgement of the Polish Constitutional Tribunal were voiced by M. Włodarczyk, I fully share this standpoint, more in M. Włodarczyk „Swoiste" źródła prawa pracy – kilka refleksji na temat ich genezy i funkcji [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 115-117.

[95] Resolution of the Panel of Seven Judges of the Supreme Court – the Chamber of Labour, Social Insurance and Public Issues of 15 September 2004, III PZP 3/2004, LexPolonica No. 370700, OSNP 2005/4 item 49.

[96] For a specific and critical analysis of the regulation concerning forming of the employee part of a collective labour agreement see M. Włodarczyk Swoiste źródła prawa pracy [w:] K. W. Baran (red.) Zarys systemu prawa pracy. Tom I Część ogólna prawa pracy, Warszawa 2010, pp. 406-412.

[97] M. Seweryński Autonomia partnerów społecznych w stosunkach pracy i jej ograniczenia [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p. 65.

[98] An idea which remains interesting is a uniform establishment arrangement put forward by J. Wratny, cf. more in J. Wratny Porozumienie zakładowe. Stan obecny w Polsce, doświadczenia niemieckie, wnioski de lege ferenda, Warszawa 1999, pp. 12-13.

3.5 Summary

Poland has a long history of various collective agreements and the history of struggling with flaws of legal regulations adopted in their scope is also long[99]. The struggle will continue forever as static law in contact with the ever changing reality must after some time show dysfunctions and unconfonformities. At the same time, it needs to be remembered that the system of law, due to its complex nature, will always show gaps and unintentional negative consequences of legal amendments even though they were introduced in good faith. In this context, one should be careful when voicing postulates with regard to necessary amendments to law on the one hand, and on the other – discussion about binding regulations should not cease.

It also needs to be pointed out that collective agreements first appeared as a specific social fact and legal regulation within that scope was adopted only later[100]. Legal factors behind the development of collective bargaining are not of greatest importance and focusing on them may lead to erroneous conclusions. It is non-legal factors that have decisive importance for the development of collective bargaining.

4. Empirical study: objectives, questions and hypotheses

The main objective of the study is to answer the question concerning barriers to conclusion of collective labour agreements and actions which need to be taken in order to overcome them. These recommendations are addressed to management boards of company trade unions (the chairman and management boards of trade union organisations). The subject of this study is a sample of large enterprises, selected by target screening, from five basic sectors of the economy. They mainly include entities with foreign capital. The goal of the study is more of application and assessment nature rather than explorative and descriptive, referring to the current situation of trade unions and the collective agreement practice. It is evident that without an in-depth diagnosis it is not possible to form reliable recommendations, that is why the study team put great emphasis on the analysis of the collected material in the questionnaire studies. The study covered three vast modules: first of all, one referring to the situation of enterprises and their organisational culture, secondly, to the three categories of members of company trade union organisations (leaders, members of management boards and active members of trade unions who are not members of management boards) in terms of objective features and social and economic views, and thirdly, to the collective agreement practice and the content of single-establishment collective agreements. Moreover, the study also covered representatives of management boards (in particular human resources departments). In accordance with the study assumption, the analysis of each module is to provide such classifications and typologies or select such variables which will allow for capturing the factors enabling conclusion of collective agreement agreements and barriers hindering the collective agreement practice. From the point of view of the goal of the study, key groups include management boards of company trade union organisations as conclusions and recommendations are addressed primarily to them.

In accordance with the remarks presented above, when commencing the study, we posed two main questions:

First of all, we wanted to find out if it is possible to select from the material collected those features of the situation of enterprises and management boards of trade unions which stimulate the collective agreement practice. We assumed that a number of factors may stimulate the collective agreement practice, such as the sector, the country of origin of the capital, the manner of recruiting of management boards and the extent to which they enjoy their freedom in making decisions, the market situation of enterprises and their modernity level (measured based on the level of technologies, innovativeness, etc.), selected

[99] Cf. more in e.g. M. Włodarczyk Historia zbiorowych porozumień normatywnych na szczeblu zakładu pracy w Polsce w latach 1918 – 1994 [w:] Z. Góral Studia z prawa pracy. Księga pamiątkowa ku czci Docenta Jerzego Logi, Łódź 2007, s. 209 i nast. [History of normative collective labour agreements at the company level in Poland in 1918 – 1994 [in:] Z. Góral Studia z prawa pracy. Księga pamiątkowa ku czci Docenta Jerzego Logi, Łódź 2007, s. 209 i nast. [Z Góral Studies in labour law. Commemorative book in the honour of Jerzy Loga, PhD, Łódź 2007, p. 209 et seq. In the past, many interesting ideas were developed, which after being forgotten are rediscovered and shared with a larger circle of recipients. The memory of such ideas is revived in the book by W.Szubert published in 2012, in which the author discusses, among others, the concept of the role in sectos relations for trade unions and works councils, W Szubert Problemy pracy w koncepcjach programowych Delegatury Rządu na Kraj (1941 -1945), Łódź 2012, s. 56 i następne [W. Szubert Problems of labour in the programme concepts of the Government Delegation for Poland (1941 -1945), Łódź 2012, p. 56 et seq.

[100] See M. Włodarczyk „Swoiste" źródła prawa pracy – kilka refleksji na temat ich genezy i funkcji [w:] Z. Góral (red.) Z zagadnień współczesnego prawa pracy. Księga jubileuszowa Profesora Henryka Lewandowskiego, Warszawa 2009, p.111.

aspects of the organisational culture, the social system of enterprises with, key for that system, relations between trade unions in enterprises and between trade unions and management boards. Apart from this aspect, the aspect of competences and attitudes of the studied groups, in particular awareness barriers dividing those groups, was key for us.

With regard to the highlighted issues we put forward a several simple hypotheses. The collective agreement practice will be less developed in trade, construction and services of general interest, and more in the metal sector; this practice will be more developed in enterprises owned by European concerns, in particular German ones, and less in those owned by concerns with Anglo-Saxon capital (this issue was connected with the type of Polish capitalism and its dependence upon foreign capital). We assumed that the collective agreement practice will be positively affected by the organisational culture which is focused on participation and not on management by authoritarian methods[101]. We assumed that management boards, recruited in Poland, in particular those with great freedom in decision making, will be less favourable to conclusion of collective labour agreements and will be more willing to suspend them than foreign management; we assumed that the key factor which will positively affect the collective agreement practice will be the scope of cooperation between trade unions within enterprises and the attitude of management boards of enterprises to trade unions. We put particular emphasis on the hypothesis whereby the collective agreement practice will be more developed where management boards of company trade union organisations will be more competent, their members will show a more open and pro-market economic mentality[102]. In this context, we assumed that the collective agreement practice will be significantly hampered by differences in the sphere which could be referred to as economic and normative, which refers to the expected economic order. We also made a hypothesis that where European work councils exist, the dialogue culture is transferred from parent companies to Polish branches, which positively affects development of the collective agreement practice.

Secondly, we intended to study the collective agreement practice which we understood above all as conclusion and preservation of collective labour agreements and their "quality" or "strength (scope). In the first place, we wanted to establish whether and to what extent collective labour agreements differ, we also wanted to verify whether trade union members adopt new topics diverging from the traditional domain of collective bargaining (age management, work-life balance) and to what extent they copy the provisions of the Labour Law and by such they do not create any added value.

Thus, first of all, we assumed that collective labour agreements will be of different strength, that is different degree of protection of employment relations and decommodification of labour. At the beginning of the study, we had no knowledge as to which provisions of collective agreement agreements and their configurations require greater costs incurred by management boards of enterprises and are more difficult to attain by trade unions and which offer lesser resistance of management boards. We assumed that after verifying the provisions of those pacts, we would be able to offer proper classification. It needs to be added that an issue appeared as to which we adopted an assumption about a strong influence on the "quality" of pacts, namely definition of the period after the lapse of which a fixed-term employment agreement is to be changed into an agreement for an indefinite term.

Thirdly, as to the application dimension, it was evident that possible suggestions could be put forward only to management boards of trade unions. However, we took account of a situation whereby no impact of management boards of trade unions on the collective agreement practice would be observed, i.e. a situation whereby this practice would be dependent upon factors beyond the control of trade unions. This issue was connected with the hypothesis on the existence in Poland of an order referred to as "a dependent market economy"[103]. We intended to verify this hypothesis to the extent allowed for by questionnaire studies (the issue refers to the type of capitalism developed in Poland, which has been mentioned).

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[101] The study of the organisational culture also allowed us to obtain adequate typologies in past studies ("Working Poles 2007" and "Entrepreneurs 2011"). We thought that we would obtain similar results in the current study.

[102] The economic mentality ratio adopted in the study, modelled on the tool used in the studies "Working Poles 2007" (Working Poles and the crisis of Fordism, Scholar, Warsaw 2009) and "Entrepreneurs 2011" (Businessmen and craftsmen. Owners of small and medium enterprises, Scholar, Warsaw 2013) is to allow for identification of attitudes varying from the pro-market dynamism to traditionalism. We assumed that since such attitudes were present in the labour environment in 2007, they will also be present in the environment of members of management boards of trade union organisations and will be correlates of the collective agreement practice.

[103] Noelke, A., Vliegenthart A. (2009) 'Enlarging the Varieties of Capitalism: The Emergence of Dependent Market Economies in East Central Europe', World Politics, 61, pp. 670-702.

4.1 Structure of the empirical report

The empirical report consists of two parts. The first part pertains to the features of enterprises in terms of diversity due to the sector, the country of origin of the capital, and selected aspects of the organisational culture of an enterprise.

The second part is devoted to the collective agreement practice, with particular emphasis placed on single-establishment collective labour agreement: (hereinafter referred to as SECLA). The collective labour agreements themselves are analysed in detail, and then an analysis is made of the reasons for which in some companies SECLAs have been concluded and remain binding, in some SECLAs have been cancelled and in some other no agreements have ever been concluded. Analysed are also the reasons for varied scope of agreements. Answers to those issues and other issues connected with collective agreement have been provided in light of the results of the analyses included in the first part of this report and in light of the hypotheses presented in the preceding sub-chapter of the introduction. The report concludes with synthetic conclusions of application value ("recommendations").

PART I.
ENTERPRISES AND TRADE UNIONS

I.1 Characteristics of enterprises

Representatives of trade unions from enterprises which are entirely or to a large extent held by foreign capital dominate in the study. They constituted nearly 93% of all the respondents. Certain differentiation in terms of the sectors to which enterprises belong was observed. In the trade sector 100% of the respondents claimed that their workplace is owned (co-owned) by foreign capital, whereas in other sectors the percentage of respondents expressing such an opinion was lower. In the enterprises from the metal sector the percentage stood at 94.8%, in the food processing sector – 91.9%, in services of general interest 89.3% and in the construction sector – 88.2%.

Respondents employed in enterprises originating from Germany were most numerous (26.5%) – every third employee represented the metal sector, the USA or the UK ranked second (19.1%) – more than half of the respondents represented the food processing sector, then came France (or Belgium) (15.4%) – in most cases the respondents represented services of general interest, Scandinavian countries or Holland (11.4%) – in their case the food processing sector was represented by the greatest number of respondents. Every fourth respondent represented an enterprise whose parent company was seated in a country other than those mentioned above (more than half of the respondents are trade union members from the food processing sector). Those countries include Japan, Korea, South Africa, Switzerland, Portugal, Italy, Lithuania/Cyprus, Austria. Since the number of respondents representing those enterprises was relatively small, a decision was taken to combine them in one category arbitrarily referred to as "Other countries except Poland". The division distinguishes also Polish companies whose trade union representatives constituted the least numerous group (approx. 7.7%) and more than half of them constituted trade unions from the food processing sector.

Table 1. Sectors as per the country of origin of the capital (in %)

Country of origin of the capital	Branża					Total
	trade	construction	metal	food processing	services of general interest	
Germany	13.9	19.4	33.3	18.1	15.3	100.0
France, Belgium	23.8	19.0	9.5	19.0	28.6	100.0
Scandinavia, Holland	19.4	12.9	25.8	29.0	12.9	100.0
USA, UK	9.6	–	34.6	55.8	–	100.0
Other countries except Poland	5.6	7.4	35.2	51.9	–	100.0
Poland	–	19.0	19.0	57.1	4.8	100.0
Total	12.5	12.5	28.3	36.4	10.3	100.0

chi^2=80.493; df=20; p<0.000

One of the variables which differentiates foreign-owned enterprises is the place where strategic decisions are made, and by such the independence level of enterprises in terms of the decision-making process. The respondents most often indicated that in the enterprises they work for such decisions are taken in the headquarters abroad, and the Polish management board only acknowledges them (43.0%) or that they are taken in the foreign headquarters in cooperation with the Polish management board and taking into account its ideas and remarks (35.1%). Approximately only 16% of the respondents indicated that strategic decisions pertaining to the enterprise are taken locally and only require approval of the foreign headquarters. This answer was most often selected by representatives of the construction sector – 30% and services of general interest – 24%. This may be due to the fact that their products and services are not only made in Poland but also entirely sold here. It should be added that 6% of the studied population was not able to specify where strategic decisions are made; the largest group, as much as 16% of representatives of the construction sector, found it difficult to answer this question. This may be due to dispersion of workplaces or construction sites and no flow of information about the headquarters which makes decisions.

The study respondents were asked to assess the financial standing of the enterprise they represent. Only every eighth respondent declared that the standing is very poor (8%) or poor (12.3%). In the situation when Polish economy still feels the effects of the crisis, such percentage of indications is justified. What is optimistic, though, is the fact that over 70% of the respondents assessed the standing of their enterprise as very good (17.0%) or good (54.9%). In the case of enterprises without foreign capital, more than half of respondents indicated that the financial standing is poor or very poor, and only every third respondent assessed it as good or very good. It may be concluded that enterprises without foreign capital have worse financial standing, at least in the opinion of trade union representatives, than those which are held (entirely or in part) by foreign capital.

The financial standing of an enterprise was most often assessed positively by trade union members representing enterprises included in the food processing sector (81.8%) and in the metal sector (73.7%). However, representatives of the trade sector (39.4%) and the construction sector (20.6%) most often perceived the financial situation of their enterprise as poor.

The assessment of the effects of the crisis on a given enterprise depended on the sector. It transpires from the studies that representatives of the metal sector most often claimed that their company is still impacted by the adverse effect of the crisis (26%); on the other hand, such an assessment was least often made by trade union members from the construction sector (11.8%). However, one third of the respondents from the food processing sector (33.3%) and services of general interest (32.1%) believed that so far their companies had not felt the negative impact of the crisis. Generally, the respondents selected the answer that initially the company felt no negative impact twice as often, currently an answer is also given that initially the company felt some negative impact but currently the situation has improved. This is a trend observed in Polish economy which at the beginning (2008) was not affected by the global crisis, however the situation recently changed (2012–2013).

The respondents were also asked to assess the fixed assets of their enterprises. It turns out that every third respondent from the construction sector declares that the fixed assets of their enterprise are modern at world level. The answer that the assets are modern at world level was least indicated in enterprises offering services of general interest (7.1% of indications) and in the trade sector (11.8%).

Table 2. Assessment of modernity of fixed assets as per sectors (in %)

Sector	Fixed assets of a company				Total
	Modern at world level	Average as compared with leading enterprises but still modern as compared with other domestic enterprises	Average as compared with domestic enterprises	Not modern	
Trade	12,1	27,3	60,6		100.0
Construction	32,4	32,4	35,3		100.0
Metal	27,3	64,9	3,9	3,9	100.0
Food processing	26,3	55,6	16,2	2,0	100.0
Services of general interest	7,1	50	35,7	7,1	100.0
Total	23,6	51,3	22,5	2,6	100.0
Ogółem	17,3%	70,8%	11,9%		100,0%

chi^2=66.726; df=16; p=0.000.

I.2 Organisational culture of enterprises

Organisational culture is one of soft components of an organisation reality. However, its significance should not be underestimated as it is the culture that serves as the foundation on which – depending on its internal composition – collective bargaining may or may not develop. Exploration of this area in the study questionnaire was opened by a question on the dominant management style in the enterprise, as perceived by the respondent.

The possible answers included the following styles: autocratic (decisions are taken without the participation of employees), democratic (employees participate in taking decisions) and liberal (decisions are taken spontaneously, without any involvement of superiors). In view of the trade union elites studied, the dominant management style in enterprises is the autocratic style – this opinion is shared by seven out of ten respondents and only slightly over one fourth describe their company as democratic. The liberal (laissez-faire) management style is present in a small number of enterprises (1.5% of the respondents deem it the proper term to describe the management style in their own workplace). The existence or non-existence of a collective labour agreement in a company has no real influence on the number of indications: the distribution of management styles is similar in companies with a collective labour agreement and those where there is no collective labour agreement; the number of indications to the autocratic style is only 2.5 p.p. lower in companies with a collective labour agreement than in companies without a collective labour agreement.

A different view on the issue of a management style dominant in companies is presented by the persons representing company management boards and persons dealing with human resources. From their point of view, the extent of democracy (and by such – employee participation) is much wider than assessed by trade union members. Above all, nearly 60% of management representatives questioned believe that the enterprises in the name of which they provide answers favour democratic management, whereas autocratic management, as the dominant feature of management, is indicated only by slightly over one third. Thus, the universal truth is confirmed whereby the perception of the social situation depends on the place in the social structure.

What is the situation of the relation between the country of origin of a given enterprise and the management style identified by the respondents? It turns out that in the majority of cases the origin of the capital is not significant as enterprises with the autocratic management style prevail.

Table 3. Management style dominating in a company vs. the country of origin of the capital.

Management style	Country (countries)						Total
	Germany	France, Belgium	Scandinavia, Holland, Denmark	USA, UK	Other countries except Poland	Poland	
Autocratic	75.7	61.0	79.4	74.4	67.3	70.0	71.6
Democratic	24.3	39.0	17.6	25.6	28.6	25.0	26.8
Liberal	0.0	0.0	2.9	0.0	4.1	5.0	1.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0

76% of German companies were deemed autocratic, 61% of companies originating from France and Belgium, 79% of Scandinavian and Dutch companies, 74% of companies from the Anglo-Saxon countries and 67% of companies from other countries. Relatively smallest autocratic tendencies are observed in companies from France and Belgium, which is undoubtedly interesting and should be analysed in more detail. Companies identified as Polish are autocratic in two thirds of the cases. That allows for an initial hypothesis that the multinational companies covered by the study to a large extent yield to the opportunist temptation of adaptation in the external surroundings, which is characterised by the tendencies for autocratic management. This is proven by vast and coherent Polish literature devoted to the organisational culture[104].

[104] Zob. J. Czarzasty, „Warunki pracy i kultura organizacyjna polskich przedsiębiorstw", w: J. Gardawski (red.), „Polacy pracujący a kryzys fordyzmu", Wyd. Naukowe Scholar, Warszawa 2009, s. 343-417; Zob. J. Czarzasty, „Kultura organizacyjna małych i średnich przedsiębiorstw w Polsce", w: J. Gardawski (red.), „Rzemieślnicy i biznesmeni", Wyd. Naukowe Scholar, Warszawa 2013, s. 315-347; J. Gardawski, Powracająca klasa. Sektor prywatny w III Rzeczpospolitej, IFiS PAN, Warszawa 2001; J.T. Hryniewicz, Stosunki pracy w polskich organizacjach, Wyd. Naukowe Scholar, Warszawa, 2007; B. Roguska, „Właściciel, pracodawca, obywatel – rekonstrukcja wizerunku prywatnego przedsiębiorcy", w: L. Kolarska-Bobińska (red.), Świadomość ekonomiczna społeczeństwa i wizerunek biznesu, ISP, Warszawa 2004, s. 103–131. [See. J. Czarzasty, "Conditions of work and the organisational culture of Polish enterprises, in: J. Gardawski (ed.), "Working Poles and the crisis of Fordism", Wyd. Naukowe Scholar, Warsaw 2009, pp. 343-417; See. J. Czarzasty, "Organisational culture of small and medium enterprises in Poland", in: J. Gardawski (ed.), "Craftsmen and businessmen", Wyd. Naukowe Scholar, Warsaw 2013, pp. 315-347; J. Gardawski, The returning class. Private sector in the Third Republic of Poland, IFiS PAN, Warsaw 2001; J.T. Hryniewicz, "Labour relations in Polish enterprises", Wyd. Naukowe Scholar, Warsaw, 2007; B. Roguska, "The owner, employer, citizen – reconstruction of the image of the private enterprise", in: L. Kolarska-Bobińska (ed.), "Economic awareness of the society and the image of business", ISP, Warsaw 2004, pp. 103–131.]

I.3 Social aspects of trade unions in enterprises

An average percentage of trade union members in the enterprises covered by the study amounted to 38.5%. In the opinion of trade union leaders, in 25% of companies only one trade union operated. 47.2% declared that in their companies two unions operate, 23.6% mentioned three unions and 4.2% − five. Declarations of trade union management are presented in table 4.

Table 4. Number of trade unions operating in a company in the opinion of leaders and representatives of management boards of trade union organisations (%).

Number of trade unions in a company	Function performed by the trade union member			Total
	Leader	Vice-President	Member of the management board of the trade union organisation	
One	25.0%	24.6%	34.6%	29.8%
Two	47.2%	50.9%	36.0%	42.3%
Three and more	27.8%	24.6%	29.4%	27.9%
Total	100.0%	100.0%	100.0%	100.0%

As declared by 66.2% of representatives of management boards of trade union organisations, the trade unions operating in their companies covered up to half of employees, in the other companies the percentage of trade union members exceeded 50% of the employed[105].

Table 5. Percentage of trade union members in companies as per members of management boards of trade union organisations (%)

Percentage thresholds	Percentage of valid ones
up to 25%	34.7
26%-50%	32.5
51%-70%	22.0
71% and more	10.8
Total	100.0

When asked what trade unions operate in the enterprises, the respondents provided indications whereby NSZZ "Solidarność" organisations prevailed in absolute numbers. That was in line with previous observations that in enterprises with foreign capital and in newly founded private enterprises NSZZ "Solidarność" is more predominant than the All-Poland Alliance of Trade Unions, which on the other hand was more deeply rooted in public enterprises[106].

As we have already mentioned, the level of trade union pluralism was relatively low in the currently analysed sample of enterprises. It was lower than in the entire economy, which was indicated by high percentage of companies with one trade union as well as low percentage of those where more than three trade unions operated.

The basic question we posed trade union members pertained to the relations between trade union executives. In the opinion of company leaders, in 58.9% of enterprises relations between trade unions were harmonious, in the others – there were stronger or weaker antagonisms between organisations. If we assume that the companies where more than one trade union operated constitute 100%, then, on the basis of the table, it needs to be assumed that in 69% of enterprises those trade unions cooperated, then the effect of deeper particularism (no unions cooperated) occurred only in the opinion of 8% of leaders.

[105] In our analyses we refer either to the commissions and management boards of company trade unions or to the leaders themselves as reliable informants.
[106] B. Gąciarz, J. Gardawski, A. Mokrzyszewski, W. Pańków, Rozpad bastionu, ISP 1998 [B. Gąciarz, J. Gardawski, A. Mokrzyszewski, W. Pańków, The fall of the Bastion, ISP 1998]

The above data may be confronted with the results obtained in the study "Working Poles 2007". The situation noted in 2007 was less harmonious: 46.4% of respondents declared that company trade unions were willing to cooperate. On the other hand, the respondents indicated that 17.3% of trade union organisations defended only their own members and 3.7% of trade unions defended solely the leaders (it could be assumed that they had the feature of the so-called yellow unions[107].

I.4 Economic and social awareness

Table 6. Support of economic and social principles by members of trade union management boards vs. trade union functions.

Economic and social principles	Trade union function			Total
	Leader	Vice-President	Management board member	
1. The state should encourage Poles to have a lot of children and generously support families with many children from the budget.	88.9%	93.0%	93.4%	92.1%
2. The state should support founding new businesses by Polish capital.	94.4%	89.5%	89.7%	90.9%
3. The state should give budget support to the modern sectors of the economy and enterprises developing state-of-the-art technology.	83.3%	89.5%	88.2%	87.2%
4. Enterprises important for the economy (energy, telecommunications, etc.) should be publicly owned.	87.5%	86.0%	87.5%	87.2%
5. Trade unions should have a greater impact on the economic policy of the government than they have now.	90.3%	77.2%	86.0%	85.3%
6. The state should satisfy the housing needs of all citizens, everybody should have a guaranteed place to live.	87.5%	75.4%	82.4%	82.3%
7. The state should give budget support to the budget large enterprises with big headcount, whose bankruptcy would increase the number of the unemployed and expenditure on welfare.	73.6%	71.9%	71.3%	72.1%
8. Every Polish citizen that wants to work should have guaranteed employment.	73.6%	71.9%	71.3%	72.1%
9. The state should introduce a tax policy that levels personal income of people.	70.8%	59.6%	68.4%	67.2%
10. Enterprises should compete in a free and fierce manner. Concessions and limits stifling competition should be lifted.	34.7%	59.6%	42.6%	44.2%
11. The state should support founding new enterprises by foreign capital.	38.9%	47.4%	41.9%	42.3%
12. The state should sell state-owned enterprises to Polish private capital without any restrictions.	34.7%	47.4%	37.5%	38.9%
13. Public enterprises that do not generate profit should go bankrupt, they should not be supported from budget funds.	29.2%	40.4%	32.4%	33.2%
14. Organisations of employers should have a greater influence on the economic policy of the government than they have now.	34.7%	33.3%	22.8%	28.3%
15. The state should sell state-owned enterprises to foreign capital without any restrictions.	4.2%	8.8%	2.2%	4.2%

The principles are arranged in accordance with the frequency of choice as per the "total" column (%). The answers "definitely yes" and "rather yes" are combined.

[107] Polacy pracujący a kryzys fordyzmu, J. Gardawski (red). [Working Poles and the crisis of Fordism, J. Gardawski (ed).]

The first group of six principles, each of which was supported by more than 80% of all management board members, concentrates on expectations of the state to perform its welfare functions in the area of family and housing policies, the function of modernisation of economy (supporting modern technologies), development of Polish capital and at the same time protecting public property in strategic sectors. This group also includes the postulate to increase the influence of trade unions on the economic policy of the government.

The second group, supported by approximately 70% of all management board members consists of three principles: protecting employees of large enterprises whose bankruptcy would increase unemployment, guarantee of work for those who are willing to take up employment and the postulate of egalitarian tax policy, levelling personal income.

The third group of five least often selected principles (approx. 30-40%) is of a market and effectiveness nature. It includes approval of free and fierce competition, bankruptcy of enterprises that do not generate profit, support for foundation of foreign enterprises, selling state-owned enterprises to Polish private capital without any restrictions, as well as the postulate that employer organisations have greater influence on the economic policy of the government.

In the ranking of support, consent to privatisation of state-owned enterprises by foreign capital without any restrictions ranks lowest and is supported by a marginal group of trade union members.

Table 7. Support of economic and social principles by representatives of HR departments.

Economic and social principles	1.HR representatives	2.Management boards of trade unions	1-2
1. The state should encourage Poles to have a lot of children and generously support families with many children from the budget.	82.5	92.1 (1)	-9.6
2. The state should give budget support to modern sectors of the economy and enterprises developing state-of-the-art technology.	82.5	87.2 (3)	-4.7
3. The state should support founding new businesses by Polish capital.	77.5	90.2 (2)	-12.7
4. The state should support founding new enterprises by foreign capital.	60.0	42.3 (11)	+17.7
5. Enterprises important for the economy (energy, telecommunications, etc.) should be publicly owned.	60.0	87.2 (4)	-27.2
6. Every Polish citizen that wants to work should have guaranteed employment.	57.5	72.1 (8)	-14.6
7. Public enterprises that do not generate profit should go bankrupt, they should not be supported from budget funds.	52.5	33.2 (13)	+19.3
8. The state should satisfy the housing needs of all citizens, everybody should have a guaranteed place to live.	45.0	82.3 (6)	-37.3
9. Organisations of employers should have a greater influence on the economic policy of the government than they have now.	42.5	28.3 (14)	+14.2
10. Enterprises should compete in a free and fierce manner. Concessions and limits stifling competition should be lifted.	40.0	44.2 (10)	-4.2
11. The state should introduce a tax policy that levels personal income of people.	40.0	67.2 (9)	-27.2
12. The state should sell state-owned enterprises to Polish private capital without any restrictions.	37.5	38.9 (12)	-1.4
13. The state should support from the budget large enterprises with big headcount whose bankruptcy would increase the number of the unemployed and expenditure on welfare.	32.5	72.1 (7)	-39.6
14. Trade unions should have a greater impact on the economic policy of the government than they have now.	20.0	85.3 (5)	-65.3
15. The state should sell state-owned enterprises to foreign capital without any restrictions.	20.0	4.2 (15)	+15.8

The principles are arranged in accordance with the frequency of choice (%). The percentage of positive answers has been aggregated.

Let us compare the distribution of answers of members of executive bodies of company trade unions with answers of HR representatives.

The area of consensus covers above all the key market principle: free competition (a slight difference for the benefit of trade union representatives – 44.2% against 40% HR), then selling state-owned enterprises to Polish private capital without any restrictions (HR – 37.5%, trade unions – 38.9%), supporting from budget funds of modern sectors of the economy and enterprises developing state-of-the-art technologies (HR – 82.5%, trade unions – 87.2%).

The area of greater support from trade unions – the state should give budget support to large enterprises with big headcount, whose bankruptcy would increase unemployment and expenditure for welfare (trade unions – 72.1%, HR – 32.5%), welfare functions: the state should satisfy the housing needs of all citizens, everybody should have a guaranteed place to live (HR – 45%, trade unions – 82.3%), enterprises important for the economy (energy, telecommunications, etc.) should be publicly owned (HR 60%, trade unions – 87.2%), every Polish citizen that wants to work should have guaranteed employment (HR 57.5%, trade unions – 72.1%), the state should support founding new businesses by Polish capital (HR 77.5%, trade unions 90.2%).

The area of greater support of representatives of management boards – public enterprises that do not generate profit should go bankrupt, they should not be given budget support (trade unions – 72.1%, HR – 57.5%), the state should support founding new enterprises by foreign capital (HR – 60%, trade unions – 42.3%). It needs to be added that trade unions more often supported the principle that the state should support founding new businesses by Polish capital (here trade unions – 90.2%, HR – 77.5%). Organisations of employees should have a greater influence on the economic policy of the government than they have now (HR 42.5%, trade unions 28.3%).

PART II.
COLLECTIVE AGREEMENT PRACTICE IN THE LIGHT OF THE STUDIES

II.1 Analysis of documents (collective labour agreements, work regulations, remuneration regulations, other agreements) collected from the enterprises studied

The subject of the analysis were documents (collective labour agreements, work regulations, remuneration regulations) collected from the enterprises covered by the study and divided into the following sector-related groups:
− construction and wood sector,
− metal sector,
− services of general interest,
− food processing sector,
− trade.

The analysis aimed, above all, at identifying good practices, that is such negotiation solutions which give employees an "added value" as compared with labour law regulations. Another element covered by the study were provisions on the relation between trade unions and the employer.

II.1.2 Good practices

II.1.2.1 Fixed-term agreements

The analysis of good practices may be commenced with an issue that constitutes one of the basic postulates of Polish trade union organisations – restrictions on the overuse of fixed-term agreements. However, the provisions that pertain to this issue are rarely used. Three sample provisions being good practice in this area may be indicated:
− Fixed-term agreements are concluded with newly employed persons. The first agreement is concluded for the period of three months, the subsequent one for the period of one year. Then, when the employee's work is assessed positively, an agreement for an indefinite term is concluded. In justified individual cases, the company management board may withdraw from this principle (services of general interest);
− The maximum term of a fixed-term agreement may not exceed 12 months (construction and wood sector);
− The maximum term of fixed-term agreements is two years (construction and wood sector).

With one exception (metal sector), no standards concerning temporary employees appear. Also, there are no regulations which would introduce solutions in the field of employment based on civil law agreements.

II.1.2.2 New negotiation areas

a) work-life balance

The analysed documents show a small number of solutions which could be included in this area. We noted only one good practice in this field (food processing sector):
− an additional day off of compassionate leave on account of child birth;
− an additional day off on account of care of a child below 14;
− six-hour working day for the first month after the maternity leave with the right to full remuneration.

b) work-related stress

The notion of stress was mentioned only in the case of one collective labour agreement. The provision reads: the management of the company shall undertake to reduce stress in the organisation and counteract burn-out (food processing sector).

c) improving professional qualifications

An insignificant number of provisions refer to improving professional qualifications. The following provisions may be indicated:
- the company uses the models and the principles of a learning organisation and life-long learning (food processing sector);
- the employer develops annual employee training schedules and the time devoted to training is recognised as working time (metal sector);
- following consultations with trade unions, the company will develop an annual training schedule which will reflect the directions of action and development of the company.

d) age management

It is mentioned only in one case (food processing sector). What is indicated there is, among others, that the employer undertakes to provide older employees with the same possibility to undergo trainings and develop their professional career as it provides for the benefit of younger employees, and trade unions undertake to encourage older employees to effectively participate in trainings. Every year, the employer is to analyse staff employment in terms of age and positions held. In the case of domination on a given position of employees from the age group over 50 or below 35 years of age, the employer will attempt to diversify the employers in terms of age in a given group. Another provision reads that the employer undertakes to consent to a request of an employee to reduce their working time after they turn 45.

II.1.2.3 Classical issues

By classical issues we mean regulations concerning remuneration and working time.

a) bonus for night shift

Significantly more often appears a bonus the amount of which is higher than in the common regulation in accordance with which the employee performing work at night is entitled to a bonus for each hour of work performed at night in the amount of 20% of the hourly rate ensuing from the minimum remuneration for work, set forth under separate provisions of law (Article 151(8) of the Labour Code). The following solutions may be indicated in the documents analysed:
- an employee that renders work at night is entitled to remuneration bonus for each hour of work performed at night in the amount of 40% of the hourly rate ensuing from the minimum remuneration for work (construction and wood sector);
- a bonus for night work amounts to 20% of the rate ensuing from the individual pay grade classification (services of general interest).

b) bonuses connected with seniority

Various types of service anniversary awards appear most often. Other forms of bonuses are also given, e.g.:
- an additional compassionate leave on account of achieving specified seniority (e.g. 5 years of service – the employee is entitled to one additional day off with the right to remuneration on account of the service anniversary in the year of the anniversary, 10 years of service – two days off, 15 years of service – three days off (trade).

c) other remuneration bonuses

c1) bonus for work on Sundays and holidays

- bonuses for work on Sundays, provided that the employee worked on at least two Sundays in one calendar month (trade);
- a bonus for work on Sundays and holidays – the employee is entitled to a bonus in the amount of 40% of the hourly rate ensuing from the minimum remuneration. This bonus is paid regardless of other remuneration bonuses set out by the provisions of the Labour Code (construction and wood sector).

c2) bonuses for foremen

- a bonus for foremen, whose amount depends on the number of team members and amounts from 7.5% to 10.2% of the basic monthly remuneration (construction and wood sector);
- a bonus for foremen in the amount of 25% of the minimum remuneration, provided that the team consists of up to 5 employees, without the foreman, and 30% if the team consists of more than 5 employees (construction and wood sector);
- bonuses for foremen are also common in the metal sector.

c3) bonuses connected with shift work

- employees performing work in the continuous working system in a four-team work organisation are entitled to a bonus in the amount of 27% of the basic remuneration pro rata to the time during which they rendered work in this working system (construction and wood sector);
- an employee performing work in a three-shift system is entitled to a bonus in the amount of 5.5% of the basic remuneration pro rata to the time during which they rendered work in this working system (construction and wood sector);
- bonuses for shift work are also common in the food processing and metal sectors.

c4) specific remuneration bonuses

- an award for recommending an employee: an employee recommending their friends or family members for work will receive a pecuniary award in a specified amount for each recommended candidate if the person recommended by the employee worked with the employer for at least 4 full calendar months and following this period is not in the period of notice (trade);
- an incentive bonus for employees of the sales department (construction and wood sector);
- remuneration for watches in the case of employees hired to protect watercrafts plus bonuses to this remuneration, e.g. 200% of the hourly rate for watches during storms on Sundays and holidays (construction and wood sector);
- a bonus for work on Christmas Day, Easter Day and New Year (services of general interest);
- a bonus for active performance of social function of the labour inspector (services of general interest);
- a bonus for work in direct production (metal sector);
- an attendance bonus (metal sector);
- a performance bonus (metal sector).

d) Period of inability to work due to illness

An issue indirectly related to remunerating an employee is payment of remuneration for the period of inability to work due to illness. Regulations in this respect divide personal risk. In accordance with the regulation included in the Labour Code (Article 92 of the Labour Code), for the first 33 calendar days in a year an employee unable to work due to illness is entitled to 80% of his remuneration (with regard to employees aged over 55, this period is limited to 14 days). After the period during which remuneration for the period of inability to work due to illness is paid, an employee is entitled to sickness benefit paid by the Social Insurance Institution. In the analysed documents the following solutions may be indicated:

- the amount of the remuneration for the period of inability to work for employees who have worked for at least 3 years stands at 90% of the remuneration (services of general interest).

e) Norms concerning working time

In most of the analysed documents there are provisions directly referring to the norms included in the Labour Code. However, solutions more favourable to employees, developed as a result of negotiations, such as longer breaks recognised in the working time, restrictions concerning overtime work or duty regulations. The provisions referred to are as follows:

- another 15-minute break recognised in the working time if working time exceeds 9 hours per day (construction and wood sector);
- the maximum number of overtime hours in a calendar year amounts to 250 (construction and wood sector);
- an on-call duty may not be shorter than 4 hours, an employee may do it no longer than for 14 days in a calendar year and it is paid for such a duty 100% of the hourly rate ensuing from the minimum remuneration (construction and wood sector).

f) Provisions regarding recruitment

The analysed documents relatively often include provisions on the recruitment process aiming, above all, at emphasising the priority of in-house recruitment.
The following provisions may be indicated:

- in the case of a need to fill a vacancy, selection of employees from among those already employed by the company is preferred and if no employee with the required qualifications is found, an external recruitment process is opened (construction and wood sector);
- first of all, in-house selection is conducted, i.e. filling vacancies by the existing HR resources (metal sector).

II.1.3 Relations between trade unions and the employer

With regard to this issue, three main areas regulated in the analysed documents may be indicated: the rules of assessment of functioning of collective labour agreements, remuneration negotiations and the technical aspects of trade union operations.

a) functioning of collective agreements

All the analysed collective labour agreements are concluded for an indefinite term. In order to ensure their stability provisions of longer (6-month) periods of notice appear. The following provisions are included in the agreements:

- the parties to the agreement, at least once every two years, are obligated to assess the content of the agreement and if they detect any need for its update or amendment, they are obligated to make them by additional protocols (services of general interest);
- every year, the parties are to review and assess the way the agreement functions (construction and wood sector);
- the parties to the agreement undertake to conduct a periodic assessment of the agreement concluded after each 12-month effectiveness period (construction and wood sector).

b) rules of remuneration negotiations

In this scope, the following provisions may be indicated:

- no later than by the end of February each year, company trade union organisations agree with the management board the manner of establishing the average index of basic remuneration increase (construction and wood sector);
- the rules of determining increases in remuneration – the index of increase of an average monthly remuneration shall be subject to negotiations with company trade union organisations, the increase may not be lower than the inflation rate for the preceding year (services of general interest).

c) technical aspects of trade union operations

- the employer undertakes to make available equipped office rooms, telephone and IT tools (services of general interest);
- the employer makes available to trade unions in each workplace, free of charge, a room equipped with necessary work tools, such as a computer, telephone and internet access and reasonable stationery (construction and wood sector);
- the costs of expert and legal opinions carried out on the initiative of trade unions in agreement with the employer are covered by the company (services of general interest);
- a member of a trade union has the right to remuneration for the time of training conducted in his working time if he was referred to that training by the trade union organisation he belongs to in agreement with the employer. A budget of training days per year is developed for each trade union and it is calculated as a sum of double the number of members of the management board and the auditing committee and one tenth of the general number of members of a trade union (services of general interest).

II.1.4 Conclusions from document analysis

Following the document analysis, two general theses may be put forward. First of all, a large majority of provisions included in negotiated or agreed documents repeat the norms ensuing from the Labour Code (LC) and other common sources of law. Secondly, in the purely "negotiation" part (that is the part with an added value as compared with the LC), solutions or provisions on issues other than the issues relating to employee remuneration and regulations pertaining to working time are rare. The provisions pertaining to the so-called new negotiation areas (age management, work-related stress or improving professional qualifications) are completely marginal.

It may be stated that the imagination of the parties involved in negotiations does not embrace new challenges, such as phase, gradual retirement, comprehensive support of women taking care of children, norms reducing stress. We do not intend to criticise the content of Polish negotiation documents as the situation is similar in France or Germany: a renowned researcher of trade unions and social partnership – Jelle Visser – on the basis of literature analyses pointed out that pacts concluded in those countries are not creative enough[108].

What should be emphasised, though, is the frequency of occurrence of a benefit for night work the amount of which is higher than the amount stipulated in the Labour Code (it is to be reminded that in the LC it is connected with the minimum remuneration). The phenomenon stems from the fact that the statutory amount is outrageously low. This gives a lot of room for negotiation and arouses justified expectations to increase the bonus.

The quality of collective bargaining differs significantly from one sector to another. The situation is least favourable in trade (this is the only group without a single collective agreement). The food processing group seems to be the leader in negotiations. Extended solutions may also be observed in services of general interest. The metal sector ranks surprisingly low.

II.2 Content of agreements in the eyes of trade union members

Opinions of trade union activists on the effects of collective negotiations, obtained in direct studies, are an interesting supplementation of the analysis of the negotiation documents. From the point of view of the goal they are to serve, the provisions of agreements indicated by the respondents may be divided into four groups.

[108] J. Visser, Wage Bargaining Institutions from crisis to crisis (Economic Papers 499/ 2013)

First of all, provisions favourable to employees (provisions that have an added value in their opinion) in everyday work: higher bonus for night work (51.2%), service anniversary awards (51.2%), higher minimum remunerations (51.2%), assessment of employees for professional development purposes (48.8%), higher remuneration for overtime work (41.5), restrictions on agreements concluded for a definite term (28.2%), manner of changing agreements for a definite term into agreements for indefinite term (26.8%), specific regulations concerning holiday entitlement (19.5%), determination of the percentage of staff that could be employed by Temporary Work Agencies (2.4%).

Secondly, provisions that protect employees in the period of restructuring: additional severance pays (61.0%), preparation for retraining (41.7%), protective measures in the course of restructuring (26.3%), retaining highly qualified employees in the period of group redundancies (15.0%).

Thirdly, provisions pertaining to the situation of trade unions in the employer, e.g. deducting by the employer, with the consent of an employee, trade union fees (87.8%) and making available to trade union organisations of premises and technical equipment (85.4%).

Fourthly, provisions strengthening the position of members of management boards of trade union organisations: Fourthly, provisions strengthening the position of members of management boards of trade union organisations.

In the interview questionnaire we included an extensive index that encompasses 17 potential provisions of collective labour agreements, which are presented in the table.

Table 8. Content of collective labour agreements and the scope of their use in the opinion of leaders and members of management boards of trade union organisations (declarations of respondents from the companies where collective labour agreements are concluded).

Agreement provisions	Declarations of chairmen (leaders) confirming ("yes")	Declarations of management boards of trade unions, total confirming ("yes")		
		Yes	No	I do not know
1. Deduction by the employer with the consent of employees of trade union fees	87.8	83.4	11.0	5.5
2. Making available to trade union organisations of premises and technical equipment	85.4	79.9	15.3	4.8
3. In the case of terminating an employment agreement by the employer or based on mutual agreement of the parties, the employer receives an additional severance pay	61.0	51.4	40.3	8.3
4. Guarantees higher bonuses for night work than provided for in the Labour Code	51.2	48.3	48.3	3.4
5. Guarantees service anniversary awards	51.2	56.8	39.7	3.4
6. Provides for a minimum remuneration in the company at a level higher than the statutory minimum remuneration	51.2	46.3	43.5	10.2
7. Obligation of the employer to introduce an employee assessment system for the purpose of their professional development	48.8	44.2	46.3	9.5
8. Provides for advance preparation of employees for retraining and position change	41.7	38.5	46.2	15.4
9. Guarantees higher bonuses for overtime work than provided for in the Labour Code	41.5	42.5	54.1	3.4
10. Determines the term of an agreement for a definite term	28.2	34.1	55.9	9.8
11. Provides for the terms and conditions of changing an employment agreement for a definite term into an agreement for an indefinite term	26.8	28.4	59.5	12.2
12. Provides for protective measures connected with restructuring or introducing flexitime	26.3	31.9	56.3	11.9
13. Determines the manner of remunerating employees delegated to perform roles in the management board of a Company Trade Union Organisation	21.4	19.0	70.1	10.9
14. Determines detailed terms and conditions of using holiday entitlement	19.5	25.0	68.1	6.9

15. Grants the right to exemption from the obligation to render work for the term of office in the management board of a company trade union organisation, other than the right specified in the Act on trade unions	19.5	15.9	73.8	10.3
16. Includes an obligation of the employer to retain – in the period of redundancies – a basic group of highly qualified group of workers	15.0	14.0	74.1	11.9
17. Determines what percentage of the staff may be composed of employees from Temporary Work Agencies	2.4	3.4	87.0	9.6

The agreement provisions included in the table are grouped in five areas that differ in terms of the frequency of support. We present them referring to the declarations of leaders:

A. The first group of two provisions (1–2) indicated each time by over 80% leaders and slightly fewer members of management boards of trade unions focuses on creating by management boards of enterprises of conditions favourable to trade union action: above all on facilitating collection of trade union fees and then provision to trade unions of premises and technical equipment. Those solutions were widely discussed when we were conducting our studies, in particular in liberal media. **It is suggested that the costs of premises and technical assistance for trade unions are a significant burden for workplaces. However, the data obtained as a result of our studies show that the situation is totally different. Management boards of enterprises are willing to finance trade union organisations but are less willing to introduce privileges for management boards of trade unions or their leaders or regulate fixed-term agreements.**

B. The second group including four provisions (3-6), indicated by slightly more than half of the leaders (51.2%-61%), refers to additional financial benefits for employees: additional severance pays at the moment of termination of employment agreements rank first, then come determination of a minimum remuneration higher than the statutory one, bonuses for night work and service anniversary awards. Disputes concerning the amount of minimum remuneration are the most heated in discussions between trade unions, employers and the government. It turns out that in approximately half of the companies covered by the study this issue is regulated by a collective labour agreement. It transpires from the answer to the question on the minimum remuneration, negotiated in 51.2% of enterprises, that it stands at an average level of PLN 2,100 (from PLN 1,600 to 3,200).

C. The third group of findings (7-9), indicated by 41.5% - 48.8% of respondents, apart from bonuses for overtime work, includes two findings with regard to the system of assessment for the purposes of professional development of employees and a vital issue of preparation of employees to retrain and change position they hold.

D. The fourth groups concerns four findings (10-13) indicated by 21.4% - 28.2% of leaders and adopted relatively less often, namely restrictions on the term of agreements concluded for a determined term, which for years have been one of the basic controversies between trade unions, employers and the government as well as determination of terms and conditions of changing agreements concluded for a definite term into agreements for an indefinite term. **TThus, the issue of agreements concluded for a determined term is relatively rarely accepted by management boards of enterprises and is rarely included in collective labour agreements.** Moreover, this group includes protective measures connected with introducing flexitime and the manner of remunerating leaders during the time they perform trade union functions, which is important for them.

E. Four findings that comprise the last group (14-17) are indicated by 2.4% - 19.5% of leaders. They refer to specific terms and conditions of using holiday entitlements as well as two issues important for the functioning of trade unions in an enterprise. The first of them: "retention of the basic group of highly qualified employees" used to contribute to stabilisation of staff of state-owned enterprises and strengthening the position of trade unions. Also, the specific right to "be exempt from the obligation to render work for the term of office of a management board of a company trade union organisation" meant, among others, the possibility to be awarded an additional trade union employment or assignment. The least common provision in the collective agreement practice of studied enterprises was restriction on employing in an enterprise persons via a Temporary Work Agency.

The above presented analysis of negotiation documents reveals that from **among 17 issues included in the index (table II.1) it was relatively most difficult to achieve the term of an employment agreement for a definite term and the terms and conditions on which an agreement concluded for a definite term may be changed into an agreement for an indefinite term connected therewith. The distribution of answers to the question about the content of collective labour agreements confirms this observation: in the opinion of the trade union members who participated in the study, only every fifth agreement contained a relevant provision.** Moreover, an analysis of the content of the agreements allowed for differentiation of four segments of agreements. Thus, we assumed that the presence of a provision on restrictions in employment for a definite term will be one of the key criteria of agreement strength. We also wanted to determine the structure of agreements obtained in the course of statistical analyses (correlation matrix and factor analysis) in view of the segments differentiated above.

II.2.1 Internal structure of agreements

Currently, the subject of the analyses will be to study the internal structure of agreements[109] and later to select those provisions which are particularly essential for individual groups. To this end, an explorative factor analysis was applied, which allowed for obtaining six groups of provisions, which are presented in the table.

Table 9. Results of a factor analysis of agreement provisions.

	Factor					
	1	2	3	4	5	6
1. Determines the term of employment contract for a definite term	.933	.033	.095	.207	-.021	-.035
2. Determines the conditions of transferring fix-term contract into permanent employment contract	**.896**	.098	.144	.130	.115	-.046
3. Determines detailed terms and conditions of using holiday entitlement	**.511**	.136	.017	.075	-.133	-.044
4. Provides for protective measures connected with restructuring or introducing flexitime	**.086**	.896	.020	.110	.060	.147
5. Provides for advance preparation of employees for retraining and position change	.018	**.807**	.066	.082	.093	.160
6. In the case of terminating an employment agreement by the employer or based on mutual agreement of the parties, the employer receives an additional severance pay	.133	**.522**	.123	.378	.226	.067
7. It obligates the employer to introduce an employee assessment system for the purpose of their professional development	.298	**.516**	-.003	.233	-.123	-.044
8. Grants the right to exemption from the obligation to render work for the term of office in the management board of a company trade union organisation, other than the right specified in the Act on trade unions	-.018	**-.039**	.978	.152	-.004	.059
9. Determines the manner of remunerating employees delegated to perform roles in the management board of a Company Trade Union Organisation	.202	.111	**.448**	-.021	.124	.022
10. Provides for a minimum remuneration in the company at a level higher than the statutory minimum remuneration	.256	.271	**-.160**	.631	-.007	-.037
11. Guarantees service anniversary awards	.116	.126	.197	**.577**	.035	.123
12. Makes available to trade union organisations of premises and technical equipment	.072	.164	.184	**.368**	.723	-.055
13. Guarantees deduction by the employer with the consent of employees of trade union fees	-.053	.025	.036	**-.078**	.654	.104
14. Includes an obligation of the employer to retain – in the period of redundancies – a basic group of highly qualified group of workers	.225	.017	.082	.068	**-.316**	-.308
15. Guarantees higher bonuses for overtime work than provided for in the Labour Code	.148	.238	.109	.294	**-.015**	.685
16. Guarantees higher bonuses for night work than provided for in the Labour Code	-.069	.208	.121	-.111	.101	**.567**
17. Determines what percentage of the staff may be composed of employees from Temporary Work Agencies	.254	.205	.220	-.134	-.040	**-.399**

Rotation method – Varimax. The model explains 56.6% of general variance.
*Factors:
1. Restriction on agreements concluded for a definite term;
2. Alleviating the effects of restructuring and introducing flexitime;
3. Determination of special rights of trade union leaders;
4. Determination of the minimum remuneration and additional financial benefits;
5. Deduction of trade union fees;
6. Additional remuneration for overtime and night work.

[109] Separate groups of provisions, referred to as "factors" in the language of factor analysis.

Each of the groups contained an agreement provision with the greatest "factor load", which provided identity for the entire group (items 1, 4, 8, 10, 13, 15 in table 9). **The result of the factor analysis clearly confirmed the results of previous studies. Out of 17 agreement provisions, restrictions on agreements concluded for a definite term became the most important.**

The next study step is stating whether – and if yes, to what extent – the provisions with the greatest loads were correlated with explanatory variables. That pertains, above all, to the first ("Restriction on agreements concluded for a definite term") and fourth groups ("Determination of the minimum remuneration and additional financial benefits"). The question is: are relevant provisions correlated with explanatory variables? Obviously, the agreements were usually concluded in the past and are "inherited" by new owners, however, seeking such correlations is an important cognitive task.

The inclusion in collective labour agreements of a provision specifying the term of agreements concluded for a definite term is on average mentioned by 34.3% of trade unions from companies where such collective labour agreements are concluded (18.2% of all respondents). When analysing correlations, it may be stated that the existence of such a provision is less often declared by trade union members from companies with Scandinavian and Dutch capital (6.3%) as well as Polish capital (18.2%). Relatively low is the level of indications in the case of German capital (25%). The highest level of indications was noted in the case of trade union members from companies with French and Belgium capital (63.2%) and Anglo-Saxon one (44.4%). Assuming that in the situation of Poland the provision in question is particularly favourable from the point of view of employees, the distribution presented does not allow for linking this employee-friendly solution with the specific nature of labour relations in the countries of origin of the capital. However, in the case of the place of making strategic decisions a relation appears (table 10).

Table 10.

Strategic decisions	Does it determine the term of an employment agreement for a definite term?			Total
	yes	no	it is hard to say	
They are taken in the foreign headquarters and the Polish management board only acknowledges them	28.6%	67.9%	3.6%	100.0%
They are taken locally and require only approval of the foreign headquarters	47.8%	43.5%	8.7%	100.0%
They are taken in the foreign headquarters in cooperation with the Polish management board and taking account of its ideas and remarks	36.4%	45.5%	18.2%	100.0%
It is hard to say	55.6%	33.3%	11.1%	100.0%
Total	36.4%	53.8%	9.8%	100.0%

Chi^2=20.146; df=15; p=0.166

II.3 Collective agreement practice

The analysis of the collective agreement practice within the framework of our study project will be mainly composed of an analysis of the very presence of collective labour agreements as well as work and remuneration regulations, benefits packages connected with privatisation and benefit packages introduced by management boards of enterprises (regardless of privatisation packages). Our main scope of interest will be collective labour agreements: the very fact of their existence in enterprises and instances of withdrawal from them or amendments made to them. The following task is an analysis of the elements of agreements.

The modules adopted in conceptualisation: the modules pertaining to the situation of enterprises and organisational culture, situation of trade unions and competences of management boards of trade unions provide explanatory variables.

II.3.1 Range of collective labour agreements and packages

In accordance with declarations of the leaders (chairmen of trade union organisations), in the examined sample of enterprises, collective labour agreements are binding in 55.7% of enterprises, in 10% they have ceased to be effective and in 34.7% they have never been concluded. Analysing those data from the point of view of all the members of management boards of trade unions, the figures were 53.8%, 9.9% and 34.6%, respectively[110]. In accordance with the declarations of the leaders, in 65.3% of enterprises benefits packages (privatisation-related) were offered and in 45.8% of enterprises packages were introduced at the discretion of management boards themselves or in cooperation with trade unions. In the case of 38.9% enterprises both types of packages existed. There was also a strong positive correlation between the existence of the two packages and the existence of collective labour agreements (r=0.38; p=0.001). In 32.9% of enterprises agreements and the two packages existed at the same time; those enterprises may be referred to as particularly protecting work.

Two variables will be regarded as key variables explained: the existence of collective labour agreements and the existence of all three types of agreements (collective labour agreements + packages). In the first case, the negative point of reference will be enterprises where no collective labour agreements are concluded (44.3% of all enterprises), in the second one – enterprises where no agreement out of the three agreements exists (12.5%). In accordance with the hypotheses presented in the introduction to the report, we will want to determine which factors, out of the factors envisaged in the conceptualisation of the study, influence the existence of collective labour agreements and packages, that is why in which direction should practical actions evolve in order to extend the collective agreement practice.

II.3.2 Origin of collective labour agreements and their evolution

More than half of the respondents claimed that a collective labour agreement is concluded in the enterprises in which they perform trade union functions. The trade union members from the enterprises owned by Polish capital, who participated in the study, indicated conclusion of such an agreement more often[111].

Table 11. Effectiveness of collective labour agreements as per enterprise types (in %).

Enterprises which are entirely or mainly owned by foreign capital and where strategic decisions are taken	Is a collective labour agreement concluded in your workplace?			It is hard to say	Total
	It is concluded and it is binding	It was concluded but ceased to be binding	No such agreement has ever been concluded		
in the foreign headquarters and the Polish management board only acknowledges them	51.9	5.8	42.3	–	100.0
locally and require only approval of the foreign headquarters	51.2	11.6	34.9	2.3	100.0
in the foreign headquarters in cooperation with the Polish management board and taking account of its ideas and remarks	48.3	13.8	35.6	2.3	100.0
Total	50.6	10.4	37.3	1.6	100.0
Polish enterprises	68.4	-	15.8	15.8	100.0
Total	51.3	10.1	36.6	2.6	100.0

[110] In the statistical analysis we shall refer both to the declarations of trade union chairmen (leaders) themselves (initial studies: n=72; final studies: n=80) as well as all members of company commissions (initial studies: n=272, final studies: n=320).
[111] Effectiveness of collective labour agreements as per enterprise types (in %).

Table 12. Effectiveness of collective labour agreements as per the country of origin of the capital (in %).

Country of origin	Is a collective labour agreement concluded in your workplace?			It is hard to say	Total
	It is hard to say	Total	Nigdy nie było zawartego układu		
Germany	60.0	14.3	25.7	–	100.0
France, Belgium	54.8	4.8	28.6	11.9	100.0
Scandinavia, Holland	10.0	23.3	66.7	–	100.0
USA, UK	40.4	15.4	44.2	–	100.0
Other countries except Poland	59.6	–	38.5	1.9	100.0
Poland	81.0	–	14.3	4.8	100.0
Total	51.3	10.1	36.0	2.6	100.0

ch^2=65.628; df=15; p=0.000

As the data in table 13 show, in the enterprises included in the trade sector no respondent indicated that a collective labour agreement is or was concluded. In the enterprises from the other sectors, the situation is much better. Most commonly, conclusion and effectiveness of such an agreement was declared by representatives of company trade unions in enterprises from the services of general interest, and every fifth representative of this sector claimed that a collective labour agreement was concluded but ceased to be effective.

Table 13. Effectiveness of collective labour agreements as per sectors (in %).

Sector	Is a collective labour agreement concluded in your workplace?			It is hard to say	Total
	It is concluded and it is binding	It was concluded but ceased to be binding	No such agreement has ever been concluded		
Trade	–	–	93.9	6.1	100.0
Construction	66.7	6.1	21.2	6.1	100.0
Metal	56.0	5.3	38.7	–	100.0
Food processing	54.1	15.3	29.6	1.0	100.0
Services of general interest	71.4	21.4		7.1	100.0
Total	51.3	10.1	36.0	2.6	100.0

ch^2=85.115; df=12; p=0.000.

Although no statistical relation has been noted, a certain tendency may be indicated: in enterprises whose financial standing is average or poor in the opinion of respondents collective agreements are concluded more often than in enterprises whose financial standing is assessed as good or very good by their representatives (table 14).

Table 14. Effectiveness of collective labour agreements as per the financial standing of enterprises (in %).

The financial standing of the enterprises is:	Is a collective labour agreement concluded in your workplace?			It is hard to say	Total
	It is concluded and it is binding	It was concluded but ceased to be binding	No such agreement has ever been concluded		
very good or good	49,7	12,0	36,1	2,2	100.0
average – neither good nor poor	58,5	7,3	31,7	2,4	100.0
poor or very poor	55,0	5,0	40,0	–	100.0
Total	51,9	10,2	36,0	1,9	100.0

$ch^2=3.865$; df=6; p=0.695

Also, representatives of enterprises which continuously feel the adverse effect of the crisis more often point to conclusion of collective labour agreements than representatives of companies which so far have not felt the negative effect of the crisis (table 15). It is possible that it is negative economic standing that makes trade unions to strive to conclusion of collective labour agreements to protect employees, or employers, for fear of a collective dispute, conclude such an agreement as issues included in a collective labour agreement, by law, may not be the subject of/reason for a collective dispute.

Table 15. Effectiveness of collective labour agreements as per the impact of the current crisis on enterprise activity (in %).

Assessment of the impact of the current crisis on enterprise activity	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding	It was concluded but ceased to be binding	No such agreement has ever been concluded	It is hard to say	
The company continuously feels the adverse effect of the crisis	58.3	12.5	29.2	-	100.0
Initially the company did not feel the adverse effect, now it does	51.0	9.6	35.6	3,8	100.0
Initially the company felt the adverse effect, now the situation has improved	53.7	2.4	41.5	2,4	100.0
So far, the company has not felt the adverse effect of the crisis	45.9	13.5	37.8	2,7	100.0
Total	51.3	10.1	36.0	2,6	100.0

$ch^2=7.351$; df=9; p=0.601

The analysis of data obtained in the study allows for indication of a certain relation which is statistically significant. In over 70% of enterprises, whose trade union representatives assess the company fixed assets as obsolete, a collective labour agreement is concluded and is binding, and in every third enterprise such an agreement was concluded but ceased to be binding (unfortunately, the number of representatives of such enterprises does not allow for greater generalisations). However, collective labour agreements are concluded in only every third enterprise whose fixed assets are average as compared with domestic enterprises, and in nearly half of them such an agreement has never been concluded. In the case of enterprises possessing modern assets at world level, assessments are polarised. Half of the respondents indicated that agreements were concluded, the other half – that no agreement was concluded (table 16).

Table 16. Effectiveness of collective labour agreements as per modernity level of enterprise fixed assets (in %).

Company fixed assets	Is a collective labour agreement concluded in your workplace?			It is hard to say	Total
	It is concluded and it is binding	It was concluded but ceased to be binding	No such agreement has ever been concluded		
Modern at world level	49.2	4.8	46.0	–	100.0
Average as compared with leading enterprises but still modern as compared with domestic enterprises	57.7	13.1	27.7	1.5	100.0
Average as compared with domestic enterprises	37.3	6.8	49.2	6.8	100.0
It is not modern	71.4	28.6	–	–	100.0
Total	51.3	10.1	36.0	2.6	100.0

ch^2=63.278; df=12; p=0.001

In the majority of cases, collective labour agreements were concluded for an indefinite term (nearly 95% of indications). Only 22% of the respondents gave reasons for terminating collective labour agreements. The prevailing answer was that an agreement ceased to be effective "with the lapse of the notice period after termination by one of the parties" (10%).

In the opinion of trade union representatives, the suggestion for entering into negotiations aiming at conclusion of a pact was most often put forward by trade unions (over 43% of indications) or both parties, that is trade unions and management board representatives (over 25% of indications). Every fifth respondent found it difficult to determine which party initiated entering into negotiations with the aim of agreement conclusion. In the opinion of the respondents, representatives of management boards of Polish companies were more active in terms of negotiation aiming at conclusion of collective labour agreements (every fifth respondent from such enterprises indicated that the initiative lied with the management board) than representatives of foreign companies (in this case only every tenth respondent indicated that the initiative lied with the management board).

Table 17. Who put forward the suggestion to enter into negotiations aiming at conclusion of an agreement as per enterprise types?

Enterprises which are entirely or mainly owned by foreign capital and where strategic decisions are taken:	Who put forward the suggestion to enter into negotiations aiming at conclusion of an agreement?			It is hard to say	Total
	trade union	management board	both parties		
in the foreign office and the Polish management board only acknowledges them	45.8	6.8	30.5	16.9	100.0
locally and require only approval of the foreign office	40.0	12.0	40.0	8.0	100.0
in the foreign office in cooperation with the Polish management board and taking account of its ideas and remarks	40.8	12.2	14.3	32.7	100.0
Total	43.1	10.4	25.7	20.8	100.0
Polish enterprises	50.0	21.4	14.3	14.3	100.0
Total	42.9	10.9	25.0	21.2	100.0

In the case of enterprises included in the construction sector, the percentage of respondents' indications that negotiations were initiated by trade unions was the same as the percentage of indications that the initiative lied with both parties (35%). However, in the food processing sector, more than half of indications pointed to trade unions and only every fourth respondent indicated both parties.

Table 18. Who put forward the suggestion to enter into negotiations aiming at c an agreement as per sectors?

Sector	Who put forward the suggestion to enter into negotiations aiming at conclusion of an agreement?			It is hard to say	Total
	trade union	management board	both parties		
Trade	no collective labour agreement				
Construction	34.8	17.4	34.8	13.0	100.0
Metal	36.4	13.6	15.9	34.1	100.0
Food processing	53.1	7.8	26.6	12.5	100.0
Services of general interest	37.5	8.3	29.2	25.0	100.0
Total	42.9	10.9	25.0	21.2	100.0

ch^2=20.154; df=6; p=0.003

On the other hand, given the financial standing of enterprises, it was most often indicated that in the event of poor or very bard standing it is the trade unions (54.2% of indications) or the management boards (25% of indications) that put forward the suggestion to enter into a collective labour agreement. However, the suggestion to enter into a collective labour agreement is put forward by both parties at the same time significantly less often than when the standing is average or good.

Table 19. Who put forward the suggestion to enter into negotiations aiming at conclusion of an agreement as per enterprise financial standing?

The financial standing of the enterprises is:	Who put forward the suggestion to enter into negotiations aiming at conclusion of an agreement?			It is hard to say	Total
	trade union	management board	both parties		
very good or good	40.6	9.4	28.3	21.7	100.0
average – neither good nor poor	44.0	4.0	24.0	28.0	100.0
poor or very poor	54.2	25.0	12.5	8.3	100.0
Total	43.2	11.0	25.2	20.6	100.0

ch^2=10.916; df=6; p=0.091

Over 85% of the respondents from enterprises where a collective labour agreement is concluded indicated that all active company trade unions participated in negotiations of the collective labour agreement (every tenth respondent indicated the answer "It is hard to say").

On the other hand, nearly 60% of the respondents claimed that third-party experts participated in negotiating the collective labour agreement, whereas 42.9% of the respondents indicated that those experts supported both parties; 9.5% − that they supported only trade unions, and 6.8% – the employer. Despite the fact that half of the respondents indicated participation of trade union experts in negotiations, one third was not able to assess the role they played; in the case of the other respondents, approximately half of them indicated that the role was significant, and half – that it was insignificant. Also one third of the respondents were not able to assess how the trade union expert was found, and one third claimed that company trade union organisations themselves found the experts. The other respondents indicated that the experts were found by supra-company trade union structures..

Table 20. Assessment of the role of experts in negotiating collective labour agreements

Assessment of the role of experts in the negotiations	% of answers
Substantial, they conducted the negotiations to a large extent	11.4
Big, although trade unions participated in conducting the negotiations	21.9
Small, it was mainly trade unions that negotiated, although the experts participated in the negotiations	21.9
Very small, the experts did not conduct the negotiations, only provided occasional advisory services	14.3
It is hard to say	30.5
Total	100.0

As it has already been mentioned above, collective labour agreements may provide more extended and favourable employee rights than the provisions of the Labour Code or other provisions of law. A question arises whether in the opinion of trade union representatives the agreements concluded are satisfactory for both the employees and trade unions.

Table 21. Assessment of satisfaction of the employees and trade unions with the collective labour agreement as per enterprise type.

Enterprises which are entirely or mainly owned by foreign capital and where strategic decisions are taken:	How do (did) you assess the agreement from the point of view of the employees and trade unions:			It is hard to say
	it is (was) fully satisfactory for the employees and trade unions	it is (was) more satisfactory than it is (was) unsatisfactory	it is (was) more unsatisfactory than it is (was) satisfactory	
in the foreign headquarters and the Polish management board only acknowledges them	12.1	70,7	13,8	3,4
locally and require only approval of the foreign headquarters	3.7	77.8	11.1	7.4
in the foreign headquarters in cooperation with the Polish management board and taking account of its ideas and remarks	23.5	56.9	11.8	7.8
Total	14.3	68.0	12.2	5.4
Polish enterprises	–	62.5	31.3	6.3
Total	12.9	67.5	14.1	5.5

As shown by the data included in the table, on average only every eighth respondent believes that the collective labour agreement concluded in their enterprise is (was) fully satisfactory for the employees and the trade union. However, the distribution of the answers varied depending on the enterprise type represented by the surveyed trade union members. None of the trade union representatives of Polish enterprises stated that the collective labour agreement concluded is (was) to the full satisfaction of the employees and the trade union. However, nearly every fourth respondent from foreign enterprises where strategic decisions are taken by the foreign office in cooperation with the Polish management board and taking account of its ideas and remarks gave a positive opinion on the collective labour agreement concluded. The percentage of the respondents who believe that the agreement is more unsatisfactory than it is satisfactory (negative opinion) stood in foreign enterprises at a similar level (it ranged between 11.1% and 13.8%). On the other hand, in the case of Polish enterprises, every third person gave a negative opinion on the collective labour agreement concluded.

Table 22. Assessment of satisfaction of the employees and trade unions with the collective labour agreement as per sectors (in %).

Sector	How do (did) you assess the agreement from the point of view of the employees and trade unions:			It is hard to say	Total
	it is (was) fully satisfactory for the employees and trade unions	it is (was) more satisfactory than it is (was) unsatisfactory	it is (was) more unsatisfactory than it is (was) satisfactory		
Trade	no collective labour agreement				100.0
Construction	10.7	71.4	17.9	–	100.0
Metal	26.1	50.0	15.2	8.7	100.0
Food processing	4.8	74.2	16.1	4.8	100.0
services of general interest	11.5	80.8	3.8	3.8	100.0
Total	12.9	67.5	14.1	5.5	100.0

$ch^2=34.839$; $df=12$; $p=0.000$

Conclusion of a collective labour agreement and its compliance by the other party is important both for the employees and management boards of enterprises. Nearly 100% of the trade union representatives believe that they comply with the provisions of the collective labour agreement (81.5% believe that "definitely yes" and 16.7% that "rather yes"). The situation looks slightly worse when trade union members are to assess whether the other party complies (complied) with the provisions of the agreement. Although over 90% of the respondents think that the employers comply (complied) with the provisions of the agreement, only 45.7% indicate "definitely yes" and 46.3% – "rather yes". One can never be certain what the truth is in this matter, but it seems a positive fact that over 90% of the respondents, despite their generally critical attitude, admit that the employers comply with the provisions of the agreements.

Table 23. Compliance with the provisions of the collective labour agreement by the employer and trade unions (in %)

Compliance with the collective labour agreement	Does (did) the employer comply with the provisions of the agreement?	Does (did) the trade union comply with the provisions of the agreement?
Definitely yes	45.7	81.5
Rather yes	46.3	16.7
Rather no	3.7	–
Definitely no	1.9	–
It is hard to say	2.5	1.9
Total	100.0	100.0

II.3.3 Organisational culture vs. collective labour agreements

Given the subjective scope of the project, it is recommended to verify whether the existence or non-existence of a collective labour agreement is correlated with the predominance of specific aspects of the organisational culture, covered by the questionnaire. The first remark is the predominance of those enterprises where collective labour agreements are effective. This predominance manifests itself by a higher percentage of total affirmative answers (the answers "definitely yes" and "rather yes" combined) to the questionnaire questions concerning various culture aspects.

The trade union leaders who participated in the questionnaire were asked to give their opinion on technical and organisational conditions of work in their enterprises. The general assessment of those conditions is satisfac-

tory as the percentage of positive declarations in nearly all cases constitute half of the answers. One marked exception is only the existence of Employee Share Schemes, which is a marginal phenomenon.

Table 24. Technical and organisational conditions of work.

Technical and organisational conditions of work.	there is a CLA	there is no CLA
	the total % of positive answers is given in each case	
1. Work is well-organised.	67.1	53.6
2. Modern HR management techniques are used.	67.3	55.8
3. Social gatherings and integration trips are organised for all the employees.	64.4	61.4
4. Every new employee is guaranteed an initial training.	95.9	88.6
5. There are canteens and cafeterias for employees on the premises.	69.4	62.1
6. The management board and superiors systematically organise meetings with the employees at which everybody may pose a question or voice their postulates.	68.0	45.0
7. An Employee Share Scheme applies (the employees may purchase shares of their own enterprise at a reduced price)	15.6	7.9
8. There operates a company allowance fund.	84.9	72.1
9. Internal trainings are conducted to improve employees' qualifications.	97.9	98.6
10. The employees may take up post-graduate studies or part-time studies financed by the enterprise.	79.9	76.8

The existence of a collective labour agreement is positively correlated with good assessment of the technical and organisational conditions of work: in the case of each variable describing this area, a greater number of positive answers are observed in companies with a collective labour agreement than in companies without such an agreement. As much as 67% of the respondents from companies with a collective labour agreement against 54% from companies without a collective labour agreement assess that work in their company is well-organised. More than two thirds of leaders from companies with a collective labour agreement state that modern HR management forms are used in their companies, and this opinion is shared by mere 56% of the respondents from companies without a collective labour agreement. Nearly two thirds of leaders from companies with a collective labour agreement are of the opinion that social meetings or integration trips are organised for all their company employees and in the companies without a collective labour agreement the percentage of positive declarations stands at 61%. According to 96% of the leaders from companies with a collective labour agreement, every new employee is initially trained, whereas the indication level stands at 89% in companies without a collective labour agreement. Canteens or cafeterias for employees are run on the premises according to 69% of the respondents from companies with a collective labour agreement and 62% from companies without a collective labour agreement. A large difference between the companies with a collective labour agreement and those without a collective labour agreement may be observed in terms of whether the management board and superiors systematically organise meetings with the employees at which everybody may pose a question or voice their postulates, which is confirmed by 68% of the respondents from companies with a collective labour agreement against 45% of the respondents from companies without a collective labour agreement. Allowance funds operate in the examined companies relatively often, however their existence is confirmed by 85% of the leaders from companies with a collective labour agreement and 72% of companies without a collective labour agreement. The levels of positive declarations concerning internal trainings conducted in order to improve qualification of employees are distributed in an almost equal manner (98% and 99%, respectively) and the possibility to pursue post-graduate studies by employees (80% and 77%, respectively). Employee Share Schemes, owing to which employees may purchase shares of their own enterprise at a reduced price is a rare phenomenon: their existence is declared by relatively 16% and 8% of the respondents from both categories of enterprises.

Similarly favourable are the technical and organisational conditions of work as perceived by the representatives of management boards of companies dealing with HR issues. However, a positive correlation

between the existence of a collective labour agreement and the level of positive declarations may be observed only for individual aspects of this area of analysis. It is worth noting, though, that this positive correlation is observed only when an answer to a very specific question is given, such as a question about provision of initial trainings to every new employee, the existence of canteens and cafeterias for employees on company premises or, finally, the functioning of a company allowance fund. The situation is different in the case of such issues as systematic meetings with employees organised by the management board and superiors and the existence of Employee Share Schemes.

Subsequently, a segment of the area of the organisational culture was studied, which is composed of variables concerning the social conditions of work. The general picture seems rather favourable but it is much more varied internally and yet grimmer than in the case of the above segment "technical and organisational conditions of work", as the percentage of positive answers is in a few cases less than 50%.

Table 25. Social conditions of work.

	there is a CLA	there is no CLA
	the total % of positive answers is given in each case	
Managers are professional.	65.1	43.5
Superiors distribute work among the employees in a fair way.	59.2	36.7
Good employees are appreciated by superiors.	54,8	34.5
Superiors willingly take into account employees' remarks.	39,5	38.3
Employees respect their jobs, they try to work best.	91.8	87.0
There is mutual trust between superiors and employees.	49.7	28.1
Employees are familiar with enterprises development plans and are informed in advance about redundancies and new hires.	53.7	30.9
Employees are encouraged to put forward ideas to rationalise and improve work organisation.	83.7	62.6
Employees are open to changes, adapt quickly.	67.8	64.0
Personnel policy rules are transparent and employees are familiar with them.	49.0	31.7
Principles of the remuneration system are transparent and employees are familiar with them.	72.8	61.9
Systematic reviews of employee assessment of important aspects of enterprise operation and problems of employees are made.	60.3	48.2
There is a system of internal communication (broadcasting centre, magazine, information notices, intranet, internet forum, Facebook profile, etc.).	82.9	86.3
Employees are informed about management board plans concerning enterprise strategy.	58.3	38.1
Employees have easy access to direct superiors.	88.2	86.3
Employees have an influence on decisions pertaining to their workplaces.	28.8	20.9
Pregnant women are entitled to additional breaks during working time.	43.4	41.0
There are internal regulations that entitle pregnant women to individually manage their working time.	35.0	26.3
Older employees, soon reaching the retirement age, are moved to other positions which are better suited for their reduced capacities.	26.5	12.3
Team work is supported, there is an atmosphere of peaceful cooperation between employees.	66.4	51.4
Fierce competition between employees is supported, mainly personal achievements are recognised.	45.2	55.1
Subordination and meticulous order execution are supported.	89.0	80.4
Employees are regularly subject to formal periodic assessment.	89.0	81.2
A code of ethics applies in the enterprise.	66.4	59.7
It protects the environment, it is environmentally friendly.	91.1	86.2

Table 25. Social conditions of work.

	there is a CLA	there is no CLA
	the total % of positive answers is given in each case	
Enterprise complies with the Corporate Social Responsibility principles and it has adopted an official document which confirms that.	43.7	27.2
If there is a vacancy to fill, the candidate is first of all sought from among the employees and later outside the company.	70.5	69.8
When a few new candidates are considered for a position, the candidate who is recommended by an employee is hired.	40.4	47.1
There is open approach to criticism, e.g. an employee may criticise their superior if they notice that the superior made a mistake.	27.9	18.8
It is not customary for a superior to admit that they have some gaps in knowledge with regard to their duties.	48.3	53.2
If an employee knows that their colleague is on sick leave when they are not sick, the employee usually informs the company about it.	5.4	12.2
A woman who learns that she is pregnant informs her superiors (immediately) so that an employee to substitute her during the maternity leave may be found in advance.	50.0	49.6
The ability to make quick decisions and execute them from their subordinates is highly appreciated of managers.	69.4	72.2
It is customary for managers to consult their decisions with their teams.	53.4	30.9

What draws attention is a markedly higher level of employee participation in companies with a collective labour agreement: 53% of the respondents from those companies admit that in their companies it is customary for managers to consult their decisions with their teams (which is confirmed by only 31% of respondents from companies without a collective labour agreement), 54% of the respondents from companies with a collective labour agreement declare that employees are familiar with enterprise development plans and are informed about redundancies and new hires in advance (only 31% of the respondents from companies without a collective labour agreement is of this opinion), 84% of the respondents from companies with a collective labour agreement declare that employees are encouraged to put forward ideas on how to rationalise and improve work organisation (only 63% of the respondents from companies without a collective labour agreement agree with that statement), in companies with a collective labour agreement the adaptation potential of employees is higher (this is the opinion of 68% of the trade union leaders covered by the study, and in companies without a collective labour agreement only 64% of the employees are of that opinion), every second respondent from companies with a collective labour agreement declares that personal policy rules are transparent and employees are familiar with them, and this opinion is shared by only every third respondent from companies without a collective labour agreement, 73% of the respondents from companies with a collective labour agreement think that the rules of the remuneration system are transparent and employees are familiar with them, as compared with 62% of the leaders from companies without a collective labour agreement, 58% of the respondents from companies with a collective labour agreement state that employees are informed about management board plans concerning enterprise strategy whereas such an opinion is shared by merely 38% of the respondents from companies without a collective labour agreement, in both enterprise categories the percentage of leaders claiming that subordinates have easy direct access to superiors is similar (88% and 86%, respectively), the level of positive declarations whether employees have an influence on decisions pertaining to their positions is higher (yet still low) in companies with a collective labour agreement (29% and 21%, respectively). In companies with a collective labour agreement a greater emphasis than in companies without a collective labour agreement is placed on supporting team work and creating an atmosphere of peaceful cooperation between employees (66% and 51%, respectively); this disproportion is confirmed in the distribution of positive indications whether fierce competition between employees is supported and whether personal achievements count above all (i.e. in the antithesis of the above sentence) as 45% of leaders from companies with a collective labour agreement agree with it as compared with 55% of respondents from companies without a collective labour agreement.

Authoritarian tendencies in management, reflected by the predominance of answers concerning management styles (as much as two thirds of indications to the autocratic style), are confirmed in a low level of positive declarations expressed by trade union leaders in terms of such issues as: freedom to voice criticism (28% and 19%, respectively, of respondents believe that in their companies employees may tell their superiors that they have made a mistake) or admissibility of admitting to subordinates by superiors lack of knowledge in the field of their duties (48% and 53%, respectively).

In the examined companies the level of social capital, understood as trust in social relations, may not be deemed too high. Asked directly whether there is mutual trust between superiors and subordinates, half of trade union leaders from companies with a collective labour agreement give a positive answer, and only slightly more than one fourth of trade union members from companies without a collective labour agreement share this opinion. As far as phenomena being correlates of trust are concerned, 59% of the respondents from companies with a collective labour agreement and 37% of the respondents from companies without a collective labour agreement state that superiors distribute work between employees in a fair manner; 55% of the respondents from companies with a collective labour agreement and 34% of the respondents from companies without a collective labour agreement believe that good employees are appreciated by superiors. What is more, in the opinion of trade union leaders organisational cultures of the examined companies are characterised by strong normative particularism (compliance with social norms depends on a situation), which is confirmed by substantial predominance of negative declarations as to whether an employee would inform the employer of dishonest behaviour of a colleague who is on an unjustified sick leave (5% and 12%, respectively). That leads to a conclusion that employees do not identify strongly with their company as personal relations (with people) are more important for them than instrumental relations (with the institution).

The internal labour markets in the examined enterprises seem well-developed, which is not surprising as the enterprises are large and have developed organisational structures: 70% of respondents from companies with a collective labour agreement and 70% of respondents from companies without a collective labour agreement declare that when there is a vacancy to fill, the candidate is sought first of all from among employees, and if this proves unsuccessful, the candidate is sought outside the company. At the same time, the recruitment process is moderately formalised as respectively 40% and 47% of the respondents from companies of both categories claim that in the case of considering a few candidates for a vacancy, the person who was recommended by an employee is hired. The fact that the internal labour market is institutionalised is also confirmed by periodic formal assessment of employees conducted on a regular basis (89% and 81% respondents, respectively, are of this opinion).

Table 26. Attitude of the management board to trade union activity vs. the management style prevailing in a company.

Attitude of the management board to trade union activity	Management style prevailing in a company			Total
	autocratic	democratic	liberal	
It supports trade union activity	3.8%	24.0%	0.0%	9.5%
It is neutral towards trade unions – it neither supports nor hinders their action	48.4%	70.7%	50.0%	54.8%
It hinders actions of trade unions	47.8%	5.3%	50.0%	35.7%

As far as correlation of the attitude of the company management board with the management style is concerned, the findings are not surprising: **companies managed autocratically do not support trade unions** (only 4% of positive declarations), and generally remain neutral towards them or hinder their action (48% each). **In the companies managed in a democratic way, every fourth respondent describes the attitude of the management board to trade unions as favourable,** seven out of ten respondents describe it as neutral and a small minority (5%) describe their companies as unfavourable to trade unions. As far as companies managed in a liberal way are concerned, more than half of the respondents refer to their companies as neutral in this regard, but the same number of employees is of the opinion that their places of work are unfavourable to trade unions.

Table 27. Model of cooperation between management boards of trade unions vs. the management style predominant in an enterprise.

Current cooperation between management boards of trade unions	Management style predominant in an enterprise			Total
	autocratic	democratic	liberal	
All act together, hand in hand	39.3%	67.5%	66.7%	46.7%
Some cooperate, hand in hand, some other unions do not cooperate	44.3%	22.5%	33.3%	38.8%
No trade unions cooperate	16.4%	10.0%	0.0%	14.5%

What stands out is a clear positive quantitative correlation between the model of co-existence of trade unions in an environment of pluralism of trade unions on the side of employees (not in all enterprises covered by the study there is more than one trade union) and the management style. Whereas in the enterprises characterised by trade union leaders as autocratic only 39% stated that all organisations "act hand in hand", in the case of companies described by the respondents who are their employees by democratic and liberal, the opinion that unions cooperate predominated (67% for each declaration). Companies governed in an authoritarian manner suffer from a conflict-prone (or particularistic) syndrome of pluralism, as more than half of the respondents who describe their enterprise in this way do not perceive unity within trade union representatives (in total as much as 61% of them believe that only certain active trade union members undertake common actions or fail to notice such actions in their companies), whereas in the companies deemed democratic this total level of indications stands at 32% and in liberal ones – at 33%. A hypothesis may be attempted that autocracy in management is conducive to following the "divide and rule" policy as a result of which individual trade union organisations are tempted to interact with the management board individually as a strategy of protection of interests of groups of employees they represent.

Table 28. Manner of strategic decisions-making and the predominating management style.

Strategic decisions	autocratic	democratic	liberal
Are taken in the foreign headquarters and the Polish management board only acknowledges them	44.0%	35.6%	50%
Are taken locally and require only approval of the foreign headquarters	20.6%	12.3%	0.0%
Are taken in the foreign headquarters in cooperation with the Polish management board and taking account of its ideas and remarks	31.4%	46.6%	25.0%
It is hard to say	4.0%	5.5%	25.0%
Total	100%	100%	100%

The autocratic management style also seems favourable to taking strategic decisions at a higher level of corporate organisational structure without consulting them with the subsidiary company whose management board only acknowledges the decisions of the head office: this is the opinion of 44% of trade union leaders from companies where this management style predominates, whereas one fifth states that in their companies such important decisions are taken locally and nearly one third said that although decisions are taken abroad, they are taken in cooperation with the management board of the Polish subsidiary company. In the case of companies managed in a democratic manner, the omnipotence of parent companies is indicated by 36% of the trade union respondents and one seventh declare that the subsidiary company is completely free to make strategic decisions, and nearly half of them state that such decisions are taken in cooperation between the head office and the Polish management board. In the case of companies managed in a liberal manner (let us remind that they constitute a small minority) and every second respondent agrees that strategic decisions are made entirely outside Poland, and every fourth that either they are taken individually in Poland or by cooperation of the head office and the subsidiary company. The comment to those results should include the fact that the factor which has the greatest impact on the manner of taking strategic decisions in corporations operating in the territory of many countries is the very form of management and organisation of such an

enterprise. According to a widely used analytical framework, international and global corporations are characterised by stronger centralisation of power whereas subsidiary companies of transnational corporations (seen a networks) usually enjoy greater autonomy, and the most traditionalist ones, that is multidomestic corporations, are characterised by weak coordination of their action on a scale larger than their domestic market[112].

II.4 Collective labour agreements and relations between trade unions, and between trade unions and management boards

With one exception, all collective labour agreements examined were concluded for an indefinite term. With regard to the terminated contracts, the leaders declared the following manners: in 16.7% the term for which they were concluded lapsed, in 50% the notice period made by one of the parties lapsed (it seemed from the context that it concerned employers). One third of the leaders provided other reasons.

II.4.1 Negotiating collective labour agreements and the role of experts

We asked who suggested entering into collective bargaining[113]. In most cases, those were trade unions but quite often also the management board or both parties (Table 29).

Table 29. Distribution of answers to the question which party initiated negotiations of a collective labour agreement (declarations of leaders) (%)

Who suggested entering into negotiations in order to conclude a collective labour agreement	
trade unions;	44.1%
management board;	23.3%
both parties;	25.6%
It is hard to say	7.0%
Total	100.0%

In accordance with the declarations of leaders, most of the trade unions acting in a given enterprise participated in negotiating the agreement. The negotiations were conducted in a professional manner. Assuming that the enterprises where collective agreements were negotiated constitute 100%, in 43.2% of enterprises experts participated in negotiations and supported both parties, in 21.6% - they supported only trade unions, in 10.8% - they supported only the management board (in 2.7% of enterprises there were no experts and in the case of 21.6% of companies leaders did not know whether experts participated). Only trade unions dealt with hiring trade union experts in half of the enterprises (50%) and in one third of cases supra-company trade union structures offered their assistance (34.6%).

We have adopted a hypothesis that the durability of collective labour agreements depended on the procedure of negotiations and presence of experts who represented both parties. We assumed that the greater the influence of experts, the more durable the agreements. The analyses confirmed, to a greater or lesser extent, the adopted hypotheses.

Thus, durability of collective labour agreements depended on the manner of putting forward the suggestion to enter into agreement negotiations (Table 30). It transpires from the table that **durability of collective labour agreements was greatest when the suggestion to enter into collective bargaining was put forward jointly by both parties: employees and trade unions, and the least when the suggestion was put forward by a company management board only.**

[112] Ch. E. Bartlett, i S. Ghoshal, Managing Across Borders: The Transnational Solution, 2002, Harvard Business Press, Cambridge MA

[113] Generally, we present declarations of members of management boards of trade union organisations, but sometimes we refer only to the leaders (when the answers of the leaders and other members of management boards differ, in particular when a significant percentage of representatives of management boards choose the option "It is hard to say"). We indicate it each time, when a statement of a leader is presented.

Table 30. Durability of collective labour agreements and the party (parties) suggesting entering into collective bargaining (%).

Is a collective labour agreement concluded in your workplace?	Who put forward the suggestion to enter into collective bargaining aiming at conclusion of an agreement			Total
	trade union;	management board;	both parties;	
It is concluded and it is binding	88.1%	64.7%	97.4%	87.8%
It was concluded but ceased to be binding	11.9%	35.3%	2.6%	12.2%
Total	100.0%	100.0%	100.0%	100.0%

Chi²=11.853; df=2; p=003.
"It is hard to say" was omitted.

Two other factors that influence durability of collective labour agreements relate to participation of experts. First of all, it turned out that both parties had external experts (Table 31), and then that they played an important – and not secondary – role in the negotiations (Table 32). **Agreements proved more durable in enterprises where both trade unions and management boards had external experts and when those experts played a primordial role in the negotiations.** We verified as well whether duration of agreements is affected by the manner of selecting experts by trade unions: whether they were found by company trade unions themselves or they were delegated by a higher trade union instance. It turned out that the above had no impact on agreement durability (when experts were selected by trade unions themselves, 93.5% of members of management boards of trade unions declared agreement durability, and when experts were delegated by supra-company trade union structures – the ratio stood at 91.9%).

Table 31. Durability of collective labour agreements vs. participation of external experts in negotiations of agreements (%).

Is a collective labour agreement concluded in your workplace?	Did external experts participate in negotiations of collective labour agreements?			Total
	yes, they supported the management board only	yes, they supported trade unions only	they supported both parties	
It is concluded and it is binding	71.4%	80.0%	92.1%	87.4%
It was concluded but ceased to be binding	28.6%	20.0%	7.9%	12.6%
Total	100.0%	100.0%	100.0%	100.0%

Chi²=4.969; df=2, p=0.083.
"It is hard to say" was omitted.

In the opinion of trade union members interviewed, durability of agreements is to some extent affected by the role played by experts: when the role was insignificant, durability of agreements was reduced.

Table 32. Durability of collective labour agreements and the role in negotiations played by trade union experts (%).

Is a collective labour agreement concluded in your workplace?	What was the role of trade union experts in the negotiations?				Total
	substantial, they conducted the negotiations to a large extent	big, although trade unions participated in conducting the negotiations	small, it was mainly trade unions that negotiated, although the experts participated in the negotiations	very small, the experts did not conduct the negotiations, only provided occasional advisory services.	
It is concluded and it is binding	100.0%	91.3%	95.7%	86.7%	93.2%
It was concluded but ceased to be binding	-	8.7%	4.3%	13.3%	6.8%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Chi^2= 2.219; df=3, p=0.528.
"It is hard to say" was omitted.

The presented analyses show relations which prove the positive role of external experts. This is an important conclusion as in numerous studies of trade unions a postulate was often voiced by employers that trade unions should avoid using the services of external experts. The postulate was addressed mainly to higher structures of trade unions as it could provoke conflict in the social space of enterprises and entanglement in politics. **Based on the content of the subchapter a tentative conclusion may be put forward that in the opinion of trade union members covered by the study it is the presence of external experts that stabilises the collective agreement practice.** Obviously questionnaire surveys are not decisive in this respect, but they are an important signal concerning relations between the features of the phenomena discussed.

II.4.2 Durability of collective labour agreements vs. unionisation level

Currently, we are verifying the hypothesis that a higher percentage of employees being members of trade unions and at the same time a smaller number of trade unions operating in an enterprise will have a positive influence on agreement durability.

The content of table 33 to a large extent (statistically) confirmed the first hypothesis: **in the enterprises where the percentage of employees being members of trade unions did not exceed 25%, 19.8% of trade union members mentioned a concluded agreement. On the other hand, among trade union members employed in enterprises with a higher percentage of trade union members the ratio of concluded agreements increased linearly. With the highest percentage of trade union members, as much as 86.2% trade union members pointed to the existence of an agreement.**

Table 33. Percentage of trade union members among the staff vs. durability of collective labour agreements.

Percentage of trade union members among the staff	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
up to 25%	19.8%	8.8%	67.0%	4.4%	100.0%
26%-50%	58.8%	10.6%	28.2%	2.4%	100.0%
51%-70%	75.9%	17.2%	6.9%		100.0%
71% and more	86.2%	-	10.3%	3.4%	100.0%
Total	52.1%	10.3%	35.0%	2.7%	100.0%

Chi^2= 86.286; df=9; p<0.000

However, the second hypothesis was classified: in enterprises where only one trade union operated agreements were relatively rare. This may be explained on the basis of the conducted analyses: "one-union" enterprises are usually favourable to trade union action which does not necessarily need to be formalised.

The most favourable social conditions for conclusion of the agreements are to be found in those enterprises where two trade unions operate, however, the existence of three unions (or more) in the enterprise slightly lowered the level of declarations concerning the presence of collective labour agreements (table 34).

Table 34. Number of trade unions in an enterprise vs. durability of collective labour agreements (%).

Number of trade unions	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
One	28.8%	1.3%	62.5%	7.5%	100.0%
Two	66.1%	12.5%	20.5%	0.9%	100.0%
Three and more	53.3%	16.0%	30.7%		100.0%
Total	51.3%	10.1%	36.0%	2.6%	100.0%
Total	52.1%	10.3%	35.0%	2.7%	100.0%

Chi^2= 56.340; df=6; p<0.000

In order to verify the role of the percentage of trade union members and the existence of agreements in view of sector and property divisions, we applied the same regression model that was used in the first part of the report. It turned out, simply put, that movement of collective labour agreements from their withdrawal to constant lack of agreements was linked with the appearance of French and Belgium capital (hence, it was not conducive to agreement stabilisation). On the other hand, the regression model confirmed the observation that the increasing percentage of trade union members is favourable to the pact practice.

Table 35. Standardised Beta regression indices for the model of relations between the presence of collective labour agreements in a company and a set of explanatory variables.

Independent variables	Dependent variable: Is a collective labour agreement concluded in your workplace?: 1=yes; 2=it used to be concluded; 3=it has never been concluded.
Country (reference – Poland) 1. Germany	-0.035
2. France and Belgium	0.226***
3. Scandinavia, Denmark, Holland	-0.005
4. USA and UK	-0.018
5. Other countries	0.021
Sector (reference – services)	
1. trade	0.059
2. construction	0.054
3. metal	-0.040
4. food processing	-0.079
Percentage of trade union members in the staff: 1 = up to 25% ….4 = over 70%.	-0.135*
Number of trade unions in an enterprise one = 1…. three and more=3.	-0.099

* p<0.05; ** p<0.01; ***p<0.001

II.4.3 Durability of collective labour agreements vs. relations between trade unions and management boards

The subject of the analysis is the relation between the presence of collective labour agreements and interaction between trade unions and management boards. **Our hypothesis was that cooperation between executives of all enterprise trade unions as well as between trade unions and management boards would positively affect conclusion and durability of collective labour agreements. The analyses presented below confirm to a large extent the adopted hypothesis.** The data included in table II.37 prove that 76.5% of trade union members working in enterprises where trade unions cooperated, declared the existence of agreements, and among the respondents from enterprises where trade unions did not cooperate or certain unions cooperated and certain did not, the percentage dropped to 56% and 50.8%, respectively.

Table 36. Relations between trade union executives and the enterprise collective agreement practice.

Current cooperation between management boards of trade unions	Is a collective labour agreement concluded in your workplace?			Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	
All act together, hand in hand	77.5%	12.5%	10.0%	100.0%
Some cooperate, hand in hand, some other unions do not cooperate	50.8%	14.3%	34.9%	100.0%
No trade unions cooperate	56.0%	8.0%	36.0%	100.0%
Total	64.3%	12.5%	23.2%	100.0%

Chi^2=16.287; df=4; p=0.003.
The reply variants "another situation" and "It is hard to say" were omitted in the correlation.

A similar situation was observed in the case of relation between management boards and trade unions (table II.38) – **in enterprises where management boards hindered action of trade unions, the number of concluded agreements was significantly lower than where management boards supported trade union action or was neutral to it** (impediments were reflected by, obviously, lack of willingness of the management board to conclude agreements resulting from its unfavourable attitude to trade unions).

Table 37. Attitude of management boards to trade union action vs. collective agreement practice in enterprises (%).

Attitude of the management board to trade union action	Is a collective labour agreement concluded in your workplace?			Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	
It supports trade union action	73.3%	-	26.7%	100.0%
It is neutral to trade unions – it neither supports nor hinders their action	58.0%	9.1%	32.9%	100.0%
It rather hinders trade union action	35.6%	16.9%	47.5%	100.0%
It definitely hinders trade union action	34.8%	17.4%	47.8%	100.0%
Total	52.5%	10.6%	36.9%	100.0%

Chi^2=18.648; df=6; p=0.005
The reply variants "another situation" and "It is hard to say" were omitted in the correlation.

We reached interesting results by correlating a synthetic variable "trade union climate" with the presence of collective labour agreements. Table 38 reveals a particularly important role of relations between unions: if they are harmonious, they may provoke change – in the context of concluding collective labour agreements – of the unfavourable attitude of management boards to trade unions.

Table 38. Attitude of management boards to trade unions vs. relations between unions and the presence of collective labour agreements in an enterprise.

Management board/trade unions	Is a collective labour agreement concluded in your workplace?			Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	
The management board is favourable or neutral to trade unions, all unions cooperate	89,3	7,1	3,6	100,0
The management board is favourable or neutral to trade unions, certain unions cooperate	93,2	2,7	4,1	100,0
The management board is unfavourable or neutral to trade unions, unions cooperate	77,6	19,0	3,4	100,0
The management board is unfavourable or neutral to trade unions, certain unions cooperate	71,4	14,3	14,3	100,0
The management board is unfavourable or neutral to trade unions, unions do not cooperate	87,1	8,2	4,7	100,0
Total				

Chi^2=40.892; df=8; p<0.000
The reply variants "another situation" and "It is hard to say" were omitted in the correlation.

Obviously, one needs to take into account the fact that there is a number of indirect relations (intervening) which may not be captured in questionnaire studies and which may significantly affect relations between the variables. Despite those reservations, the strength of correlations described in tables 36, 37, 38 allows, in our opinion, for putting forward a conclusion that the hypothesis proved positive: **there is a strong positive correlation between cooperation of all trade unions active in an enterprise and the presence and durability of collective labour agreements. What is more, the analysis of the collected data shows that such cooperation of all trade unions is a factor that changes the possible negative attitude of the management board to trade unions and collective labour agreements. It may be assumed that it is sufficient for one trade union organisation not to join a common platform for the effect described not to occur.**

Our findings should be subject to further analysis in order to determine to what extent the relations between trade union members and between them and management boards are important factors for conclusion and durability of agreements. To this end, we are going to use a regression model which covers countries of origin of the capital and sectors – they will be the main background for the situation in enterprises. The question will be as follows: if, and if yes – to what extent, the situations are important in enterprises in the sector and property context. At the same time, one should remember that the results are to be interpreted really carefully.

The model reveals interesting information (table 39). **Simply put, it may be said that a strong negative effect of trade and a strong positive effect of the percentage of trade union members in an enterprise was observed on two opposite extremes. Another group included four negative factors – metal sector, Scandinavian origin of the capital, Anglo-Saxon origin of the capital and a great number of trade unions in an enterprise (it may be assumed that this is a confirmation of the observation that an optimum number of trade unions – from the point of view of agreements – is two). Finally, we observed – at the limit of statistical significance – a negative effect of German capital. However, with such a model, the relations of trade union members and management boards are of secondary importance (at the same time, the impact of the attitude of management boards to trade unions turned out slightly stronger than the attitude of trade union executives to one another).**

Table 39. Standardised Beta regression indices for the model of relations between the presence of collective labour agreements in a company and a set of explanatory variables.

Independent variables	Dependent variable: Is a collective labour agreement concluded in your workplace?: 1=yes; 2=it used to be concluded; 3=it has never been concluded.
Country (reference – Poland)	
1. Germany	0.120*
2. France and Belgium	-0.007
3. Scandinavia, Denmark, Holland	0.161**
4. USA and UK	0.148**
5. Other countries	0.009
Sector (reference – services)	
1. trade	0.435***
2. construction	0.032
3. metal	0.196**
4. food processing	-0.033
Percentage of trade union members in the staff: 1 = up to 25% ….4 = over 70%.	-0.301***
Number of trade unions in an enterprise one = 1…. three and more=3.	0.142**
Attitude of the management board to trade unions 1 = supportive; 2 = neutral; 3 = it rather hinders union action; 4 = it definitely hinders union action.	0.065
Mutual relations of trade union executives: 1 = all cooperate; 2 = certain cooperate, certain not; 3 = none of the trade unions cooperate	0.044

* p<0.05; ** p<0.01; ***p<0.001

Summarising the analyses we approached the company reality and we built a regression model with four independent variables. The impact of the variables on the existence and durability of agreements was the following. The positive impact of the percentage of trade union members in the staff ranked first (Beta -0.481, p<0.000), second – the negative impact of the attitude of the management board to trade unions (Beta 0.188, p=0.006), third – the negative impact of a great number of trade unions in the enterprise (Beta 0.151, p=0.21). However, the cooperation between trade unions had a lesser influence (Beta 0.085, p=0.214).

II.4.4 Conclusions from model analysis

This paragraph is devoted to the issues relating to trade unions, but in its summary we need to place the trade union aspect in the right context, to go beyond the scope of analyses of trade unions themselves. Hence, in the conclusions below the context which gives trade unions proper place will also be discussed.

It transpires from the analyses **that concluding collective labour agreements and their durability is above all related to the factors beyond the control of enterprises and enterprise trade union organisations (exogenous factors). The main exogenous factor is the country of origin of the capital.** Within our sample, it turned out that the Anglo-Saxon (USA, UK) and Scandinavian capitals were the most unfavourable to collective labour agreements, and that the French capital was the most open to agreements. The analyses presented in chapter I.1 "Characteristics of enterprises" show that enterprises owned by foreign capital from other countries were deeply differentiated in terms of management recruitment and corporate management. That affected the situation of trade unions and the agreement practice. **The differences we noted meant that there is no common pattern of labour relations which would be applied in Poland by foreign corporations but also false proved the hypothesis that labour relations in Polish subsidiary companies were shaped in accordance with the common knowledge of the relations typical of their countries of origin (except the Anglo-Saxon capital).**

Sectoral differences rank second in terms of exogenous factors. It needs to be added that to some extent they were correlated with countries of origin of the capital. There were sectors with better collective agreement practices (construction, services of general interest) and worse (trade).

The country of origin of the capital and sector specified the general terms and conditions but the solutions at enterprise level were determined by another four endogenous factors. **The first and the most important endogenous factor is the percentage of trade union members among all employees.** It was significantly differentiated and our analyses indicated that its role is primordial. It needs to be added that previous studies conducted by the Department of Economic Sociology at the Warsaw School of Economics indicated that the percentage of trade union members in subsidiary of foreign corporations operating in Poland is higher than the percentage in Polish private companies.

The number of trade union members is linked with the phenomenon of oligarchisation of enterprise trade union structures, consisting in stabilisation of management boards and lack of powerful actions aiming at recruitment of new members. Apart from this phenomenon, there are also other reasons for decreasing the inflow of new members to the organisations already existing in enterprises. Trade unions are frequently treated as institutions that in a sense protect from redundancies, however, they may protect only some, they favour old members who have paid fees for years and have often been connected by bonds of friendship. New members may not count on such support, which may discourage them from joining unions.

Another endogenous factor is the number of trade unions operating in an enterprise. The analyses show that collective labour agreements are most favoured when two unions operate – when there is only one, in particular when the relations with the management board are fairly positive, there are no sufficiently strong motivation to commence the burdensome process of collective agreement, however, when the number of unions is greater, particular interests or conflicts between unions may appear.

Factors connected with relations between trade unions and between trade unions and management boards rank lower. **The third endogenous factor, which sometimes ranks second, is the attitude of the management board to trade unions – the more the management boards are supportive of trade unions, the greater the chance for the existence and durability of collective labour agreements** (which is an obvious conclusion) **chance for the existence and durability of collective labour agreements (which is an obvious conclusion). The last endogenous factor, statistically insignificant in regression models, although significant in correlations, is the mutual attitude of executives of trade union organisations in an enterprise – the more they are focused on cooperation, the greater the chance for the occurrence and maintenance of collective labour agreements.**

II.5 Relations between trade unions and management boards vs. the content of collective labour agreements

As has been observed, **the existence of collective labour agreements and their durability were correlated with two exogenous factors: the origin of the capital and the sector as well as with four endogenous variables: percentage of members of trade unions, the number of trade unions active in an enterprise, the attitude of management boards to trade unions as well as, although to a lesser extent, the level of cooperation of trade union executives active in an enterprise.**

Now, we are going to verify the hypothesis that the variables mentioned will also affect the content of collective labour agreements. We assumed that in enterprises where those six endogenous and exogenous variables will favour trade unions, this will be reflected in the content of collective labour agreements. The hypothesis was risky as collective labour agreements often had longer history than the current ownership status, the same could be true for the trade union climate. However, the hypothesis was believed justified as relatively many agreements expired and certain were the subject of renegotiations, that is why the current ownership situation could have an adverse impact on the content of collective labour agreements. This chapter will be concentrated on verification of exogenous factors.

The analyses confirmed the hypothesis to a small extent. We will start with the factors affecting the cooperation between trade union executives. In accordance with the declarations of trade union members, in the case of seven provisions of collective labour agreements there is no relation between the situation in an enterprise and the provisions of the agreement, and five cases confirmed the hypothesis, and five did not. The following agreement provisions confirm the hypothesis:

a) **trade union members from enterprises with a harmonious cooperation of trade union executives indicated that in their collective labour agreement there is a provision on changing an employment agreement into an agreement for an indefinite term (25.8% of them) more often than trade union members from those enterprises where there was no cooperation or the cooperation was observed only between some trade unions (14.3% and 15.7%, respectively).**

b) **trade union members from enterprises where cooperation is harmonious more often pointed to the presence in collective labour agreements of a provision on the minimum remuneration which is higher than the statutory one (45.5%) than trade union members from enterprises where only some union members cooperated (38.9%) or where no cooperation was observed (35.7%).**

c) trade union members from enterprises where cooperation is harmonious more often pointed to inclusion in collective labour agreements bonuses for night work which are higher than statutory bonuses (60%, whereas in the other enterprises the percentage stands at 30.6% and 46.2%).

d) trade union members from enterprises where all trade unions cooperated more often indicated that their collective labour agreements contain a provision on making accessible to trade union organisations of premises and technical equipment (table 40). Similar tendency was observed in the case of deduction by the employer of trade union fees: where executives cooperated fully or partly, trade union members pointed to a relevant provision of a collective labour agreement (86.2% and 82.9%) more often than when there was no cooperation between trade union executives (69.2%).

Table 40. Relations between trade unions vs. the provision on making available premises and equipment.

How would you describe the relations between trade unions in your enterprise?	Does your company collective labour agreement contain a provision which obligates the management to make accessible to trade unions of premises and technical equipment?			Total
	yes	no	It is hard to say	
All act together, hand in hand	84.6%	12.3%	3.1%	100.0%
Some cooperate, hand in hand, some other unions do not cooperate	69.7%	24.2%	6.1%	100.0%
No trade unions cooperate	50.0%	35.7%	14.3%	100.0%
Total	75.9%	18.8%	5.4%	100.0%

Chi^2=8,919; df=4; p=0,063
The reply variants "another situation" and "It is hard to say" were omitted in the correlation.

On the other hand, there were a few issues key for the employees which were more often included in agreements concluded between enterprises and trade unions whose executives did not cooperate, e.g. prior preparation of employees for retraining and position change (57.1% of indications of trade union members from companies where trade unions do not cooperate and 45.7% where all trade unions cooperate). A similar situation was observed in the case of bonuses for overtime work: they were more often mentioned by trade union members from companies where trade unions did not cooperate (71.4%) than by trade union members from companies where all unions cooperated (47.7%). Thus, **the hypothesis that cooperation between trade unions always means provisions of collective labour agreements more favourable to employees than where there is no cooperation was not positively verified: the relations are various, sometimes they confirm the hypothesis, some other time they do not. Never-**

theless, it needs to be noted that in the case of two key provisions – those concerning change of an employment agreement into an agreement for an indefinite term and the increase in the minimum remunerations – a significant positive correlation with harmonious cooperation of all enterprise trade union organisations appear.

II.6 Human capital of enterprises management boards and trade union leader vs. the collective agreement practice

In accordance with the adopted goal of the studies and the hypotheses we now proceed to an analysis of a key question of whether the features of trade union management boards and leaders, in particular human capital (education background and further education), are correlated with the collective agreement practice.

The education hypothesis assumes that there is a positive correlation between the formal level of education and the existence in an enterprise and durability of collective labour agreements. Some of the collected information proved, however, that the correlation may be weak (relatively high ratio of education of trade union members in the sector which is unfavourable to unions, namely trade). The education hypothesis was not confirmed (table 41) – the highest ratio of education was noted in enterprises where the agreement had been concluded in the past but ceased to be effective. The case of improving professional knowledge was similar – here the highest level of knowledge improvement was observed among members of management boards in enterprises where collective labour agreements ceased to be valid. That was the effect of the sector influence. In trade, which is unfavourable to trade unions and collective labour agreements, the union members covered by the study showed a relatively high level of education as compared with other sectors.

Table 41. Educational of members of management boards vs. the existence and durability of collective labour agreements.

Educational background	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
vocational	19.0%	14.8%	19.1%	42.9%	19.2%
secondary	51.1%	40.7%	61.7%	42.9%	53.6%
post-secondary	10.9%	22.2%	8.5%		10.9%
bachelor	5.1%		2.1%		3.4%
master	13.9%	22.2%	8.5%	14.3%	12.8%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Chi^2=15.152; df=12; p=0.233

Hence, the level of formal knowledge did not affect the collective agreement practice, however, the role of education in the case of knowledge in the area of labour law and trade union law, economy and negotiation skills changed significantly. In particular, in the case of two first issues strong correlations with the presence and durability of collective labour agreements were noted.

On the basis of questionnaire studies it is hard to specify the direction in which the relation between knowledge of labour and trade union law and the collective agreement practice will develop – conclusion of a collective labour agreement and its protection may have resulted in an increase in the level of knowledge of law among members of a trade union management board. The strength of the correlation suggests that knowledge of law is a feature that differentiates executive circles. The feature leads to an increase in the chance of concluding a collective labour agreement and its preservation. Lack of strong relation between improving knowledge in this scope and the existence and durability of collective labour agreements needs to be emphasised – what counts is a declaration on knowledge improvement only when it is accompanied by a declaration on high level of knowledge. These observations are most interesting when compared with the ratio of formal knowledge – it is not the very level of knowledge that counts but the level of knowledge

of labour law and trade union law. It needs to be added that the persons declaring no knowledge were omitted (in the cross matching their numbers were too small). In order to emphasise this essential issue, we will also present two tables, one discussing the correlation of knowledge improvement with the collective agreement practice, the other matching knowledge with knowledge improvement.

Table 42. Knowledge of labour law and trade union law vs. the existence and durability of collective labour agreements (%).

How do you assess your knowledge and experience in the area of labour law and trade union law?	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
very high, I have no gaps	70.0%	-	30.0%	-	100.0%
very high, but I have some gaps	61.2%	12.9%	25.9%	-	100.0%
neither high, nor low	46.9%	8.8%	41.5%	2.7%	100.0%
low, I have big gaps	38.1%	14.3%	42.9%	4.8%	100.0%
I have no idea about this area	-	-	-	100.0%	100.0%
Total	51.5%	10.2%	36.0%	2.3%	100.0%

$Chi^2=55.672$; df=12; p<0.000

Table 43. Improvement of knowledge in the area of labour law and trade union law vs. the existence and durability of collective labour agreements (%).

Do you improve your knowledge in labour law and trade union law?	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
Yes	53.0%	10.8%	35.1%	1.1%	100.0%
No	47.5%	8.8%	37.5%	6.3%	100.0%
Total	51.3%	10.2%	35.8%	2.6%	100.0%

$Chi^2=6.295$; df=3; p=0.098

Table 44. Knowledge and improvement of knowledge in labour law and trade union law vs. the existence and durability of collective labour agreements (%).

How do you assess your knowledge and experience in the area of labour law and trade union law/do you improve your knowledge in this regard?	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
1. knowledge without gaps with knowledge improvement	66.7%	-	33.3%	-	100.0%
2. knowledge without gaps without knowledge improvement	100.0%	-	-	-	100.0%

Table 44. Knowledge and improvement of knowledge in labour law and trade union law vs. the existence and durability of collective labour agreements (%).

How do you assess your knowledge and experience in the area of labour law and trade union law/do you improve your knowledge in this regard?	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
3. vast knowledge with gaps with knowledge improvement	61.3%	13.3%	25.3%	-	100.0%
4. vast knowledge with gaps without knowledge improvement	60.0%	10.0%	30.0%	-	100.0%
5. average knowledge with knowledge improvement	44.7%	9.6%	43.6%	2.1%	100.0%
6. average knowledge without knowledge improvement	50.9%	7.5%	37.7%	3.8%	100.0%
7. low knowledge with knowledge improvement	57.1%	14.3%	28.6%	-	100.0%
8. low knowledge without knowledge improvement	28.6%	14.3%	50.0%	7.1%	100.0%
9. Other	40.0%	-	20.0%	40.0%	100.0%
Total	51.3%	10.1%	36.0%	2.6%	100.0%

Chi^2=52.001; df=24; p=0.001

Similar is the case of knowledge of economy and formal education (table 45). In this case, those trade union members who declared full knowledge of economy indicated at the same time that there is an effective collective labour agreement concluded in their enterprise.

Table 45. Knowledge of economy vs. the existence and durability of collective labour agreements (%).

How do you assess your knowledge and experience in the area of economy?	Is a collective labour agreement concluded in your workplace?				Total
	It is concluded and it is binding;	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
very high, I have no gaps	100.0%	-	-	-	100.0%
very high, but I have some gaps	76.2%	4.8%	19.0%		100.0%
neither high, nor low	48.7%	12.5%	37.5%	1.3%	100.0%
low, I have big gaps	39.6%	9.4%	45.3%	5.7%	100.0%
I have no idea about this area	33.3%	6.7%	46.7%	13.3%	100.0%
Total	51.1%	10.2%	36.1%	2.6%	100.0%

Chi^2=29.347; df=12; p=0.003

The relations discussed with the two tables presented above are relatively weak when compared with the declarations of negotiation skills (table 46). Thus, it is not only negotiation skills that are the foundation of a good agreement practice but knowledge of law and management.

Table 46. Knowledge of negotiations vs. the existence and durability of collective labour agreements (%).

How do you assess your knowledge and experience in the area of barganining and negotiations?	Is a collective labour agreement concluded in your workplace?				Total
	Is a collective labour agreement concluded in your workplace?	It was concluded but ceased to be binding;	No such agreement has ever been concluded;	It is hard to say	
very high, I have no gaps	76.9%	7.7%	15.4%		100.0%
very high, but I have some gaps	48.2%	17.6%	34.1%		100.0%
neither high, nor low	52.4%	7.1%	37.3%	3.2%	100.0%
low, I have big gaps	46.9%	6.3%	43.8%	3.1%	100.0%
I have no idea about this area	42.9%		42.9%	14.3%	100.0%
Total	100.0%				100.0%
	51.5%	10.2%	36.0%	2.3%	100.0%

Chi^2=19.571; df=15; p=0.189

Finally, we wish to present a regression model (table 47). It points to a very important role of knowledge of labour law and trade union law. It also indicates that it is not the mere knowledge improvement but possession of knowledge that is essential. Both the regression model and the previous analyses indirectly suggest that certain trade union executives declare to improve their knowledge but at the same time do not reach the adequate knowledge level and then their human capital (knowledge capital) does not affect the collective agreement practice.

Table 47. Standardised Beta regression indices for the model of relations between the presence of collective labour agreements in a company and a set of knowledge and knowledge improvement variables.

Independent variables	Dependent variable: Is a collective labour agreement concluded in your workplace?: 1=yes; 2=it used to be concluded; 3=it has never been concluded.
Country (reference – Poland) 1. Germany	-.053
2. France and Belgium	**.176****
3. Scandinavia, Denmark, Holland	-.007
4. USA and UK	-.020
5. Other countries	.026
Sector (reference – services) 1. trade	-.042
2. construction	.097
3. metal	-.084
4. food processing	-.013
1. Education (1=primary/ vocational… 4=university	.010

Table 47. Standardised Beta regression indices for the model of relations between the presence of collective labour agreements in a company and a set of knowledge and knowledge improvement variables.

Independent variables	Dependent variable: Is a collective labour agreement concluded in your workplace?: 1=yes; 2=it used to be concluded; 3=it has never been concluded.
2. How do you assess your knowledge and experience in the area of labour law and trade union law (1=high, without gaps …. 4=no knowledge)	**.196****
3. Did you improve your knowledge in the area of labour law and trade union law (1=yes, 2=no)?	.029
4. How do you assess your knowledge and experience in the area of economy (see item 2)?	.063
5. Did you improve your knowledge in the area of economy (see item 3)?	.030
6. How do you assess your knowledge and experience in the area of bargaining and negotiations (see item 2)?	-.035
7. Did you improve your knowledge in the area of bargaining and negotiations (see item 3)	.077
R2	.069

* p<0.05; ** p<0.01; ***p<0.001

Table 47 reveals a very important issue – it turns out that within the framework of our model and given all the assumptions it is based on, the change from the presence of a collective labour agreement, through withdrawal from the agreement to companies where no agreement is binding is due to an explanatory factor of knowledge of trade union members in the area of labour law and trade union law, and not necessarily knowledge of economy or negotiation skills. Thus, it plays a truly significant role when we ask about the factors due to which collective labour agreements exist and are maintained in certain companies and in other companies cease to exist or have never been concluded. What is more, the factor of labour law knowledge is reinforced by the country of origin of the capital variable and dominates over sector variables.

II.7 European Works Councils

Given that the scope of our interest are multinational corporations, most of which originate from EU countries, participation of Polish representatives in the work of European Work Councils (EWC) is not high: only 51% of trade union leaders surveyed confirm that the employees of their enterprises are represented in those bodies, 40% explicitly state that they are not represented and 8% have no knowledge of it. Among those who gave a positive answer 61% declare that they are familiar with the subject of EWC negotiations and 38% are not.

Table 48. Existence of collective labour agreements vs. participation of enterprise representatives in a European Works Council.

Is a collective labour agreement concluded?	Are you or representatives of your enterprise members of an EWC?			
	yes	no	It is hard to say	Total
yes	60.0%	33.8%	6.2%	100.0%
no	43.9%	48.2%	7.9%	100.0%

The existence in an enterprise of a collective labour agreement correlates positively with participation of Polish representatives in the works of EWC: 60% of trade union respondents representing enterprises with a collective labour agreement gave a positive answer to this issue, whereas only 44% of positive declarations were noted in enterprises without a collective labour agreement.

Table 49. Country of origin of the capital vs. participation of enterprise representatives in a European Works Council.

Country of origin of the capital	Are you or representatives of your enterprise members of an EWC?			
	yes	no	It is hard to say	Total
Germany	51.9%	40.3%	7.8%	100.0%
France, Belgium	62.5%	27.1%	10.4%	100.0%
Scandinavia, Holland, Denmark	50.0%	50.0%	0.0%	100.0%
USA, UK	69.4%	24.5%	6.1%	100.0%
Other countries except Poland	37.5%	44.6%	17.9%	100.0%
Poland	0.0%	100.0%	0.0%	100.0%

The country of origin of the capital is a variable which to some extent differentiates the level of commitment of Polish representatives in the works of EWC, but the findings obtained may be somewhat surprising: the highest percentage of positive answers (69%) was noted in enterprises dominated by the Anglo-Saxon capital (including American), second rank enterprises with the French and Belgium capital (62%) and third rank enterprises with the German capital (52%), which slightly exceed enterprises with the Scandinavian and Dutch capital (50%). In enterprises from countries not included in the above category, the percentage of positive declarations is significantly lower and amounts to 37%.

Table 50. Attitude of the management board to trade union activity vs. participation of enterprise representatives in a European Works Council.

Attitude of the management board to trade union activity	Are you or representatives of your enterprise members of an EWC?			Total
	yes	no	It is hard to say	
It supports trade union activity	75.0%	14.3%	10.7%	100.0%
It is neutral towards trade unions – it neither supports nor hiders their action	52.1%	38.0%	9.8%	100.0%
It hinders action of trade unions	43.0%	52.0%	5.0%	100.0%

A friendly attitude of the management board to trade unions has a positive influence on participation of Polish representatives in the works of EWC since as much as 75% of trade union respondents who positively assess the management in their enterprise in this regard confirm that some employees from their enterprise participated in EWC, and only 14% declare that their enterprise does not have own representatives in EWC. However, where management boards, in the opinion of the respondents, hinder trade union action, the percentage of positive indications stands at mere 43%, and half of the respondents claim that no such activity is undertaken. In enterprises whose management boards are referred to as neutral to trade unions, the percentage of positive answers as to participation in EWC stands at 52%, and 38% respondents state that their enterprise is not represented in EWC.

PART III.
FINAL REMARKS. CONCLUSIONS AND RECOMMENDATIONS

Based on an extensive study which covered respondents from 81 large private enterprises operating in Poland, and to a great extent owned by companies with foreign capital, the research team conducted a series of analyses concerning the interdependence of various factors affecting the collective bargaining practice – in particular with regard to collective labour agreements. Detailed findings are presented in individual chapters of this report.

In the summary we would like to present the key findings ensuing from the study and point to factors which in the opinion of the study team are of significant importance for development of the collective agreement practice in private enterprises with foreign capital. The summary also includes recommendations addressed to: leaders of company trade unions – that is the main actors of the negotiation process on the side of employees, and superior structures of trade unions as those instances which have adequate abilities to support and strengthen the negotiation process at company level.

A separate element are recommendations concerning possible legislative measures. We believe that the constitutional guarantee of the right to conduct collective bargaining (Article 59 of the Constitution of the Republic of Poland) means special liability of the state legislator to pave way for development of this form of dialogue between the capital and the labour.

III.1 Social aspects of trade unions in companies vs. collective labour agreements.

In order to put forward general conclusions, the study team has analysed questionnaire data broken down into internal factors, pertaining, to a smaller or greater extent, to company trade unions and being potentially under their control (they have been referred to as "endogenous") and into external factors which are beyond the direct control of company trade unions although some of them may have an influence on higher trade union structures ("exogenous" factors).

III.1.1 Endogenous factors

A. Trade union pluralism.
Studies on the social system in enterprises and relations between trade unions conducted in 1990s pointed to **negative consequences of the particularist variant or competitive pluralism existing in Poland.** In the currently analysed sample of companies, the level of trade union pluralism was relatively low (a small number of companies with more than three trade unions). When the number of trade unions was greater, it relatively often resulted in creation of coalitions of some trade unions against some other trade unions (or another union). Such situations sometimes seem to suggest intentional actions of management boards focused on disintegration of a common trade union platform and creation (support) of disintegrating trade unions. **Companies where two trade unions operated, created the most favourable social climate for concluding agreements. Where there were three or more trade unions, functioning and durable collective labour agreements were less common.**

There was a strong positive correlation between the cooperation of all trade union organisations operating in an enterprise and the existence and durability of CLAs. Such a cooperation of all trade unions was the factor which allowed for overcoming the possible negative approach of management boards to trade unions and to CLAs. It may be assumed that it is sufficient for one trade union organisation not to join a common platform for the effect described not to take place.

A1. Economic mentality vs. chances of a common trade union platform.
An important correlation of the problem of trade union plurality is the mentality of management circles of NSZZ 'Solidarność' and trade unions belonging to the All-Poland Alliance of Trade Unions, which was found in the study. It is worth noting that the studies conducted 20 years ago pointed to a significant difference between the company leaders of both trade unions with regard to the vision of well-managed economy. The hitherto differences in opinions were based in a different economic culture, in the scope

which may be referred to as axio-normative. Contrary to a common belief, those differences to some extent affect the possibility to enter into permanent compromises, also with regard to solutions to specific economic issues. **Current studies prove that despite preservation of strictly ideological differences between management circles of NSZZ "Solidarność" and the All-Poland Alliance of Trade Unions, the economic culture no longer divides them, a fact that increases the chances of building permanent trade union agreements referring to the company reality.**

B. Relations of trade unions and management boards of companies.
According to trade union members, the management boards were in most cases neutral about trade union activity (58%), 14% claimed that management boards supported trade union activity and 27% that management boards hindered it. Relations between trade union executives and the attitude of management boards to trade unions were significantly correlated: **where trade union executives cooperated, management boards often had a positive or neutral attitude to them** (however, there are no basis to resolve whether there is any causal link and what nature it has). On the other hand, management boards hindered actions of trade unions more often where executives failed to cooperate. There was a strong correlation between the relationship of management boards and trade unions as well as the existence and permanence of CLAs: **in enterprises where the management board hindered actions of trade unions, the percentage of agreements was significantly lower than where the management board supported trade union activity or was neutral about it.**

C. Trade union membership level in companies.
A factor which is strongly correlated with the attitude of management boards to trade unions is the rate of membership in trade unions of employees. According to the respondents, an optimum percentage of trade union members was between 51% and 70%. In the group of companies where the percentage did not exceed 25%, only 19.8% of trade union members mentioned a concluded agreement. With the increase in the number of employees being members of trade unions, the percentage of concluded CLAs linearly increased. In the case of the highest percentage of employees being members of trade unions, as much as 86.2% of trade unionists pointed to conclusion of a CLA.

D. Bargaining manner and experts.
The manner of negotiating CLAs affected the existence and durability of agreements. Durability of CLAs was greatest when both parties, employers and trade unions, accepted the agreement proposals. Agreements were more durable in enterprises where both trade unions and management boards had third party experts and when those experts played an important role in the collective bargaining process.

E. Relations between trade union executives and the content of agreements.
In order to assess the quality of collective labour agreements concluded, the study team adopted as its index introduction in the content of agreements two elements referring to: stability of employment (the provision on the period after the lapse of which an employment agreement for a definite term is to be changed into an agreement for an indefinite term) and the provision on the minimum remuneration in a company (whether it is higher than the statutory one). Also, five other significant provisions, which were sought in the content of agreements, were emphasised, yet they are of secondary importance. It was assumed that differences in the content of CLAs would follow the same logic as the existence and durability of CLAs: the higher the CLA existence and permanence level, the greater the frequency of the two provisions referred to above. We took into account the country of origin of the capital, the sector, the trade union membership rate, the number of trade union organisations in a company, the attitude of management boards to trade unions and the level of cooperation of trade union executives. The impact turned out to be weak and difficult to interpret, in most cases below the statistical significance level. It is worth mentioning only the impact of cooperation of trade union executives. **Where all the trade unions cooperated, first of all, trade unionists indicated that in their CLA there is a provision on changing agreements into agreements for an indefinite term (25.8% of them) more often than trade unionists from those companies where there was no cooperation or the cooperation was only between some trade unions (14.3% and 15.%, respectively). Similarly, in the group of enterprises where all trade unions cooperated, the inclusion in the CLA of a provision on remuneration higher than the statutory minimum remuneration (45.5%) was more often indicated than where only some trade unions (38.9%) cooperated or where no cooperation was observed (35.7%).**

F. Knowledge of members of trade union management boards of labour law and trade union law vs. the existence and permanence of CLAs.
The education hypothesis assumed a positive correlation between the formal level of education of members of commissions and management boards of trade union organisations and the existence and durability of CLAs. That hypothesis was not confirmed. The level of formal knowledge, even at the master level, did not affect the collective agreement practice. Nevertheless, it was shown that this practice was strongly affected by knowledge of labour law and trade union law, less by knowledge of economy and the skill to conduct negotiations. Improving knowledge of law as such (without achieving a properly extended knowledge level) was insignificant. What is more, sound knowledge of labour law and trade union law showed to be a factor which determines most the existence and permanence of agreements from among endogenous and exogenous factors.

III.1.2 Exogenous factors

A. Country of origin of the capital.
With one exception, the study showed no differentiation of the impact on the collective agreement practice that could be the result of different labour relations in the countries of origin of a given corporation. The exception mentioned was the impact of the capital originating from the Anglo-Saxon countries (USA, UK), which in different analyses continued to negatively affect the attitude of management boards to trade unions[114]. In the case of other countries of origin of the capital, the existence of such relationship – that is adopting the cultural model of labour relationships from the country of origin of a corporation – was not established. More interestingly, **negative attitude to trade unions of management boards of enterprises with Scandinavian capital is clearly observed in the studies, which would point to the fact that what is adopted in Poland is the opposite of the Scandinavian type of employment relations.**

B. Sector.
The sector variable strongly influenced the situation of trade unions and the existence and durability of agreements. There are sectors where the activity of trade unions is hindered and such sectors where trade union members rarely declare negative attitude of management boards to unions. Higher indications to the best climate of relations of management boards with trade unions were noted in the construction and wood sector, services of general interest and food processing sectors. Lower indications were discovered in the metal sector, and the lowest - in trade.

C. Impact of decision making centres and management recruitment.
Management boards more often supported or remained neutral towards trade unions in those enterprises where decisions were taken in foreign headquarters but in cooperation with Polish management boards and taking account of their ideas and remarks (53%), however, when decisions concerning a company were made only abroad (and were not dependent on the Polish management board in any way), the policy of management boards towards trade unions was least favourable, and management boards hindered actions of trade unions most. The impact of the recruitment channel for managerial positions should also be noted. The relations between management boards and trade unions were best where most of the positions were taken by managers recruited by the Polish subsidiary company but from a group of international candidates.

D. Crisis.
An impact of crisis on relationships between management boards and trade unions was noted, and by such an impact on the existence and permanence of agreements. Very good financial standing of an enterprise was most favourable to negotiating collective agreement agreements, in particular when initially a company felt negative impact of the crisis and in the period when the study was conducted the situation improved (68%).

[114] The differences we noted proved that there is no common pattern of employment relationships which is used in Poland by foreign corporations and which uniformly affects the practice. Also, the hypothesis that employment relationships in Polish subsidiary companies were shaped in accordance with models of relationships observed in the countries of origin was not proven (except the Anglo-Saxon capital).

III.1.3 Key factors (regression models)

We applied a few models of regression. Two of them provided information significant for the examined problem.

The first regression model referred to the attitude of management boards to trade unions and covered the countries of origin of the capital, the sectors, the number of trade unions active in a given company, the percentage of members of trade unions in the total number of employees (unionisation level) and relations between trade unions and management boards. **The model showed that, according to the surveyed trade union members, the attitude of management boards to trade unions depended first of all on the origin of the company capital (a negative factor in the capital came from Anglo-Saxon countries) and on the percentage of trade union members in the staff (the higher the percentage, the more positive the attitude) The capital coming from Scandinavian countries was the third (negative) factor, followed by the number of trade unions operating in a given company (the smaller the number, the more positive the attitude).**

The other model referred to the existence and the durability of agreements and covered, apart from the above variables, also educational variables (the formal level of education, the knowledge of labour law and trade union law, economy and negotiations as well as improving expertise inc those areas). In this case, **the existence and durability of agreements were mostly affected by sound knowledge of trade union members in the area of labour law and – to a lesser extent – the country of origin of the capital.**

III.1.4 Key recommendations

The study conducted in the discussed area allowed for differentiation of interconnected features which had an impact on the agreement practice and could be shaped by trade unions. **The most important is sound knowledge of labour law and trade union law. The need to improve expertise in this field by competent leaders is to be emphasised, which is connected with the need to develop professional training modules allowing for permanent education. A proper manual should be prepared and a training system terminating with an examination should be developed (members of trade union executives should be adequately motivated to this).**

At the same time, three goals should be attempted: increasing the number of trade union members (overcoming separatists tendencies – if observed in organisations, and the study shows that they exists), **developing a common, preferably institutionalised, platform of representation of the staff in front of the management board in employee cases** (overcoming particular interests of trade unions) **and avoiding unnecessary conflicts with management boards.**

III.2 Recommendations resulting from the analysis of the organisational culture in enterprises

The analysis of the organisational culture supported the conclusions drawn from previous analyses, and added a new one referring to the opposition between the democratic and the autocratic management styles.

A. Efforts to promote collective bargaining should be intensified in enterprises referred to as democratic by trade union leaders, as they create more favourable conditions for development of collective agreement.

B. The analysis of the organisational culture confirmed lack of clearly interpretable relationship between the agreement practice and the country of origin of the capital. This is to suggest that multinational companies in Poland often make a free (opportunist) adaptation in the external surrounding: they are able not to bind themselves by additional obligations. **To a large extent, incentives to conclude collective agreements, consent to conclusion of agreements and possibly the decision to oppose collective agreements, lies in the hands of the company (particularly the parent company).** Thus, it is advisable

to exert pressure on an international forum (this particularly pertains to EU Member States) and to refer to international trade union solidarity so that parent companies in particular from countries with prevailing corporatist-type industrial relations (Germany, Scandinavian countries) attached greater importance to adaptation of positive patterns applied in the country of origin in foreign subsidiary companies.

C. The organisational culture of enterprises shows the features of paternalism which is not a circumstance favourable to employee participation. In consequence, **trade unions, in order to promote collective bargaining, should focus on promoting participation models in management, in particular in those enterprises that are more inclined to manage by participation in their countries of origin;** in order to achieve this goal it is recommended to activate cooperation between trade unions in the entire corporation as well as to use multinational institutions of social dialogue in enterprises, above all in European Work Councils or similar bodies, if they exist in a given enterprise. It is obvious that in case of no Polish representatives being members of an active EWC, their joining a council should be sought.

D. The analysis of the organisational culture supports the conclusion drawn from the analysis of relationships between trade unions and management boards of enterprises. **Autocratic management is conducive to following the 'divide and rule' policy as a result of which (in the conditions of trade union pluralism) individual trade union organisations are tempted to commence interactions with the management board individually so as to secure interests of the groups of employees they represent. Thus, company organisations are particularly advised to be sensitive to actions of employers targeted at antagonising trade unions.**

III.3 Recommendations concerning general trade union strategies[115]

An image of highly uncoordinated and dispersed collective bargaining transpires from the study and expertise of the research team. It constitutes a serious threat to trade union movement due to the **common tendency of multinational corporations to include trade unions in building competitiveness of an enterprise at the expense of supra-company (sectoral) solidarity.** Thus, it is necessary to voice general (operational) negotiation demands and suggested negotiation areas at higher levels of trade union structures. In order to achieve that, the following actions are to be considered.

A. Annual preparation of a coherent and framework suggestion of the goal to be achieved in the course of co-ordinated collective bargaining at the sectoral level and then - individual enterprises;

B. Due to the fact that in the current state of affairs it would be very difficult to achieve effective coordination concerning demands connected with an increase in remunerations, in order **to activate the coordination mechanism, one could start with determination of non-remuneration demands for a given year** (negotiating solutions in the field of work-life balance and solutions directly addressing the persons taking care of small children or employees aged over 55).

C. Development of a system of collection of information on already negotiated solutions in a given area and building databases of collective labour agreements in a given sector by higher trade union organisation levels. This is to identify good practices which could be used by trade union organisations joining negotiations.

D. Collection of information on negotiation effects in given sectors/enterprises (e.g. after 12 months). Although the study have revealed that trade unions discuss the socalled new negotiation areas (such as e.g. age management), it clearly transpires from the document analysis that it does not translate into any binding regulations.

E. Sectoral trade unions organisations affiliated at European level should assist their company trade unions existing in subsidiaries of multinational corporation in obtaining data concerning the effects of collective bargaining in other subsidiaries abroad, in particular in the parent company.

[115] Most of the recommendations addressed to trade unions are devised for structures higher than company organisation (sectoral organisations and trade union central offices).

III. 4 Legislative recommendations

It is to be pointed out that any effort of trade unions aiming at strengthening and development of the collective bargaining practice in private companies, even if they are made taking account of the recommendations put forward above, require the existence of "friendly" legislative environment. By such environment we mean adaptation of the existing legal regulations which are conducive to conducting collective bargaining and which will allow for achievement of results which are effective and satisfactory for both parties. Based on the interviews with trade union leaders and executive representatives conducted as part of our study, we present for consideration possible legislative amendments in the following areas.

A. Creating the possibility for not applying the benefit principle defined in part XI of the Labour Code, but solely in the case of collective labour agreements without allowing for any loopholes supporting on an ad hoc basis the appointed representative of employees. Any possible "deterioration" of standards ensuing from the effective labour law is to occur only with the consent of representative trade unions.

B. Supporting the bargaining rights of company trade unions which are of representative nature. Although inevitably it shall limit the rights in this respect of small trade unions which are not representative, it shall also contribute to strengthening of the bargaining power of labour representation as such.

C. Strengthening of the rights of trade unions to acquire information concerning the financial standing of an enterprise by specifying Article 28 of the Act on trade unions. This article reads that an employer shall provide, at the request of a trade union, information necessary to conduct trade union activity, in particular information pertaining to the conditions of work and the terms and conditions of remuneration. This practice shows that determination of the scope of information pertaining to the financial standing of an employer to be provided for trade unions is a common subject of dispute between the employer and representatives of employees. It is to be noted that access to information is key for conducting professional actions by trade unions.

D. A significant amendment to the provisions pertaining to extension of collective agreements, including introduction of the possibility to extend the provisions of a collective agreement onto another company (another employer) of the same owner. This is particularly important in the case of multinational corporations which have branches with different numbers of trade union members and as such different negotiating power of employees in individual branches. The possibility to extend also specific collective agreement should be considered, which do not pertain to classic issues but new negotiation areas such as work-related stress, work-life balance, long-life learning and management of employees aged over 55, which is particularly important in view of Polish demographic situation.

III. 5 Summary

The results of the suggest that **the prerequisite for the existence and durability of collective agreements in private enterprises is competence, strength, unity of trade unions organisations which are the basis for shaping – if possible and to the extent possible – relationships with management boards which are permanent and devoid or almost devoid of conflicts.** It could be stated that this conclusion and those recommendations are not new. However, they are important as they ensue from the analysis of empirical material and are the result of a questionnaire conducted in the group of trade union members only. It may be stated that our respondents themselves characterised the reasons for which CLAs concluded at company level are less popular with Polish companies than they could be, even taking account of exogenous restrictions.

One should remember the following complementary conditions for ensuring development of collective bargaining at company level: **coordination at higher levels,** indispensable in the case of no sector point of reference in negotiations, and international cooperation (within EWCs), because, as we have found out in the study, multinational companies from the EU do not spontaneously implement positive patterns of dialogue characteristic of the labour relationships in their countries of origin[116].

And the last element which is still missing - a state favourable to the idea of autonomous collective agreements, which should manifest itself in an active promotion of this form of relations between an entrepreneur and a representation of employees as well as in lifting legal barriers which hinder its development.

[116] Which is in line with the findings presented in the report of the European Commission "Industrial Relations in Europe 2012".

APPENDIX

List of enterprises participating in the study

The companies whose trade unions have provided the research team with negotiating texts to analyze their content are marked in bold.

	Company name	Owner/parent company
Food processing sectors and related sectors		
1	**Grupa Żywiec**	Heineken N.V.
2	**Winiary Nestle Polska Kalisz**	Nestle
3	**Philip Morris Polska Kraków**	Philip Morris International
4	Jutrzenka Colian – Kalisz	Grupa Colian
5	**Danone Polska - Warszawa / Bieruń**	Danone
6	ZM Morliny	Smithfield Foods –Animex Group (taken over by Shunaghui International Holdings since June 2013)
7	**Lotte Wedel Warszawa**	Lotte
8	**SM Polmlek Maćkowy**	Grupa Polmlek
9	**Alima Gerber Rzeszów**	Nestle
10	**ZM Koło (grupa Sokołów)**	Saturn Nordic Holding
11	**Agros-Nova Łowicz**	Agros-Nova (owner: investment fund – IK Investment Partners)
12	**Stock Polska/Polmos Lublin**	Stock Spirits Group (portfolio group of the investment fund Oaktree Capital Management)
13	**Lajkonik Snacks Skawina**	Bahlsen GmbH
14	**Kraft Foods Polska Jankowice**	Kraft Foods
15	ZT Kruszwica	Bunge
16	**Dr Oetker Polska Gdańsk**	Dr Oetker
17	ZPC Mieszko Racibórz	Grupa Mieszko (owner: investment fund – EVA Grupe)
18	Kompania Piwowarska	SABMiller
19	Bonduelle Gniewkowo	Bonduelle
20	**Unilever Poznań**	Unilever
21	Polmos Białystok	Grupa CEDC (taken over by Russian Standard Corporation since June 2013)
22	**Cukrownia Ropczyce**	Südzucker
23	Mars Polska Sochaczew	MARS Incorporated
24	Coca-Cola Radzymin	Coca Cola HBC
25	Sonoco Poland Packaging Łódź	Sonoco
Automobile and electro-mechanical sector (metal)		
1	**Volkswagen Poznań**	Volkswagen
2	**GM Manufacturing Poland (Opel Gliwice)**	General Motors
3	Volvo Polska Wrocław	Volvo
4	**MAN Bus Starachowice**	MAN SE
5	**Polar Whirlpool Wrocław**	Whirlpool Corporation
6	Flextronics International Poland - Tczew	Flextronics International
7	**TRW Steering Systems Poland Czechowice-Dziedzice**	TRW Automotive
8	LG Display Poland - Biskupice Podgórne	LG Display
9	Indesit Company Polska – Łódź	Indesit Company
10	Alcatel-Lucent Polska – Bydgoszcz	Alcatel - Lucent
11	**Autosan Sanok**	since October 2013, the company put into liquidation, formerly owned by Sobiesław Zasada SA
12	**Toyota Motor Industries Poland - Jelcz**	Toyota Motor
13	**Zelmer Rzeszów**	listed company (since March 2013 taken over by BSH)
14	Electrolux Poland – Siewierz	Electrolux

15	**WABCO Polska –Wrocław**	WABCO
16	Federal-Mogul Bimet Gdańsk	Federal-Mogul
17	**GE Power Controls Bielsko Biała**	General Electric
18	Bombardier Transportation (ZWUS) Polska - Katowice	Bombardier Transportation
19	**Fiat Auto Poland**	Fiat
20	Turbo Care Poland –Lubliniec	Siemens
Construction and wood sector		
1	Skanska – Gdańsk	Skanska
2	**Bilfinger Infrastructure**	Bilfinger
3	Hochtief Polska	Hochtief
4	Cementownia Chełm	CEMEX
5	**Lafarge Cement Małogoszcz**	Lafarge
6	**Dyckerhoff Polska Nowiny**	Dyckerhoff
7	**Lhoist Bukowa**	Lhoist
8	**Hydrobudowa Gdańsk**	Polish private investors
9	**Pfleiderer Prospan Wieruszów**	Pfleiderer
10	**Swedwood Poland**	Swedwood
11	Dovista Swarożyn	Dovista (VHR Group)
12	**Kronopol Żary***	Swiss Krono Group
Trade		
1	Auchan Polska	Auchan
2	Biedronka	Jeronimo Martins SGPS
3	**Tesco Polska**	Tesco
4	**Jysk**	Jysk
5	Carrefour Polska	Carrefour
6	**Praktiker Polska**	Praktiker
7	**Statoil Poland**	Until June 2012 – Statoil, at present: Alimentation Couche-Tard
8	**Leroy Merlin Polska**	Leroy Merlin
9	**Makro Cash&Carry Polska**	Metro
10	**H&M Kórnik**	H&M
11	**Decathlon***	Decathlon
12	Kaufland Polska	Kaufland
13	**Real Polska**	Real (currently undergoing takeover by Auchan Group)
14	Lidl Polska	Lidl
Services of general interest		
1	**EDF Wybrzeże SA**	Electricite de France
2	**Elektrownia Rybnik**	Electricite de France
3	**GdFSuez Energia Polska (elektrownia Połaniec)**	GdF Suez
4	**Veolia Transport Polska**	Veolia Transport (since May 2013 Polish subsidiary acquired by Arriva /Deutsche Bahn)
5	SITA Głogów	Suez Environment
6	**Saur Neptun Gdańsk**	SAUR
7	RWE Stoen Operator	RWE
8	Dalkia Poznań	Veolia Environment
9	GPEC Gdańsk	Stadtwerke Leipzig GmbH
10	**Fortum Power and Heat Polska - Wrocław**	Fortum
11	WPO ALBA – Wrocław	ALBA Group

*companies that provided negotiation documents, but in which no interview with union leaders was carried out.

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