CHAPTER 5

Instability Despite Consensus: The reversal of private pensions in Poland

(Final draft)

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Introduction

Since the fall of the Iron Curtain in 1989, old-age social insurance has been almost constantly on the agenda of Polish policymakers. It has followed a "modernization" path that closely resembles, both in process and outcome, that of several Continental Western European countries, which departed from their Bismarckian roots and entered an "age of dualization" at the beginning of the 21st century (Palier, 2012; Emmenegger et al., 2012).

Given the severe mismatches between the skills of workers employed during socialist times and the needs of a market economy, Poland embarked on a labour-shedding path in the early 1990s, which soon exposed its retirement system to growing fiscal imbalances. Since then, dualization has been swiftly introduced through labour market reforms that have thoroughly liberalized flexible types of employment (Poland ranks among the EU Member States with the highest share of fixed-term contracts). Standard Employment Relationships (SERs) are now often denied to the young, the unskilled, and women.

Moreover, the perpetuation of the insider–outsider cleavage in social policy has happened, *in primis*, through the radical 1999 pension reform (called "Security through Diversity") that replaced the unsustainable mono-pillar PAYG system with a second generation multi-pillar design. This entirely individualizes pension benefits through the two defined-contribution tiers (one PAYG, one funded) that constitute the compulsory part of Polish retirement insurance, a proper path-switch in Ebbinghaus's (2005) terminology.

Even though the new system aimed to guarantee fiscal neutrality and political sustainability (its introduction was a rare instance of consensual decision-making in post-socialist Poland), a number of problems emerged. First, the differential statutory retirement age of men and women was both fiscally untenable, given the negative demographic outlook, and discriminatory towards women, whose pension benefits would not suffice for either income maintenance or poverty alleviation. Second, the spread of atypical, precarious and

informal employment increased the risk for a large segment of the population of accumulating insufficient social security contributions. Third, unexpected deficits in the Social Insurance Institution (ZUS), and inattentive planning of how to deal with transition costs arising through the Financial Defined Contribution (FDC) tier, raised concerns about the fiscal sustainability of the new pension system.

Two of these problems have been tackled during the premiership of Donald Tusk, thereby substantially reducing the fiscal pressure generated within the pension system. During 2010–14, the statutory retirement age was lifted and equalized at 67, the contribution flowing into the funded tier was reduced and, even more controversially, the Open Pension Funds (OFEs) were partly overhauled. Part of their assets (treasury bills) were seized, the funds are now barred from investing in government bonds, and their members had to state in writing whether they still wished to be privately insured or not. Tusk used the global financial crisis as an excuse, and his re-election (a first in Polish post-1989 history) as leverage. These changes substantially altered the Polish pension system, and their democratic legitimacy, owing to their unilateral adoption, is more than questionable. Even though a definitive Hungarian-style renationalization has not been pursued yet, the populist inclinations of the recently elected Law and Justice party (Prawo i Sprawiedliwość, PiS) do not bode well.

Despite the reforms, Poland still is in a similar situation to some Western economies. Labour market segmentation has not been treated as a priority area of intervention, and may soon lead to looming problems of poverty in old age. Additionally, the social partners (especially the unions) have been progressively excluded from pension-related decision-making and deprived of any significant managerial role in the new system. Both developments (the deepening of the insider–outsider cleavage and the Polish government's unilateralism) hence raise deep concerns over the political sustainability of the last wave of reforms.

The chapter proceeds as follows. In the first section, it illustrates the "modernization" of the Polish pension system from its socialist-Bismarckian roots to dualization and the latest crisis-driven reforms. The second section analyses in detail the sustainability of the Polish pension system, both financial and social, in terms of the current demographic challenges, the interaction with labour market flexibilization and the impact of the financial, economic and debt crises. The third section focuses on the role played by the unions in Polish pension politics, thereby denouncing the circumvention of the social partners from reforms that would require extensive social pacting. The fourth section concludes.

1. Pension reforms from the fall of socialism to the Great Recession

1.1 A Bismarckian system under socialism

Polish old-age retirement fitted well with Inglot's (2008) description of a socialist pension system. It consisted of three layers. The Bismarckian core was retained. Retirement was based on the constitutionally guaranteed right to work, only the traditional white- and blue-collar categories were replaced by new ones in 1954. First-category workers performed heavy and unhealthy jobs, deemed as relevant to the advancement of socialism. Second-category workers were entitled to lower benefits and retired later.

The post-war socialist social solidarity layer consisted of a single-pillar PAYG system, which gradually increased its coverage during the 1960s, culminating with the creation in 1977 of a separate scheme for farmers (Rzegotka and Sroka, 2005). Even though the defined-

benefit formula was generous, it was degressive with income. Moreover, insufficient indexation generated the so-called "old pension portfolio" problem, requiring pensioners to engage in informal work (Müller, 1999: 96). Early retirement increasingly became the norm: the turbulent 1980s saw the flourishing of all sorts of special retirement rights and the average effective retirement age decreased by almost six years during 1978–92 (see Żukowski, 1996).

The final layer of Polish retirement was the monolithic public administration that embodied the imported Stalinist centralization. The Social Insurance Institute (Zakład Ubezpieczeń Społecznych, ZUS) was almost uninterruptedly in charge of the pension system following its foundation in 1933.

1.2 *From timid reforms to radical restructuring*

Thus, democratic Poland inherited a complex pension system in constant need of refinancing: contribution rates reached an unsustainable 45 per cent of total payroll in 1990. Various emergency measures during the transformational recession (for details see Aleksandrowicz, 2007) resembled the Western European labour-shedding strategies of the 1970s (cf. Palier, 2012). Redundant workers became unemployed, entered the informal economy, or were forcedly retired. The result was that contributors fell by some 15 per cent and retirees increased by 38 per cent during 1990–2000 (Guardiancich, 2012a: 154). Contribution evasion, under-reporting and periodical write-offs of arrears resulted in ZUS running deficits as high as 6 per cent of GDP in 1992–4 (Chłoń-Domińczak, 2004: 183–91).

It is surprising that during such an emergency average replacement rates rose until 1995. The staunch opposition to pension cuts of the two main trade unions, Solidarność and the successor All-Poland Alliance of Trade Unions (OPZZ), is possibly the best explanation (Ratajczak, 2005: 187–9).

Despite some rationalization, the structure of the Polish pension system was unsustainable. First, the general social insurance system covering employees was insufficiently reformed in 1991. Not only the new formula (for details see Chłoń et al., 1999: 7) increased benefits to almost 70 per cent of pensioners, but also the effective retirement age did not abate, owing to a lack of decrements. Since contributions were uncapped, as opposed to pensions, evasion among high-earners was common.

Second, the large Polish agricultural sector was covered by ZUS until 1991, when the Farmers' Social Insurance Fund (Kasa Rolniczego Ubezpieczenia Społecznego, KRUS) was established as a separate entity. In addition to being difficult to reform – farmers represented an important constituency for the Polish People's Party (PSL), for the Democratic Left Alliance (SLD) and for various compositions of Solidarność – KRUS was less a social insurance fund than a tax-financed social assistance scheme that cost the taxpayer 2 per cent of GDP per year (Chłoń-Domińczak, 2004: 160–2).

Third, certain categories of employees (military forces, the police, judges and prosecutors, etc.) were covered by separate, entirely tax-financed security provisions that applied very favourable retirement rules.

As the system was financially unsustainable, subsequent Polish governments tried slowing down early exit and reducing indexation. The main provisions, which arbitrarily reduced the assessment base from 1992 on, were swiftly struck down by the Constitutional Court, which

demanded structural reforms. The time became ripe for "Security through Diversity" (Office of the Plenipotentiary, 1997).

1.3 *Security through diversity*

The 1999 Polish pension reform was the most radical in the region, an archetypical instance of path-switch (Ebbinghaus, 2005). A second-generation multi-pillar design replaced the single-pillar PAYG system. The compulsory part consists of a public PAYG Notional Defined Contribution (NDC) tier, and private fully-funded Financial Defined Contribution (FDC) plans. Voluntary pension schemes and a tax-financed basic safeguard complement the two. This means that the whole Polish pension system now operates according to a defined-contribution logic.

The NDC tier is managed by ZUS, which collects contributions, administers the individual accounts and pays out the annuities. Overall contributions to old-age insurance are 19.52 per cent of gross wages (non-standardized), split equally between employer and employee. For fiscal reasons, since March 2011 the contributions flowing to the second FDC tier decreased from 7.3 to 2.3 per cent, to be raised to 3.5 per cent in 2017. Contributions are capped at 250 per cent of the base amount and build the notional capital, whose accrual rate is 100 per cent of real wage bill growth.

The statutory retirement age has been raised a number of times. After 1999, it had to reach 60/65 for women/men by 2014 (discriminatory, and undermining the income maintenance function of the pension system for women; for details see Barr, 2012). By 2012, the retirement age for men and women was finally equalized at 67: it gradually increases three months per year, so that the target will be reached for men by 2020 and for women by 2040.

Annuities are based on unisex life expectancy tables, which implies substantial redistribution from men to women (the difference in life expectancy at retirement is more than 10 years). Indexation is mixed: 20 per cent wages and 80 per cent prices. In 2011, there were 14.7 million contributors and 7.4 million beneficiaries (4.97 million receiving old-age pensions, 1.17 million disabled and 1.27 million survivors).

By December 2013, the FDC tier consisted of thirteen mandatory, private and fully-funded Open Pension Funds. Upon entering the labour market, new employees choose the OFE, otherwise they are assigned through a lottery. Before having part of their assets seized – again, a consequence of crisis-related measures – and members being permitted to leave for ZUS, OFEs had 16.38 million members and managed net assets worth PLN 299 billion, around 18.4 per cent of GDP. OFEs are managed by separate legal entities, the Pension Fund Societies (PTEs). The Financial Supervision Authority (KNF) supervises, while ZUS collects and allocates contributions. OFE fees are capped by law and on retirement; insured persons purchase an annuity from private insurance companies.

In addition to compulsory insurance, Polish policymakers introduced voluntary occupational and individual pension plans: Employee Pension Programmes (PPEs) and Personal Pension Accounts (IKEs). Despite various, but clearly insufficient, tax exemptions, neither pillar has proven to be popular in Poland. This is not surprising: OFEs have simply crowded them out.

A crucial question is how the social partners assented to such radical reform. As “Security through Diversity” has been extensively analysed elsewhere (Guardiancich, 2012a; Orenstein, 2000; Müller, 1999), it is worth highlighting only the main points.

First, in mid-1997, public opinion surveys indicated that a vast majority of respondents favoured accumulation in individual accounts, a tighter cost–benefit and funding (see Chłoń, 2000). Attaining high replacement rates through funding convinced the labour unions Solidarność and the OPZZ, albeit for different reasons. Solidarność championed a popular form of capitalism, hoping that shares of state-owned firms would be assigned to OFEs. OPZZ was more sceptical and agreed in order to maximize its leverage in tripartite negotiations.

Second, carefully crafted quid pro quos shielded some of the unions’ constituencies and pushed everyone else into a fiscally sustainable, but hardly generous new system (Golinowska and Żukowski 2007: 10–11). Entirely consistent with an insider–outsider reform logic and the ageing membership of the unions, workers older than 50 were exempted from joining the system. Affiliation was voluntary for the 30–50 age bracket and compulsory for younger ones. As the objective was to reform old-age pensions, the status quo was maintained for several narrow interest groups. Disability pensions and KRUS were excluded from reforms, a concession to the rural electorate of PSL and of parts of SLD (Armeanu, 2011: 53–4; Thompson and Price, 2009: 146). Tax-financed security provisions for uniformed services, prosecutors and judges were maintained. Granting bridging pensions (early exit financed by employers) was crucial to convincing the miners.

Third, the three Plenipotentiaries for Pension Reform (Andrzej Bączkowski, Independent, Jerzy Hausner, SLD and Ewa Lewicka, Solidarność) crafted a relatively successful cross-parliamentary deal between social-democratic and conservative forces.

1.4 *The impact of the crisis*

Apart from a number of drawbacks, for example the exclusion of miners from the system as a consequence of delays in approving the bridging pension laws, the new NDC/FDC pension system ran relatively smoothly until the global financial crisis broke out.

In 2009, Poland was the only European country that did not experience a recession, but only a slowdown in economic growth (to 1.9 per cent), also due to the skilful use of various stimulus packages. Even though the Polish fiscal position was still favourable compared to that of other Member States, it deteriorated during the crisis: deficits were consistently above 3 per cent of GDP (reaching almost 8 per cent in 2010) and led to an increase of public debt of *circa* 10 percentage points (from 45.0 to 55.6 per cent of GDP in 2007–12).

As several scholars (Drahokoupil and Domonkos, 2012; Naczyk and Domonkos, 2015) have explained, a good chunk of the deficits derived from the transition costs were incurred through OFEs. Despite initial projections that the funding gap would not have exceeded 1 per cent of GDP, a number of factors contributed to almost doubling the figure: a greater-than-expected number of people choosing to avail themselves of the FDC tier; lower-than-expected privatization revenues; and persisting deficits in ZUS due to unexpected developments (revenue losses as a result of uniformed services and miners excluded from the general system, higher indexation, a decrease in contributions for disability insurance) (Égert, 2012). So, a third of the Polish public debt has its origin in the transition costs of the FDC tier as well

as in the deficits of ZUS and KRUS (Wojciechowski and Rzońca, 2010). Even though the deficits of the general insurance scheme will be absorbed in the long term, owing to the NDC formula, budgetary transfers to ZUS (for the public pillar only) averaged 2.4 per cent of GDP in 2006–10. The subsidies to KRUS have somewhat stabilized at 0.3 per cent of GDP.

Since the EU did not (entirely) allow for the exclusion of transition costs from its deficit convergence criterion, the Council of the European Union initiated an Excessive Deficit Procedure in July 2009, given the worsening of the Polish debt-to-GDP and deficit-to-GDP ratios. Moreover, Poland had a self-imposed Constitutional intermediate debt ceiling of 55 per cent of GDP.

The main priority of Donald Tusk's Civic Platform (Platforma Obywatelska, PO) centre-right government shifted from the preservation of jobs to the consolidation of public finances. As tripartite social dialogue became a nuisance (Guardiancich and Pliszkiewicz, 2013), the government started disregarding the social partners' opinions during the second part of the crisis. In addition, the PO-PSL coalition (Civic Platform and the Polish People's Party) was re-elected in October 2011, giving the executive further leeway to act unilaterally.

In order to rein in public spending on pensions, Tusk's governments temporarily reduced the contributions flowing to OFEs, raised and equalized by statutory retirement age at 67 for all, and, finally, raided part of the private pension fund assets (government bonds) as well as asking OFE members to choose whether to maintain private insurance or be hauled back to ZUS only. Instead of recalling the whole political process (see e.g. Guardiancich and Pliszkiewicz, 2013), here I will focus mainly on the role played by the social partners.

The reform of the FDC tier is usually a technical matter; nevertheless, the reduction of contributions was very controversial. Owing to internal strife, the Government slowly reneged on its commitment to OFEs as a consequence of their poor performance (Cienski, 2010).

The employer associations (PKPP Lewiatan, the Business Centre Club and the Employers of Poland), the business world, for example the Polish Chamber of Pension Funds (Izba Gospodarcza Towarzystw Emerytalnych, IGTE), and some members of the Government (the Prime Minister's Chief Economic Advisor Michał Boni) criticized the reform proposal. The influential Civil Development Forum (Forum Obywatelskiego Rozwoju), founded by former Minister of Finance Leszek Balcerowicz, described it as an attempt to liquidate the second pillar.

The unions were divided. Solidarność criticized the proposed cuts as a short-term measure to thwart the deficit. OPZZ, instead, supported the idea that employees should be allowed to choose whether to invest in OFEs or leave their contributions in ZUS. Finally, public opinion opposed the cuts, as only 21 per cent of survey respondents supported the reform package (Guardiancich, 2012a; Wojciechowski and Rzońca, 2010; Mrozowicki, 2011; Rae, 2011).

Notwithstanding this, the Minister of Finance Jacek Rostowski endorsed the return of contributions to the state budget to amend the fiscal overruns during the crisis, and was soon joined by Prime Minister Tusk. Since March 2011, the contributions flowing to OFEs decreased from 7.3 per cent to 2.3 per cent, to be raised to 3.5 per cent in 2017. The remainder is transferred to individual accounts within ZUS, with a return indexed to the average nominal GDP growth during the previous five years (ignoring eventual slumps).

In addition, the law introduced some changes to OFE investment limits: an incremental rise in equity from 40 per cent in 2010, by 2.5 per cent per annum, until 62.5 per cent in 2020, without raising the 5 per cent cap on foreign investments. (Tusk deemed this essential for the

security of the system.) Despite capped OFE fees and centralized collection reducing administrative expenditures, the new law banned transfer fees levied on savers switching between OFEs and, as of 2012, the use of sales agents by pension companies (a huge problem in 1999). Finally, as partial compensation, tax credits for a new voluntary, supplementary pension vehicle, the Individual Pension Insurance Account (IKZE), were increased (Égert, 2012; Krzyzak, 2011).

The reduction in contributions is estimated to have lowered the budget deficit by around 0.8 per cent of GDP in 2011 and a total of 1.2 per cent each year from 2012 onwards. In a thorough simulation exercise, Égert (2012) analysed what would be the long-term impact of this diversion on pension deficits and debt, as well as on replacement rates. The main conclusion is that the fiscal position of Polish pensions improves in all but the most pessimistic scenarios that include negative assumptions yielding higher costs related to tax breaks and more spending on social minimum pensions.

The rise and equalization of the statutory retirement age generated even more controversy than lower contributions to OFEs. Low pensionable age and the discrimination between men (retiring at 65) and women (at 60) created tangible problems for the Polish old-age insurance system. So, Civic Platform proposed raising and equalizing the pensionable age to 67. This would simultaneously reduce ZUS's deficits in the future and raise pension benefits, especially for women.

After re-election in late 2011, the PO-PSL coalition presented various pension-related policy proposals (Kuźmicz, 2012a): equalizing the retirement age of women and men and raising the retirement age to 67; restricting retirement privileges for miners to those working underground; raising the retirement age for uniformed services to 55; and increasing the employers' pension contributions by two percentage points.

As the reforms touched upon all aspects of social dialogue, the social partners unanimously appealed to the Government to start consultations at the Tripartite Commission for Social and Economic Affairs. Its Presidium had not met since June 2011, and the nomination of the new chairman, Minister of Labour and Social Policy Władysław Kosiniak-Kamysz, failed, and took much longer than expected. The Government representatives consistently failed to show up at meetings or came unprepared, eliciting the criticism of the social partners (Kuźmicz, 2012a).

In February 2012, Prime Minister Tusk announced the decision to gradually raise the retirement age for men and women to 67, defying the public's traditional aversion to equalization. In fact, a survey conducted in March 2012 showed that 84 per cent of respondents disapproved of the increase in the retirement age of men, 91 per cent opposed the change for women and 80 per cent thought that differentiated retirement ages are justified (CBOS, 2012).

The Tripartite Commission met during the same month and witnessed growing divisions between the social partners: the employers approved the reform (to be supplemented by pro-family benefits and lower pension privileges for some working categories); the unions unanimously rejected it.

The Chair of Solidarność, Piotr Duda, accused the Prime Minister of tabling the proposal to please international credit rating agencies. Solidarność prepared a list of alternatives, such as: the introduction of social security contributions to all forms of employment; the regulation of temporary work to avoid the abuse of social security rules; better health and safety for

people in pre-retirement age and Active Labour Market Policies (ALMPs) for the young; greater control of the social partners over the Labour Fund, which funds unemployment benefits and some activation policies; and social security contributions for employers based on real and not declared income. OPZZ was equally critical: the chair, Jan Guz, retorted that without tripartite social dialogue the retirement age could not already start increasing in 2013 (Kuźmicz, 2012b; Mrozowicki, 2012).

As tripartism was leading nowhere, the Government declared that consultations with the social partners were over by April 2012. The unions mobilized in vain. In February, Solidarność collected and handed in to the Polish Parliament (Sejm) 1.4 million signatures (500,000 are required) calling for a referendum on the reform. PO and PSL voted down the referendum proposal on 2 April. Then, the unions set up the Pension Village, a protester's camp in the guise of Occupy, in front of the Prime Minister's office in late March and outside the Sejm in mid-May. Solidarność and OPZZ held demonstrations in front of the presidential palace in late May and early June. The opposition parties Law and Justice and Democratic Left Alliance (SLD) joined the protests. Finally, the unions advertised their campaign in nationwide media and through a website (Mrozowicki, 2012).

The Government pressed ahead. PO, PSL and the Palikot's Movement voted in the Sejm for the amendment of the Act on pensions from the Social Insurance Fund on 11 May. The President, Bronisław Komorowski, signed it on 1 June.

In addition to raising the retirement age (as originally planned), the Act introduced the possibility of drawing a partial pension, amounting to half the full one, from the age of 62/65 with 35/40 years of contributions for women/men. Additionally, by December 2013, the Labour Minister was obliged to prepare proposals on ALMPs for workers older than 60.

Finally, and despite denials from Premier Tusk and Finance Minister Rostowski, already by April 2013 rumour had it that the Polish Government intended to further reduce the runaway public deficits and debt through interventions in the second pension pillar. The strategy was similar to the one employed to temporarily reduce the contributions to OFEs: the funds were accused of inefficiency (acknowledged by IGTE) and this was then used as a Trojan horse to persuade a reluctant public to accept the partial seizure of accrued assets.

In June, Rostowski, and the Minister of Labour and Social Policy, Władysław Kosiniak-Kamysz, presented a joint report on the future of OFEs. The report was critical of their underperformance vis-à-vis ZUS, the Warsaw Stock Exchange and Polish GDP in general. Moreover, the report stated that OFEs did help stock market capitalization, but that under Eurostat methodology public debt would be 18 percentage points lower than the 56 per cent of GDP to which it amounted in 2012, including PLN 13.3 billion saved on debt servicing. Hence, the ministers opened consultations on a number of proposals, including the delegation of the pay-out phase to ZUS, the seizure of part of the estimated 120 billion PLN in governments bonds held by OFEs, restrictions to their investment portfolios, and making participation to the second pillar voluntary (entirely, or with the possibility of paying via additional contributions) (Krzyzak, 2013a).

As the industry was hardly consulted in the run-up to the report, Małgorzata Rusewicz, acting president of IGTE, met the propositions with shock and equated the proposals to an attempt at renationalization. IGTE was joined by the whole Polish securities sector in defence of the private second pillar, without which "Poland would not be a regional financial centre" (Krzyzak, 2013b). The bill generated unprecedented opposition among employers (the Polish Confederation Lewiatan), by the Warsaw Stock Exchange (WSE), by the Business Centre

Club and so on, who stated that the short-term recovery of public finances comes at the expense of future pension adequacy. According to the Attorney General's Office the Government engaged in classic expropriation and the advertising ban clearly breached the Constitution (Krzyzak, 2013d).

However, most institutions were very soon brought into line. Even the new Finance Minister Mateusz Szczurek, who replaced the unpopular Rostowski in mid-November 2013, and who had earlier supported the second pillar, has had to renounce his views. The debate of the bill was ludicrously rapid: the lower house (Sejm) spent four days on the three readings and final vote, and the upper house (Senate) even less time. President Bronisław Komorowski signed the bill in late December 2013.

As for the Polish labour movement, this was, unsurprisingly, divided on the topic, thereby continuing a trend that seemed to have been ended by the national days of protest (against governmental unilateralism among others) organized on 11–14 September 2013 by the Inter-union Protest Committee. The latter had seen the usual ideological clash between OPZZ and Solidarność undermining its effectiveness; however, the protests were joined by both right- and left-wing social movements and unions were perceived for the first time after 1989 to be expressing the concerns of all Polish workers (Gardawski, 2013). With respect to the dismantlement of OFEs, **[omission?]** supported some changes, but criticized the lack of public consultation and awareness-raising campaigns aimed at future retirees. Solidarność opposed the overhaul alongside the employers (Trawinska, 2014). None of these efforts was effective.

The new law restricted the operations of OFEs on multiple fronts. First, on 3 February 2014, OFEs had to cede all Polish government bonds in their possession, and if these were insufficient to cover 51.5 per cent of their portfolio the funds had to make up the difference with road bonds, treasury-guaranteed securities, bank deposits and finally bonds issued on foreign markets. These amounted to 153 billion PLN: 134 billion in treasury bonds, 17.2 billion in other treasury-guaranteed papers and 1.9 billion in cash. From then on, OFEs were banned from investing in government bonds, Polish or foreign. Instead, as a favour to the WSE, OFEs have now to invest minimum 75 per cent of their portfolios in equity in 2014, and this limit declines by 20 percentage points each year until it disappears in 2018. As any sensible person notes, putting all one's eggs into the same basket increases systemic risk dramatically.

Second, the funded pillar was rendered voluntary for new labour market entrants and old members had to express in writing whether they wished to maintain their 2.92 per cent of contributions to funded schemes. Otherwise they would be hauled back to ZUS. To underscore the Government's intentions, the bill included a ban on OFE advertising from 15 January 2014. Even though the Government backed off from the original proposal to make a breach an imprisonable offence, the penalties are a hefty 1–3 million PLN. The advertising ban lasted until 31 July, that is, until the end of the four-month period during which Polish workers decided whether to stay in OFEs or not. So eager was the Government on maximizing the number of people switching back to ZUS that it (unsuccessfully) complained about the "I'm staying with OFE" television campaign run between December and 14 January by the Polish private employers group, Confederation Lewiatan, to both the Polish Financial Supervision Authority (KNF) and the Competition and Consumer Protection Office (UOKiK) (Krzyzak, 2014a).

Third, the new legislation addressed, finally, the pay-out phase. Prospective retirees are now handled by ZUS under a mechanism by which 10 per cent of a member's portfolio will be transferred each year to the first pillar ten years before retirement. This solution is acceptable, given that older members have not had the opportunity to save enough to make annuities worthwhile, while the pensions industry's proposal for a programmed withdrawal lasting only 10–15 years received a poor reception.

The consequences of the bill were catastrophic for the Polish second pillar, both in economic and in political terms. In August 2014, net assets were halved owing to the seizure, and amounted to 151.4 billion PLN. The effect on public debt is hence a reduction of 8–9 per cent of GDP. Additionally, the number of workers who declared in writing that they were willing to stay within the Polish pension pillar was 2.56 million by the same period (18.3 per cent of eligible workers). This means that, with respect to current members, some 85 per cent will disappear from OFE accounts.

Politically, the dismantling of the Polish funded system has two consequences. First, the law undermines public and investor trust in the whole system. The controversial piece of legislation has been promulgated before the Constitutional Tribunal expressed an opinion, as requested by President Komorowski himself. The Polish Confederation Lewiatan also believed that several aspects of the new law did not comply with the Constitution, not only the seizure of bonds but also the incremental transfer of members' assets to ZUS ten years before retirement (Krzyzak, 2014b). Second, the Polish move has encouraged other countries, such as Lithuania, in the region to follow suit and roll back their funded pension systems, thereby possibly creating an avalanche effect (Krzyzak, 2013c).

As of the beginning of 2016, the fate of the Polish funded pillar looks grim. First, the Constitutional Tribunal ruled that the 2014 reform was largely legal, apart from the advertisement ban on OFEs. Hence, during the second period when members can choose to opt out (April–July 2016) this will be lifted (Krzyzak, 2015). The victory of PiS during the 2015 elections, and the subsequent turn to populism and nationalism during its first months in government, do not bode well. The party's members have never hidden their contempt for the second pillar and, if carried out, their social spending plans will inevitably increase budget deficits, which may have to be financed through a wholesale liquidation of OFEs' remaining assets (Krzyzak, 2016).

2. The social and fiscal sustainability of Polish pensions

The Polish pension system was known for its relative lavishness. At the time of "Security through Diversity", Polish welfare was geared in favour of pensioners, whose at-risk-of-poverty rates were lower than for other segments of society: around 8 per cent of people older than 65 as against 16 per cent for the total population in 2000 (see Meardi, 2013). Additionally, pension spending was high and increasing in the early 1990s, when it reached 15 per cent of GDP. After the 1999 reform, the situation starts reversing: the trade-off between the future fiscal and social sustainability of retirement policies tilts against the latter. The at-risk-of-poverty rate of pensioners soared to 14–15 per cent during the Great Recession, against a national average of 17–18 per cent. Public pension spending as a percentage of GDP dropped to 11.8 per cent and will decrease to 9.6 per cent by 2060 (European Commission, 2012). Most worryingly, the gross replacement rate granted by public pensions – calculations including the latest reforms are not yet available – will decline, on average, from 49.1 per cent to just 18.7 per cent in 50 years. The 2015 Pension Adequacy Report (European Commission

and Social Protection Committee, 2015) calculates that Polish pensioners will experience the highest drop in theoretical replacement rates in the EU.

Donald Tusk's two governments have rendered the Polish pension system rather waterproof against the generation of deficits both within ZUS and in the wider economy. At the same time, however, Polish old-age social insurance has become an emblem of the fact that dualization of the welfare state has reached a number of post-socialist countries with twice the speed as in Western Europe (see Palier, 2012). The most upsetting phenomenon is the reproduction during retirement of the insecurity experienced in the labour market during working age. The mechanism for this is the individualization of pension benefits (see Hinrichs and Jessoula, 2012). Only one of Tusk's reforms has improved the social sustainability of the Polish pension system, that is, the elongation and equalization of the statutory retirement age (and even this was aimed at reining in public finances).

Like the rest of Central and Eastern Europe, Poland will experience sustained population ageing in the coming decades that will certainly place its pension system under strain (Égert, 2012). Two factors underscore this trend. First, fertility rates dropped substantially owing to greater economic uncertainty, rising unemployment and longer times spent in education. According to Eurostat data, the Total Fertility Rate in Poland declined from 2.06 children per woman in 1990 to 1.37 in 2000 and 1.30 in 2013. This means that there will not be large working populations supporting the retirees from the baby-boom cohorts of the late 1970s and early 1980s. Second, improving healthcare has lifted life expectancy (from low levels), meaning that the Age Dependency Ratio (people of working age over people older than 65) will significantly decline between 2030 and 2060. Average life expectancy at birth increased from 70.7 years in 1990 to 73.8 in 2000 and 76.8 in 2012.

As the difference in the life expectancy of men (73.8) and women (81.6) was almost eight years in 2014, it was absurd to maintain a differential statutory retirement age of 60/65 for women/men, as introduced in 1999. Such a solution contrasted with the original plans contained in "Security through Diversity", which foresaw equalization at 62 (Office of the Plenipotentiary, 1997: 29), and was a concession to conservative forces (Solidarność *in primis*).

Until Donald Tusk's second government, making the argument was taboo, as Polish public opinion was fiercely opposed to equalization and lower retirement ages for women were considered a legitimate right. The gradual increase and equalization is, hence, an important step forward: it will reduce the System Dependency Ratio of the pension system (pensioners on contributors), and hence improve the fiscal sustainability of Polish pensions as well as increase female replacement rates. However, given that the NDC plus the FDC pillar uses life expectancy to calculate annuities, it will be probably necessary in the future to automatically adjust the statutory retirement age to longer expected lives.

If future fiscal sustainability does not come under question, the social adequacy of Polish pensions is a big problem. Benefits are strictly tied to the contributions paid in, which, of course, create difficulties for all those insured persons who experience career breaks or have incomplete contributory histories (Guardiancich, 2012b).

The individualization of the Polish pension system (through the DC logic) clashes with the extreme flexibilization and short-termism of its labour market (Rymsza, 2005: 30), leading to the de facto dualization of old-age insurance in Poland. Just as Benio and Ratajczak-Tuchołka (2007: 209) claim, low levels of actuarially strict mandatory provision put more vulnerable citizens at risk of social exclusion, women outside marriage are granted insufficient protection

(after the 2012 reform less so), and supplementary insurance is simply non-existent. As a previous study (Guardiancich, 2012b) has pointed out, the spread of atypical contractual relationships and their abuse exacerbates the already gloomy state of affairs.

Given the recent radical changes to the composition of its two mandatory tiers (NDC and FDC) and the ongoing increase in the retirement age, most existing simulations of future pension benefits (Chłoń et al., 1999; Jajko-Siwek, 2007; Holzmann and Guven, 2008) are now only scarcely informative, and were hardly comparable in the first place (Guardiancich, 2012b). Hence, it is hard to give precise assessments of the social adequacy of the current Polish pension system above and beyond providing an account of its main pros and cons.

According to very early projections (Chłoń et al., 1999) – whose assumptions have been widely criticized as over-optimistic – the new NDC plus FDC system was supposed to be less generous than the old one for shorter accumulation periods and earlier retirement, whereas it rewarded only much longer accumulation (44–5 years) and later retirement (at 69–70). The second tier should have counted towards the retiree's benefits as much as the first one (despite lower contributions), owing to higher returns.

The recent legislative changes have, of course, transformed all that. First, the balance between the share of benefits provided by the FDC and NDC tiers has shifted dramatically towards the public pillar. Even though clear projections are not yet available, some speculation is possible. On the positive side, fluctuations in the financial markets will have less impact than before – OFE yields were not entirely unsatisfactory, but they fluctuated widely: in 2008 they recorded a minus 14.1 per cent nominal rate of return. On the negative side, the FDC pillar would provide higher returns and increase the safety of its members, if only some thorough restructuring were considered (e.g. life-cycle funds).

Second, the increase in the statutory retirement age is of course good news, as the NDC formula is designed to reward later retirement and longer careers. Provided that the Polish labour market absorbs the workforce in excess, pension age equalization and increase were necessary. In particular, the situation for women should improve in the long run. In fact, retiring five years earlier than men and assuming a similarly shorter accumulation period would have translated into a 20 per cent shortfall in the replacement rate.

Despite the positive upside, the core problems of the Polish employment–pension nexus remain unresolved. The Polish labour market combines chronically bad structural indicators (which improved after accession to the EU) with extreme flexibilization. During the past decade, the overall employment rate (people aged 15–64) has been climbing, and it reached 61.7 per cent by 2014. The unemployment rate halved in a decade from almost 20 to less than 10 per cent, mainly owing to high economic growth and emigration. After steadily rising since 2008, it slightly abated in 2014. Long-term unemployment is resilient, affecting more than 40 per cent of all unemployed. The situation for older workers (aged 55–64) is unsatisfactory, if improving: the employment rate was 42.5 per cent, still low by EU standards.

As for the type of employment, self-employment is a comparably vast phenomenon in Poland: it covers almost 20 per cent of all employed persons. Of these, four-fifths are own-account workers. Some authors estimate that almost 2 million people could be falsely self-employed. With respect to fixed-term contracts, Poland saw the sharpest rise of all the Member States. By 2014, 53.6 and 28.3 per cent of contracts of, respectively, younger cohorts (aged 15–29) and employees aged 15–64 had temporary duration. Part-time employment is

less diffused; however, 13.7 per cent of younger (15–29) and 12.9 per cent of older (50–64) women have this type of contract.

Atypical contractual arrangements have two disadvantages vis-à-vis the new pension system: shorter contributory records due to interruptions, and lower calculation bases, leading to low pension benefits or to triggering of the minimum pension guarantee.

Fixed-term contracts are treated similarly to permanent ones; however, the likelihood of unemployment spells is higher. Conditions to apply are stringent, and fruition is often limited. Thus, it becomes likely that workers on short-term contracts are not eligible and that the large share of long-term unemployed is left unprotected. In 2009, less than 20 per cent of all registered unemployed received some compensation (Guardiancich, 2012b). As fixed-term jobs are concentrated among younger cohorts the full negative effects of contributing to the new NDC plus FDC system may only appear in the future. Students are being discriminated against, since contribution credits for university years were eliminated.

The falsely self-employed are usually employed through civil law contracts. These entail cumulative disadvantages. The minimum assessment base for the self-employed (60 per cent of the average wage) barely guarantees a replacement rate higher than the minimum pension for any contributory period (Benio and Ratajczak-Tuchołka, 2007). There is no protection against job loss, which means that social assistance is the only safety net. Often, own-account workers register as pretend farmers to pay lower contributions to KRUS, rather than higher ones to ZUS. Benefits are in this case minimal.

As the share of part-time jobs is comparably low in Poland, the main problem is the unfavourable situation of women who take up these jobs. Owing to traditional Polish values, family policy is deficient: employer-based social security was basically dismantled and taken over by local and fiscally collapsing authorities (the *gminias*) in the early 1990s; childcare, nursing and elderly care facilities became gradually unavailable as a result, especially in rural areas; and the costs of care services not only increased in absolute terms but, increasingly, have to be borne by the household (Grotkowska et al., 2005; Heinen and Wator, 2006; Balcerzak-Paradowska et al., 2003). Hence, a growing proportion of women look for part-time employment arrangements (or exit from the labour market). As these jobs are by definition poorly paid, the resulting pension benefits are inadequate, in particular when combined with early exit (the equalization of the statutory retirement age will help in this respect).

Finally, up to an estimated 1.4 million workers are employed in the informal economy. Mostly unskilled workers are forced to forgo social security coverage to get a job (Walewski, 2008). These informal arrangements are relatively easy to combine with unemployment or social assistance benefits.

There are several ways in which this increasing segmentation can be avoided, but none of the solutions is either easily produced or firmly on the political agenda. Of course, the problem being generated primarily through the labour market, the improvement of employment conditions would alone at least avoid the return of poverty in old age. The main policies that should be put into place are: (i) relaxation of eligibility rules for unemployment benefits to workers on atypical contracts; (ii) elongation of the fruition of unemployment benefits (or alternatively of the complementary social security contributions only); (iii) an increase in the contribution bases of other assimilated periods (parental leave, various types of care, etc.); (iv) tightening of the legal definition of self-employment to fight the abuse of the status of own-account workers; (v) an increase in the contribution base for own-account

workers; (vi) tightening of the legal definition of self-subsistence farmers; (vii) a setting-up of more effective Active Labour Market Policies (ALMPs), especially for older workers.

Apart from the obvious fiscal costs and current administrative deficiencies, the reforms above seem less controversial than (again) changing the pension benefit formula to avoid the problem post-factum. There are several good examples of mostly Beveridgian pension systems that combine a basic safety net for those who would fall through its interstices given a Bismarckian setting. A striking case is the Dutch pension system, which allows the many part-time workers to effectively contribute to occupational pensions through a complex franchise system.

The main point here is that a renewed reform of Polish pensions is unlikely in the near future, especially if it entailed a complete redrawing of the current rules. Possibly the easiest solution would be to copy the Swedish solution for low earners, in light of the fact that the two retirement systems are closely related. A zero tier, where eligibility is based on residence and benefits are flat and indexed to prices, could easily be added to the Polish multi-pillar design. However, such a solution comes at a (substantial) cost to the taxpayer.

In line with Palier's (2012) "restructuring the welfare state institutions" phase of the transition between Western European welfare states from Bismarck to dualization, the role of the social partners, and of trade unions in particular, has been greatly diminished in Polish retirement.

First, ZUS being an "executive" of government policy, the impact of the social partners sitting on its board is limited. Unions have a say only on the operating affairs of the Social Insurance Institute (salaries, investment in IT, etc.) and the workers' rights of its employees. The Institute's Board (Rada Nadzorcza) gives an opinion (e.g. on the budget plan, on the candidates for the post of Director and management), but has no decision-making powers. The budget plan for ZUS is discussed in the Parliamentary Commission for Social Policy, and the board's opinion is submitted in this process. Hence, the unions' role is purely advisory.

Second, multi-pillarization in Poland was inimical to the social partners' administrative role in social insurance. In particular, the unions did not cash in on the creation of the mandatory and voluntary private pillars. As for the OFEs, OPZZ endeavoured to create its own fund in the late 1990s; however, the plan was soon abandoned (Müller, 1999). In addition, supplementary occupational funds are still extremely rare by comparison with Western Europe.

Third, the unions have been slowly excluded from decision-making with the latest reforms, as Donald Tusk's two governments have pushed on with the reduction of contributions flowing into OFEs and with the equalization of and increase in the statutory retirement age, despite not reaching an agreement in the Tripartite Commission. Compared to in the late 1990s, when "Security through Diversity" gained – through a long and painstaking negotiation process – conditional clearance from most of the actors involved, such a form of governmental unilateralism does not bode well for the political sustainability of reforms.

Finally, and apart from the structural limitations above, the main problem confronting the effectiveness of Polish unions is the unabated ideological antagonism. Not having a proper stake in OFEs, OPZZ and Solidarność never agreed on a common stance vis-à-vis the Polish second pillar, which greatly undermined their individual efforts. The conservative Solidarność was always fascinated by the notion of popular capitalism and the ownership society that funded pension plans carried with them; in total contrast, OPZZ reluctantly accepted the

existence of a second pillar back in 1999, in exchange for greater involvement in tripartite negotiations (Guardiancich, 2012a: 161). Its stance towards the reduction of contributions, voluntarization and the seizure of assets was, hence, incoherent and disunited. This, of course, made the task of the Polish Government much easier.

3. Conclusions

Even though Poland must be praised for replacing its wasteful, unjustly redistributing and unsustainable PAYG mono-pillar pension system with a second-generation multi-pillar design in the late 1990s, this progressive reform has not been free from flaws. In just fifteen years, the system's three major shortcomings – the persistence of a differentiated statutory retirement age for men and women, the insufficient attention paid to building a social safety net for the rapidly spreading atypical forms of employment, and inattentive planning of how to cover the transition costs to a funded system – have undermined its fiscal, social and political sustainability.

In the immediate aftermath of the global financial crisis, policymakers have tackled two of these "problems". On the positive side, the statutory retirement age has been significantly raised and equalized. On the negative side, the Polish second pillar has been progressively dismantled and was by 2016 basically hollowed out. Evidently, Tusk's priority was to put the Polish pension system and the economy as a whole on a better fiscal footing, thereby, however, paying insufficient attention to the social and political parts of the retirement equation, disregarding possible compromises with the pension industry, and failing to address the future needs of the population.

Hence, Tusk's latest reforms have left the most important shortcomings unaddressed. Dualization in the labour market and the de facto perpetuation of outsider status through the retirement system require profound changes in employment policies (such as greater legal guarantees to employees, strengthened inspection, etc.) and/or the set-up of a strong, most probably Beveridgian social safety net that means people do not have to depend on their employment record to avoid widespread poverty in old age.

At the same time, the political legitimacy of the post-crisis reforms has lately been undermined by the expulsion of the unions, employers and other stakeholders from pension-related management and decision-making. Given that a law on pensions is not just an act of parliament but rather a social compact that requires continuous political support at all levels, the reintegration of social partnership and the rekindling of social dialogue – perhaps involving not only the traditional (and weakened) social partners but also other interest groups – are essential conditions for the retirement system's legitimation in the eyes of the public. Given the dismaying democratic record of the recently elected Law and Justice government, it is hard to imagine that such developments may follow. Instead, a fully-fledged liquidation of the Polish second pillar may soon be climbing to the top of the political agenda.

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