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Research Report

Social harmonization in the eyes of Polish stakeholders: In search of consensus

CASE Network Studies & Analyses, No. 484

Provided in Cooperation with:

Center for Social and Economic Research (CASE), Warsaw

Suggested Citation: Beaumont, Karolina; Mirecka, Katarzyna; Styczyńska, Izabela (2016) : Social harmonization in the eyes of Polish stakeholders: In search of consensus, CASE Network Studies & Analyses, No. 484, ISBN 978-83-7178-648-8, Center for Social and Economic Research (CASE), Warsaw

This Version is available at:

<https://hdl.handle.net/10419/179706>

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CASE Network Studies & Analyses

**Social harmonization
in the eyes of Polish
stakeholders
– in search of consensus**

Karolina Beaumont
Katarzyna Mirecka
Izabela Styczyńska

No 484 (2017)



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This policy brief was prepared within a research project entitled “SocialBoost – effective measures of social harmonization as a boost for employability in times of demographic changes”, which received funding under the Nordic Council of Ministers’ Programme for NGOs in the Baltic Sea Region.

Keywords:

posted workers, labor mobility, social harmonization, social model, social rights, social convergence, labor market

JEL Codes:

J31, J32, J61, H53

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Graphic Design:

Katarzyna Godyń-Skoczylas | grafo-mania

EAN: 9788371786488

Publisher:

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Abstract

Aspects of labor mobility and discrepancies in social benefits schemes in Member States became an urgent matter to address. Revision of the Posting of Workers Directive, the European Pillar of Social Rights and the European Mobility Package were aimed at introducing more harmonization within the EU countries. However, the EU propositions faced a strong resistance from some groups of stakeholders and Member States. Moreover, the debate has been evolving quickly given recent events such as the economic and migration crises and Brexit. CASE held a forum with various Polish stakeholders, where CASE experts gathered views on the future of social situation in the EU. They are all summarized in this Policy Brief. Main policy recommendations emphasize that proposed legislation is important for Poland, however it still needs more debate, since under current form certain policies might be harmful for many EU Member States.

1. Context

Documents such as the Treaty establishing the European Community and the European Union (EU) Charter of Fundamental Rights set out fundamental social objectives, such as the promotion of employment and social protection, and include principles such as freedom, equality, and solidarity, and the right to fair and just working conditions, as well as social security and social assistance and equality between men and women.

The Treaty of the EU established the European Employment Strategy (EES), which aims to create more and better jobs in the EU and constitutes a part of the Europe 2020 growth strategy. The EU's role in social policy is such that the EU should provide a framework that reconciles openness and mobility with domestic social cohesion, supports national welfare states on a systemic level in select key functions, and guides the substantive development of national welfare states by indicating general social standards and objectives and organizing mutual learning processes, while leaving the ways and means to the Member States.

The EU founding fathers assumed that supranational economic cooperation could be a tool for establishing cohesion both between and within countries. However, as traditional frameworks are not fit for managing the current challenges, the EU needs to create a virtuous circle where both pan-European and national cohesion are enhanced, and needs to support both convergence towards higher levels of prosperity and well-being across the member states and convergence towards more equality within the member states.¹

The European Social Model was the first step towards realizing these goals and was a tool to cope with globalization and the economic reforms made at the expense of workers' rights. The model of a Social Europe entails the achievement of employability, the improvement of education, the fight against poverty and social exclusion, new family policies, the achievement of gender equality, and active ageing. Now, social harmonization is the next step.

¹ Vandenbroucke F., Rinaldi D. (2015)

Social harmonization has been the subject of intense debate for several years, since phenomena such as intra-EU mobility, social security coordination, and national welfare, which are directly linked to it, generated significant social and economic concerns for European and national policy makers.

Moreover, this concept is perceived differently among European countries and the possibility of significant discrepancies between EU and national priorities in the adoption of common guidelines exists. Therefore, the aim of this policy brief is to present the view point on the social harmonization concept and Social Europe from the Polish perspective. It is aimed at disseminating the point of view of different stakeholders, to strengthen the debate about this very relevant issue, and contribute to the creation of consensus within Europe.

2. Significance of the problem

Today, Europe is fighting against macroeconomic, budgetary, and demographic problems. Growing social inequalities have become an urgent matter, as confirmed by European Commission President Jean-Claude Juncker on September 14, 2016, who stated: *"We have to work urgently on the European Pillar of Social Rights. And we will do so with energy and enthusiasm. Europe is not social enough. We must change that".*²

However, problems arise when it comes to legislation. Currently, there are no common rules ensuring the social rights of people working abroad, who, therefore, cannot save for the future, whose pensions are lower than those of local workers, and who cannot benefit from the healthcare system in the same way as local workers. To address these problems, the European Commission acted by fostering rules to establish social harmonization. The actions undertaken by the European Commission aim at ensuring equal rights for all workers and social groups.

The announcement of the European Pillar of Social Rights was made during President Juncker's State of the Union address to the European Parliament on September 9, 2015. Efforts under this Pillar will be included in the Commission's work towards a deeper and fairer Economic and Monetary Union. Social considerations and social fairness are also emphasized by the Commission in its focus on promoting structural reforms, investment, and responsible fiscal policies. Broad public consultations regarding the propositions in this Pillar were a major focus of 2016.

Another important part of the Commission's work during 2016 was the Labour Mobility Package, which consists of a revision of the Directive on Posted Workers and a revision of the Regulations on Social Security Coordination. The Labour Mobility Package is part of the Political Guidelines for this Commission and is aimed at promoting the principle of equal pay for equal work done in the same place.

The phenomenon of labor mobility in the EU is certainly very important, especially given that, according to the European Council, 6.9 million EU citizens live and work abroad in another EU country, and there are over 1.1 million cross-border or frontier workers

² European Commission (2016c)

(i.e. EU nationals who work in an EU country other than the one where they reside).³ The new directive focuses on “posted workers”—workers who have an employment contract in their home country, but are sent by their employer to work temporarily in another country in the context of a cross-border provision of services. This subject is certainly important, as there were 1.92 million posted workers in the EU in 2014, which represents an increase of 44.4% as compared to 2010.⁴ Three main areas are proposed to be changed under the new legislation: the remuneration of posted workers, including situations of subcontracting, the rules on temporary agency workers, and long-term posting. Under current legislation, an employer is obliged to pay a posted worker only the minimum rate of pay set by the host country. This situation leads to the creation of wage differences between posted and local workers and may lead to social dumping, as posted workers are usually remunerated less than other workers for the same type of activity. The new revision aims at changing this situation in a way such that posted workers will be granted the same remuneration rules as local workers.⁵

The main changes under the new law would be the coordination of the social security contribution (SSC) at the EU level, the facilitation of the benefit of SSC regardless of the place of living, as well as aligning income tax, bonuses, and holiday pay. The only remaining cost advantage of posted workers over local workers would be that their social benefits and pension contributions are paid in the home country. The European Commission expects these changes to *“boost the rights of posted workers, make the cross-border provision of services easier and fight against social dumping. Its aim is to improve the application of existing rules, without changing them.”*⁶

Nevertheless, drawbacks to these solutions exist on both sides. The eastern Member States, which are mainly low-wage countries, are primarily the “senders” of posted workers, and the western Member States are the countries in which the posted workers are usually employed. After changes to this legislation, the cost of employing a posted worker may increase considerably; therefore, employers may save less. However, because employing posted workers may become less attractive, many organizations currently using posted workers may hire local workers instead or may go out of business.

3 European Council (2016)

4 European Commission (2016a)

5 Idem.

6 European Council (2016)

Furthermore, consensus between Member States on this matter is extremely difficult to reach. On the one hand, the European Commission is accused of acting within the competence of national governments, and, on the other hand, of closing markets and limiting one of the main European freedoms (free movement of services).

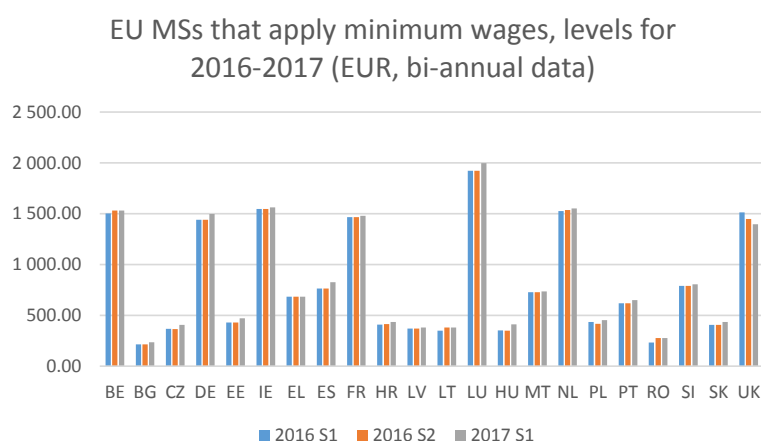
During these times of an escalating crisis in the EU, with one country having already voted to leave the Community, and with a very visible wave of populist and far-right movements and governments, a substantive, righteous, and inclusive dialogue is of crucial importance. This dialogue, supported by in-depth research, is designed to increase trust in European institutions, to clearly identify the advantages and disadvantages for different social groups, and to help reach a consensus between Member States. These concerns, among others, were the focal points of discussion with social partners in Poland between September-December 2016.

The three main aims of this paper are the following: i) to contribute to the dialogue between stakeholders in Poland to reach a consensus, ii) to disseminate the conclusions of the dialogue in Poland at the European level, and iii) to initiate a substantive dialogue at the international level.

3. The social situation in Poland and social rights “acquis”

Poland has been experiencing an economic and social expansion; however, the country is still facing social problems, some of which may have a particularly strong influence on its socio-economic outlook.⁷ According to Eurostat, employment rates in Poland, although increasing, are still lower than in western Member States (62% in 2014 among those aged 15–64 in Poland, as compared to 73% in the Netherlands and Germany and 64% in France). The labor cost index, defined as “*core expenditure borne by employers for the purpose of employing staff*” in industry, construction, and services was 3.4 for Poland in 2015, which is relatively high when compared to other EU countries (e.g. 1.2 in France or 2.8 in Germany).⁸ Moreover, as seen on the chart below, the minimum wage in Poland in 2017 remains among the lowest in the Community, at PLN 1,459 net per month (or PLN 2,000 gross per month), which translates to approximatively EUR 340 per month.

Chart 1: EU countries that apply minimum wages, 2016–2017.



Source: Eurostat

⁷ European Commission (2016d)

⁸ Eurostat (2015)

Furthermore, expenditures on social benefits (i.e. old age, disability, survivors, and unemployment pensions) have been increasing since 2011, but are still relatively low as of 2014, at EUR 2,049.24 per person, as compared to EUR 10,493.53 in Germany and EUR 11,097.55 in France.⁹ In general, social benefits in Poland are ranked low when compared with other EU Member States, and cover only 29% of those under the poverty threshold. Compared to the EU average, spending on social protection is also among the lowest (at 17.6% of GDP), and its contribution to the fight against poverty is relatively small¹⁰. On the contrary, GDP expenditures on pensions are higher than in other Member States, partly because of the special pension schemes for farmers and miners.¹¹ However, pensions in Poland are relatively low, and may decrease further given that the number of pensioners will increase following the recently accepted reform reversing the increase in the statutory retirement age.

Moreover, Poland's rapidly ageing society has led to an increase in the demand for elderly care, which is characterized by a growing reliance on full-time informal care due to the lack of availability of formal care. The old-age-dependency ratio is expected to nearly triple between 2010 and 2050 (growing from 20.9% to 58%).¹²

The population aged 15–64 in Poland is already decreasing, and the recent retirement age reform may leave even less workers in the labor market. However, this outflow is compounded by additional factors. First, Poland has one of the largest populations of its citizens living in other EU countries. The number of labor migrants to other EU Member States in 2015 exceeded 2 million (with the most popular destinations being Great Britain and Germany), and is still growing, according to the Central Statistical Office of Poland.¹³ Second, the new “Family 500+” program, which offers families a monthly allowance of PLN 500 (EUR 114) per child for every second and consecutive child under the age of 18, may further lower working incentives, especially for women.

In 2014, Polish firms sent 463,174 posted workers to other EU Members States (22.9% of all posted workers in the EU, including postings to multiple Member States).¹⁴ According to the European Commission's Directorate-General for Employment, Poland is considered a low-wage country, and it posts primarily industry and construction workers.¹⁵ Polish

9 Eurostat (2014)

10 European Commission (2016d)

11 Idem.

12 Idem.

13 Główny Urząd Statystyczny (2016)

14 European Commission (2016b)

15 European Parliament (2016)

workers sent abroad are generally paid less than local workers, which causes controversy in host countries, with many citing this as a case of social dumping and unfair competition.¹⁶

One example of posted workers from Poland are road transport workers who are posted to higher-wage countries, such as Germany, France, Italy, or the Nordic countries. This sector developed substantially (the number of registered trucks rose by 78% between 2000 and 2014), and is now the most important branch of the transport sector. It is characterized by numerous small companies, which is a sign of a highly competitive sector, and is regulated by both domestic and European legislation. However, as the labor standards and wages of Polish drivers differ considerably from those in force in western European countries, Polish transportation firms are accused of social dumping. A new and somewhat confusing element in the matter of posted workers who work as drivers is the introduction of the minimum wage of EUR 8.50 on the German territory (as compared to the average wage of EUR 4.00 in the transportation sector).¹⁷ According to German legislation, the minimum wage should apply to every person that is considered a worker; however, the European Court of Justice stipulated that a national minimum wage cannot be a hold-up in providing a service in another Member State.¹⁸

Thus, even though the differences in social standards between Poland and the EU average have decreased, challenges for the country remain high.¹⁹

16 European Commission (2016e)

17 Deloitte (2015)

18 Idem.

19 European Commission (2016d)

4. Social harmonization policy in the eyes of Polish stakeholders

From the Polish perspective, the EU position on social harmonization and, in addition, the European Pillar of Social Rights is too vague and little has been done to make it clearer and more concrete.

In debates, it is often noted that the Treaty of Lisbon strengthens social integration and the social dimension of the EU sufficiently; therefore, even though some of its details could be discussed, there is no need for new legislation on this matter. The Treaty already shows the very diverse economic relations between Member States.

Several aspects concerning possible changes in social conditions in the EU are particularly important for Poland, such as changes to the personal income tax and non-wage labor costs and the introduction of a minimum wage. Overall, the issue of different economic levels across EU Member States remains important: Poland must meet the economic level of western European countries to introduce better social care. Moreover, a general social harmonization in the EU is considered impossible to reach because health systems in Member States differ too greatly. Furthermore, stakeholders fear that unifying health systems across the EU would only strengthen the already existing administrative burdens for employers. The idea of higher pension contributions is not very welcome either: pensions in Poland are low despite relatively high pension contributions, so increasing contributions will not substantially raise pensions in Poland.

Concerns are also being raised about the fact that the European Commission does not react quickly enough to changes in the European labor market, as evidenced by the introduction of a minimum wage in Germany: entrepreneurs were left with uncertainty regarding the legal aspects of this move, which, in turn, had a negative influence on the economy. Another concern is the existence of the grey market, which, according to the views of some stakeholders, should be handled first. Finally, changes should be introduced by evolution, not revolution.

Nevertheless, according to trade unions, social convergence in the EU might be a good solution for Poland, but there are some inefficient internal regulations that must be resolved first, such as social dumping at the country level concerning truck drivers. This profession represents a particularly complicated case: it remains unclear whether drivers should be

treated as posted workers; therefore, new regulations would be critical for them. Transportation companies, as many other Polish enterprises, maintain their competitiveness through low working costs. However, this situation cannot exist forever, as, for example, in 20–30 years, drivers might be replaced by automatic cars, and Polish transportation companies would have to seek competitiveness elsewhere, regardless of the legislation. Therefore, for trade unions, a common minimum wage should be a good incentive for Polish businesses to plan better.

Finally, many stakeholders find that wage levels should be established at the national, not European, level; therefore, consensus in this matter is not possible.

Based on the opinions expressed regarding the social harmonization policy, the following recommendations were developed:

- Current social conditions (from the Treaty of Lisbon) are sufficient and should remain, although discussions on some of its points could be useful;
- Harmonization, if any, should concern working standards, such as equivalent periods for holidays, among others;
- Changes should be introduced through evolution, not revolution;
- The Pillar should be written in a clear and transparent way, so as to be understandable for all, taking into account not only EU laws, but also the regulations of the Council of Europe and the International Labour Organization;
- It must be considered whether all Member States have sufficient means to introduce extended social protections; and
- The Pillar should be addressed to the whole EU, not only to the Eurozone.

5. European Pillar of Social Rights under Polish debate

According to Polish stakeholders, introducing any changes in social rights in the EU is unrealistic, because EU Member States are still far too different on economic and developmental levels: the countries of “Old Europe” can bear higher social costs, but newer members cannot afford such high social provisions.

The most common opinion about the European Pillar of Social Rights is that it is too general: the document provides vague political ideas rather than specific solutions, and, therefore, does not provide an answer to the current problems of the European Community. No concrete solutions are presented—all changes should be introduced through the proposed guidelines. Currently, the Pillar focuses on Eurozone countries, and other countries may participate if they wish to do so. However, Polish trade unions comment that the Pillar should be addressed to all EU Member States because it is the only way to introduce social convergence.

The Polish entrepreneurs association view the new set of rules as unfavorable and believe that the solutions proposed in the Pillar will not be profitable for Poland in the long term and will not ensure stable growth. They point out that there are key elements missing in the document: regulations reflecting newer ways of working, such as the possibility of working remotely or of providing services to clients based in different countries at the same time. They are also astonished by the negative perception of temporary employment expressed in the Pillar. Most importantly, in their view, the Pillar can weaken areas of Polish competitiveness. Western trade unions are pressing policymakers to fight cheap labor competition from newer EU Member States; however, it is this low-cost competition that is the main advantage for Poland on the European stage.

Conversely, trade unions believe that the current situation is, in fact, harmful for the Polish economy. In their view, Polish entrepreneurs do not invest in innovation, and instead of making long-term plans, they profit from the short-term benefits of their work. Furthermore, currently, posted workers cannot save for their pensions, nor can they benefit from health services in the countries where they live, as local people do.

Another concern is that the introduction of chapters on wages and social rights might mean that they will be left entirely to the EU, which may lead to a situation where the social

rights of Member States will be more important than their economic interests. Therefore, in accordance with this view, solutions for social policies should be developed at the country level, not at the EU level. Some suggest that the EU should follow the principle of subsidiarity, and act only in situations where national governments cannot. Once again, stakeholders reiterate the argument that if we do not attain high economic growth and do not gain money (i.e. profit from our competitive advantage, which is a low-wage labor force), Poland will not be able to afford introducing generous and extended social security benefits. Quite often, the idea of European Pillar of Social Rights is said to be utopian.

Furthermore, a popular view in Poland is that social protection that is “too high” might create a disincentive to work. For example, as noted earlier in this report, in 2016, the Polish government introduced the “Family 500+” program, which guarantees families a monthly benefit of PLN 500 (EUR 114) per child for every second and consecutive child under the age of 18, without any upper threshold of income. Also, parents with a combined income per person of not more than PLN 800 (EUR 184) are eligible for the allowance with their first child. In Poland, the net minimum wage in 2017 is PLN 1,459; hence, the sum of PLN 500 constitutes an important difference for the most vulnerable families. This program is aimed at improving living conditions and increasing natality in the country. However, its introduction raised concerns among economists²⁰ and employers²¹ about its efficiency and outcomes for the labor market, as it can become a disincentive for professional work and may encourage parents to leave the job market.²² Thus, it is not surprising that the propositions aimed at increasing social benefits included in the Pillar are not seen as advantageous by some groups of Polish stakeholders.

On the positive side, some stakeholders find that the chapters concerning skills and education might be valuable for Poland, as adult participation in lifelong learning in Poland decreased from 2002–2014.²³ Consequently, stakeholders find that a greater emphasis on equal access to education is needed.

Polish trade unions are generally in favor of the Pillar. One aspect of the Pillar that, in their opinion, should appear in its final version is the notice that the minimum wage should be set at a level of 60% of the average (median) wage of the country.²⁴

20 CenEA (2016)

21 Polskie Radio (2016)

22 Adamowicz P.

23 European Commission (2016e)

24 OPZZ (2016)

6. Polish views on the Directive of Posted Workers

As mentioned before, the legislative problem of posted workers is extremely important for Poland given their number in the country. However, the Directive of Posted Workers is found to be too vague and Poland must clarify its own legislation before accepting laws at the EU level.

According to all interviewees, the idea of equal pay for equal work in the same country is perceived as good, but only in specific situations: it is difficult to simply apply the rule of equal pay in all situations, because sometimes it can “kill” the market. Moreover, representatives of the entrepreneurs association note that in Polish legislation, it is already written that men and women should be granted the same salary; therefore, it is needless to repeat the same rule. Another argument often raised during discussions against the introduction of the same wage for posted workers is that nowadays people often travel to other countries for work purposes several times per month; therefore, calculating a salary from different countries within the same month would be extremely complicated and intensify the administrative burden. A preferred situation is one in which a worker posted in another EU country that has her or his life center elsewhere should be subject to the welfare system of the country of the life center. Generally, it is viewed that it would be more useful to harmonize working standards than social conditions.

Attention is often paid to the fact that if these measures enter into force, all posted workers, whose main source of income is their work abroad, will lose their jobs because employing them in “Old Europe” will no longer be profitable. Furthermore, firms sending workers to western Europe may face significant problems or even bankruptcy. Some also believe that the Directive could lead to substantial losses for the Polish national budget.

Since its accession to the EU, Poland has generally specialized in the export of services, which means that partially depriving the country of the freedom for movement in services is perceived as unfair. Polish interviewees are also troubled by the fact that even though limiting any of the four free movements of the EU is forbidden, Brussels has introduced limits to one of them. Furthermore, if a firm that is posting workers receives a contract for more than two years, it will be extremely complicated to post a worker under the new law.

Another concern is that the announced higher wages may not be realized, because, according to the views of some, if a posted worker can receive additional bonuses, the employer may simply lower his or her wage to pay those bonuses without spending more than what would be paid to a foreign employee. Calculating the bonuses will be another cost for Polish employers, which will make Polish firms even less competitive in western Europe.

However, viewpoints differ among organizations. For example, representatives of trade unions find that there is no reason why Polish workers should be discriminated against by being remunerated less than local workers while working abroad. It also seems unreasonable to them for Poland to base its advantage in trade only on the low costs of workers (i.e. Polish truck drivers), because once laws change (or technological progress replaces certain occupations), the Polish economy will lose on many levels.

Finally, the stakeholders agree that as there are no official data on social dumping in Europe, it is difficult to assess this phenomenon.

- The following recommendations were developed from the opinions and concerns voiced by the stakeholders regarding the Commission's plans on labor mobility:
- While applying the rule of equal pay, attention should be paid to the details, such as the type contract, so as to avoid social dumping and the other negative consequences of sending workers abroad;
- If the location of a worker's life center is different from where he or she works, and the contract time is less than 12 months, he or she should be subject to the social security system of the country of his or her life center; and
- To reach an agreement at the European level, countries must first reach an agreement at their national level, which is not the case with Poland.

7. Summary and policy recommendations

Social harmonization, understood as the European Pillar of Social Rights, and the Directive on Posted Workers, is under debate in Poland, both in the media and during meetings between stakeholders.

The general view is that the direction the EU is moving is correct and appropriate for Poland: it is agreed that labor legislation and social benefits are important and necessary for all.

The controversial points remain how to introduce these in the EU and how do we want to attain this social harmonization. An important group of people participating in these debates finds that social harmonization, as presented in the Pillar and in other EU documents, could and should be attained naturally, but can only be attained in Poland after further economic growth. In their view, additional limits to the current freedom of movement of goods and services could slow economic growth in the country. The main problem for Poland concerning social harmonization with the EU is that even though the country is continually developing, it is not yet at the same economic level as western Member States and, therefore, cannot afford more expensive social benefits schemes. Many reforms must be implemented before similar social measures can be introduced in the EU. However, the notion of enforcing changes only in “Old Europe” is not welcomed by Polish stakeholders either.

However, other groups of stakeholders find that social harmonization should be imposed on countries, because it is the only way to reach economic growth in Poland. In their view, Polish entrepreneurs, by basing their activities on legal loopholes and low wages, are active in less productive sectors. Consequently, they remain satisfied with short-term profits, but do not think about long-term results, and therefore do not invest in innovation—an attitude that does not lead to an increase in productivity. Enforcing limits to the freedom of movement of services should, in their opinion, force entrepreneurs to change the direction of their investments and build stronger businesses.

Regardless of the views on how to reach social convergence in the EU, Polish stakeholders agree that the European Commission’s measures, as presented in the above-mentioned documents, are vague and do not build consensus. All parties to the discussion

concur that given the current environment, with the financial crisis and the general lack of harmony between Member States, the EU should search through its activities for more agreement and consent. Nevertheless, documents like the Pillar or the Labour Mobility Package cause more misunderstandings and hostility than willingness to search for consensus, not only at the national level, but at the international level. Stakeholders in Poland agree on the areas and general activities of the EU; however, they find that its documents should be more transparent and preceded by dialogue. The introduction of such documents should be preceded especially by studies that would show that the proposed measures are not only the interest of some groups of stakeholders or sector representatives, but that society and the EU as a whole would benefit from the changes.

Despite movements and associations that actively participate in these discussions,²⁵ consensus regarding social harmonization has yet to be reached in Poland until now. Excluding trade unions, most stakeholders have a critical approach towards these documents. In general, Polish stakeholders believe that, even if the overall direction that the European Commission is moving in is correct, it is not possible to implement the Pillar now because the economic situation between EU Member States differs considerably. Furthermore, they believe that there are other, more pressing issues that the Community should address before implementing changes to social laws. Trade unions, on the other hand, are in favor of the documents; however, they believe that the propositions should be implemented across the EU, and not just in the Eurozone. Moreover, Polish legislation should be revised first in order to reach an agreement at the European level. To conclude, the European Commission's new propositions have been received with mixed feelings in Poland: even if the general guidelines in the documents are viewed as correct, its introduction forthwith is considered unnecessary, and perhaps even impossible.

25 For example: OPZZ Razem Silniejsi, www.opzz.org.pl, Transport Logistyka Polska www.tlp.org.pl, Związkowa Grupa Wyszehradzka V4 www.tysol.pl/a2117-Zwiazkowa-Grupa-Wyszehradzka-popiera-europejski-filar-praw-socjalnych

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