



Relaunching Collective Bargaining Coverage in Outsourced Services

RECOVER POLICY PAPER

Cheap is cheap, no matter what they say. Collective bargaining and working conditions in outsourced services in Poland

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This publication constitutes a deliverable of the RECOVER project – Relaunching Collective Bargaining Coverage in Outsourced Services.

This project has received funding from the European Commission, DG Employment, Social Affairs and Inclusion under Agreement No VS/2016/0351.

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November 2018

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The Sociological Research Centre on Everyday Life and Work - QUIT (Centre d'Estudis Sociològics sobre la Vida Quotidiana i el Treball) is coordinating the research project RECOVER: Relaunching Collective Bargaining Coverage in Outsourced Services.

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Recommended citation:

Czarzasty, Jan; Owczarek, Dominik (2018): "Cheap is cheap, no matter what they say. Collective bargaining and working conditions in outsourced services in Poland ". *RECOVER Policy Paper*.

This publication is also available at:

<https://ddd.uab.cat/record/199545>

POLICY PAPER: POLAND

KEY MESSAGES

- Outsourcing as a fast-growing, cost-cutting business strategy in both public and private sectors.
- Very low collective bargaining coverage of outsourcing services in general (sector-size coverage gap), including sectors under scrutiny: health care services and security services.
- No multi-employer collective agreements and some incidental company-level collective agreements.
- Very low level of social partners' outreach to the sector and therefore weak position of social partners – especially employees' organisations – translate to small institutional capacity to deal with collective bargaining and working conditions problems.
- Working conditions in outsourcing companies vary depending on contract conditions with client companies. Predominantly, outsourcing translates into poorer social protection of employees (civil law contracts, bogus self-employment, fixed-term contracts, low wages, high turnover, non-standard working time, etc.).

INTRODUCTION

Outsourcing services in Poland has been following the general trend in global economy and experienced dynamic development in the recent decade. According to the estimations currently there are over 700 Shared Services Centre (SSC) and Business Process Outsourcing (PBO) employing over 200 thousand employees in Poland. However, outsourcing phenomenon should not be limited only to relatively large companies delivering non-core services to its clients. Outsourcing occurs also among SMEs while subcontracting cleaning, security, IT or other companies. According to the European Company Survey around 20% of establishments in the European Union outsource part of their design and development, production, and sales and marketing activities, but full outsourcing is still rare (Eurofound 2015).

Collective bargaining coverage is lower in outsourcing companies. This may lead to weaker workers protection, growth of wages disparities and segmentation of labour market. Objective of the study is to examine to what extent the growth in outsourcing is triggering coverage problems for workers in these outsourced services and what are the collective bargaining practices in case of collective agreements gaps. The analysis shows collective bargaining coverage in outsourced services in Poland with a view to: **identify coverage problems related to outsourcing practices; study the capacity of existing institutions in dealing with them; analyse the incidence of coverage gaps across different groups of workers; analyse the strategies deployed by social partners in order to address these problems and provide actors with some policy guidance in order to ensure inclusive and effective coverage.**

For the purpose of the study security and health care sectors were investigated. Moreover a case study of the company 'FMC Poland' was elaborated in order to analyse collective bargaining practices at company level.

Outsourcing activities are not a subject to special legal definitions or regulations. Companies offering such services operate under general terms of economic activity.

INDUSTRIAL RELATIONS RECKONING WITH OUTSOURCING

Collective bargaining (CB) in Poland plays a minor role in industrial relations (IR), both in quantitative (volume of collective agreements (CAs) in force and number of employees covered) and qualitative (newly registered collective agreements rarely contain provisions more favourable than those guaranteed by law) terms. The CAs coverage is low (figures span between 15% to 18%, ICTWSS) which is due to: low density rates for both trade unions and employer organisations, legal puzzles surrounding the notion of 'employer' (so-called 'managerial' formula, as opposed to 'ownership' formula), no room for 'derogation clauses', and reluctance of employers to engage in CB due to complicated procedures governing dissolution of CAs (Czarnecki 2014, Gładoch 2016, Korytowska 2013, Pisarczyk 2015, Wratny 2011). Polish law does not recognise 'sectoral' CA, the only upper-level type of CA is a 'multi-employer' CA. Moreover, specific representativeness conditions must be met by both parties to 'multi-employer' CA. In effect, 'single-employer' CAs are predominant form of CA in the country covering approx.. 2mln employees (out of 16 mln labour force). Despite the fact that the CAs extension mechanism is allowed by the national law, it has never been put into practice.

Unsurprisingly in the given context, no multi-employer CA and some incidental company-level CA have been identified in the outsourcing sector in Poland. It might be concluded that **the lion's share of outsourcing services are not covered by any CA and collective employment relations occur very rarely** (predominance of individual employer-employee or B2B relations).

Nevertheless, there are some organisations that are capable to conclude CA at both company- and multi-company level which gives some prospects for future developments in the area of CB in outsourcing:

- on employees' side: Intercompany Union Organisation of the NSZZ "Solidarność" of Security, Catering and Cleaning Workers [Miedzyszakladowa Organizacja Zwiaskowa NSZZ "Solidarność" Pracownikow Ochrony, Cateringu i Sprzatania]
- on employers' side: Entrepreneurs of Poland Federation [Federacja Przedsiębiorców Polskich, [FPP](#)] and Professional Association of Employers PSC [Związek Pracodawców Branżowych

PSC, ZPB PSC] which has been established by the Polish Cleaning Chamber of Commerce [Polska Izba Gospodarcza Czystości, [PIGC](#)] (Eurofound 2012).

OUTSOURCED ACTIVITIES AND FACILITY MANAGEMENT COMPANY CASE

1. OUTSOURCED ACTIVITIES

Two sectors have been chosen: health-care and security services. The rationale behind making such selection is mainly based on importance of the activities performed in the branches under scrutiny: both are responsible for provision of public goods, yet they have been under pressure of market logic for several years resulting in a number of tactical solutions aiming at cost reduction. Outsourcing of work appears to be the leading approach in health care and security services used to achieve such an objective. In the circumstances of deteriorating collective bargaining in general and low level of labour mobilization, no outward manifestations of workers dissatisfaction and grief are to be seen. Nevertheless, the problem remains.

Activity 1: Health-care: 'cheap-state' meets undersupply of labour

Poland's expenditure on health is below average, measured by GDP share, comparing to other OECD countries: as of 2017 it amounts to 6.4% only (OECD-35 mean is 9%), of which 2.0% come out-of-the pocket (private spending). Too little money in the system translates into understaffing: in Poland there are only 2.3 practicing doctors per 1 000 population, and 5.2 nurses per 1000 inhabitants (2015). Financial input has been criticized for years as insufficient, and finally at the end of 2017 become a key feature of the large industrial conflict in public health-care.

Inadequate financial allocation had triggered various HR management practices aiming at reduction of labour costs, such as multi-tasking and outsourcing of activities, which often are combined (e.g. nurse working on the basis of employment contract, and after hours providing service (of the very same character) as a solo self-employed or an agency worker (TAW). While trade unions are aware of the phenomena and risks they entail, their bargaining capacity is not

sufficient to effectively confront employers (de facto government, in the public sector) over the issue.

Activity 2: Security services: illusory safety bought for a penny

The rise of global security culture has put a mark on Poland's economy and society. Even though Poland belongs to the safest countries in the world (UNODC data), the demand for security services has been rising, between 2015 and 2017 the value of security services market increased roughly by 25%.

For many years the prices, especially for the most generic type of services (watchpersons, ushers etc.) have been low, as the demands of those jobs are equally modest (significantly, a relatively high share of security staff are disabled people, as their wage-costs could be subject to state subsidies). This translated into general precarisation of work in the sector. As for public sector, the 'cheap-state' logic (in a similar way to public health-care) propelled outsourcing of those activities. The practice of quiet acceptance and even encouragement of precarious forms of work used by their external service-providers (not just security but also cleaning) among public institutions has been subject to criticism, as the 2016 report of the national auditing agency (NIK) reveals. Unlike in the public health-care incidence and coverage of trade unions in the security services sector is low, and collective bargaining coverage is virtually none.

2. FACILITY MANAGEMENT COMPANY

As an exemplification of Facility Management Company a Polish branch of FMC company was selected. The company is a leading global provider of facility services including not only cleaning, security, property, catering and support services, but also integrated facility management. It is also one of the key market players in the country in both private and public sector.

Vast part of client constitutes of global companies having their branch in Poland. In many cases service contract is concluded at central or regional level of such multinational with rather operational role of representatives of the country branch in the contracting process. In effect, FMC in Poland provides its services mostly to medium and large-size companies. Operation in this segment of the market is also due to the fact that FMC offers mostly complex services and is interested in large cost-cutting (from the clients' perspective) assignments. The main motivation

for contracting FMC is to minimize potential client's costs and ease process of delivering services which is reflected in the strategic goals of FMC.

As compared to the total employees of 2.1 thousand, the FMC headquarter employs approx. .65 workers only that manages operation of the whole company and contracts implemented in clients' facilities. The CEO is supported by two regional managers and by segment directors. The headquarter staff include also well-developed HR and recruitment unit, as well as general accounting and administration. Majority of workers belong to the second part of the organisational structure. There are two general organisational levels: facility managers of the objects where services are provided and service staff (blue-collar workers). Professional profile of the service staff depends on the sort of service provided (cleaning, catering, security, etc.).

In effect of specificity of the FMC sector (employees work in customers' premises), **working conditions of employees groups depend more on conditions of agreements with particular customers, rather than standardized work regulation within the company.** Therefore, conditions vary in: form of employment (employment contract, civil law contract, self-employment), working time, wages (usually minimum wage level allowed by the law among service workers), etc.

The FMC company fits general characteristics of the industrial relations system in Poland, representing decentralised form of social dialogue and **individual employer-employee relations.** There is also **no collective agreement nor extension mechanism** of CA applied.

The company is associated in the Polish Cleaning Chamber of Commerce [Polska Izba Czystości, [PIGC](#)] that is a member of the Confederation Lewiatan [[Konfederacja Lewiatan](#)] (representative employers' organisation at the national level. FMC Poland has also joined recently the Entrepreneurs of Poland [Federacja Przedsiębiorców Polskich, [FPP](#)] which is an employers' organization.

There is only one trade union organisation in an establishment in Cracow which is affiliated by NSZZ "Solidarność", but it organises small number of employees (several dozens) as compared to total number of 2,5 thousand in the whole company in Poland. According to our knowledge, here is no other trade union organisation operating in the company as of 2018.

The FMC Poland is involved in European Works' Council by delegation of an employee of the Warsaw headquarter (which is not a trade union member, but rather a representative of the medium level administrative staff).

POLICY RECOMMENDATIONS

In the given context of the relative weakness of social partners and low level of collective agreements coverage in Poland prospects for covering the CB gap in outsourcing look rather gloomy. Specificity of outsourcing, which nature is conducting work at client's facilities, make collective bargaining much more difficult in these circumstances. Employment relations are highly fragmented and therefore more individualised as compared to other sectors. Especially, progress in trade union organising in a company with a dispersed structure is very limited. **Expanding membership from a trade union organisation at one client's premises to other client's premises encounters many difficulties.** Also a temporality of service contracts in many cases is a barrier as well. Social dialogue at sectoral or regional level are not a valid option. Therefore, **national level social dialogue and regulative context (at both national and EU level) seem to be the only chance to negotiate employment relations and working conditions.**

To be realistic, the very first activity to be considered is **trade unions reaching out to the outsourced workers with a view of persuading them to join.** This, however, should not be pursued on ad-hoc basis, but rather start with designing a coherent approach which would fit into general organising strategy of major trade unions. As highlighted above, the first bridgeheads have been reached. Regardless of structural barriers to be encountered, this is the most feasible method of recruitment, which, at some point, may translate into enhanced coverage for outsourced workers in Poland.

The question in this debate is whether trade unions are willing to invest their limited resources to organise highly rotating workers in outsourced services. Hitherto observations show that trade unions strategies include mostly organising activities in the companies / sectors where potential membership retention is high, which is not the case of outsourcing companies. Trade unions' institutional capacity to organise and support workers in this segment of labour market is very limited. However, trade unions may undertake effective steps in the law-making process at the national- (and EU-) level aimed at improving working conditions in the most precarised segments of labour market i.e. by **increasing minimum wage (and hourly minimum wage), limiting civil law contracts and bogus self-employment, developing social clauses in public procurement, strengthening power of labour inspectorate to counter-fight undeclared work and violation of labour rights** etc.

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