

Political competition and regulatory reform: Polish pension funds during the financial crisis

Paper prepared for the **8th ESPAnet Annual Conference**.
Budapest, 2-4 September 2010.

Work in progress. Comments welcome.

Marek Naczyk
DPhil candidate in Politics
University of Oxford
marek.naczyk@sant.ox.ac.uk

1. Introduction

Private pension provision has considerably developed in Central and Eastern Europe over the last 15 years. Except for the Czech Republic and Slovenia, all countries of the former communist bloc which joined the European Union after 2004 have introduced so-called “paradigmatic pension reforms” which have consisted in transforming their pay-as-you-go defined-benefit public pension systems into multipillar systems (Müller 1999; Orenstein 2008; Guardiancich 2009). As part of the reform packages that have been introduced, an increasing part of the workforce have started to participate in funded defined-contribution pension schemes on a mandatory basis. Apart from social security contributions, workers must also pay monthly contributions into private pension funds which run individual retirement accounts for their members and invest the collected savings in various financial instruments.

The introduction of mandatory “second pillars” managed by private pension funds has been accompanied by the creation of legal frameworks aimed at regulating the newly established pension fund markets. This movement of privatization and re-regulation is characteristic of the rise of the regulatory state in Europe (Majone 1996; 1997) and of the diffusion of regulatory techniques in an increased number of countries and policy domains (Jordana and Levi-Faur 2004; Gilardi 2005; Levi-Faur 2005). Considered as a reaction against the failure of discretionary state interventions in the economy (Majone 1996; 1997), this new policy style is characterized by a process of privatization of state-owned companies

and the delegation of market regulation to independent regulatory authorities (IRAs). The spread of IRAs in Europe has been largely driven by their promotion through EU directives and by a process of emulation through symbolic imitation and the “taken-for-grantedness” of new regulatory techniques (Gilardi 2005). However, the decision to delegate authority to such independent watchdogs has also been driven by politicians' will to commit credibly to privatization, by reasons relating to political uncertainty and policy complexity and by the possibility to shift the blame for difficult decisions onto non-majoritarian institutions (Gilardi 2002; Thatcher 2002a; Gilardi 2004; Elgie and McMenamin 2005; Elgie 2006).

The politics of regulatory reform have usually been characterized as having a distinctive nature from those encountered in other areas such as redistributive policies. The regulatory state is seen as a relatively depoliticized arena in which party politicians and civil servants relinquish their influence over policy-making in favour of other actors such as policy experts, judges or single issue groups (Lowi 1972; Majone 1996; Levi-Faur 2005). Empirical studies have shown that, once independent regulatory authorities are created, political actors tend to retreat from these policy areas and do not make active use of their control powers over regulators, through instruments such as the formal dismissal of IRA members or the possibility to overturn IRAs' decisions (Thatcher 2002b; Coen and Thatcher 2005; Thatcher 2005). Recent work on institutional change in private pensions has also suggested that this policy area is characterized by “subterranean” processes of policy-making (Hacker 2002; 2004) as opposed to the more visible politics of welfare state reform. Often constructed as an issue of “efficiency-enhancing social regulation” (Mabbett 2009), the regulation of pension funds is considered less salient because, although often influenced by state actors, many key decisions are made in the market and in the industrial relations arena (Bridgen and Meyer 2005; Trampusch 2006; 2007; Bridgen and Meyer 2009; Ebbinghaus *forthcoming*) or at the supranational level (Haverland 2007; Hennessy 2008; Mabbett 2009).

This paper will suggest that, even when large regulatory powers are delegated non-majoritarian institutions and even if such institutions remain autonomous from politicians' interventions, in some sectors regulatory reform may still be a highly politicized issue. An analysis of developments in the Polish pension system during the global financial crisis shows that policy-making in private pension regulation is not confined to expert networks and interest group activity, but may become a matter for party competition. The fact that the regulation of pension funds has been politically salient in a country like Poland is intriguing for two reasons. First, the partial privatization of the Polish pension system was introduced in

a climate of relative political consensus. Largely influenced by the blueprints proposed by the World Bank (see World Bank 1994) and other non-state actors such as USAID and José Piñera (Orenstein 2008), the new legislation was enacted despite a change in parliamentary majority during which a post-communist government was replaced by coalition of parties linked to the Solidarity movement and to the communist-era opposition (Müller 1999). Second, even though Polish pension funds have not been spared by negative rates of return (IPE 2009), Poland has been the country that was least affected by the economic crisis as it was the only EU member to post a positive growth rate in 2008. Thus, the politics of pension regulation could have been expected to be relatively less salient in Poland than in countries more deeply affected by the crisis. Nevertheless, the regulation of the second pillar was a matter for continuous political debate throughout the crisis and several institutional changes were introduced in this area. I suggest that the politicized character of private pension regulation in Poland stems from the restructuring of the Polish party system, which results in a greater emphasis given to issues of redistribution.

The rest of the paper is structured as follows: The next section presents the structure of the new Polish pension system and traces the most significant pre-crisis debates concerning the regulation of pension funds. It also presents a brief overview of the effects of the financial crisis on the second pillar. The third section presents recent changes in the Polish party system which have led to a greater politicization of pension regulation. In the fourth section, I analyse the politics of Polish pension regulation. I identify three distinct phases during which the issue of pension regulation became increasingly contentious and which resulted in several legislative changes in the system.

2. The reformed Polish pension system

The Polish pension system underwent a comprehensive reform in 1997-1998. From being based exclusively on the pay-as-you-go (PAYG) method of financing, the Polish pension system has become a multipillar system which relies to a much larger extent on savings as a source of pension provision. The 1997-1998 reform affected the largest statutory pension scheme (ZUS) in Poland, which covers the vast majority of private-sector and public-sector employees. The reform left the farmers' scheme (KRUS) and the pension schemes of the uniformed services (i.e. the armed forces and the police) untouched. In the new pension

system, workers are covered by two different pillars. First, they pay contributions into a statutory PAYG scheme run by the Social Insurance Institution (ZUS). Second, workers also have to pay contributions to a second pillar, which is fully-funded and managed by so-called “open pension funds” (OPFs). In both pillars, benefits are calculated according to the defined-contribution principle, which means that the level of the pension is a function of three variables: the total amount of contributions paid by a worker during their career, the rate-of-return on these contributions and the worker’s life expectancy at retirement. In the PAYG scheme, the “rate-of-return” on contributions is a largely fictional variable and is determined by the state. In the Polish first pillar, contributions are indexed to the evolution of the average wage in the economy. In the funded pillar, the rate-of-return is determined by the performance of the investments made by the open pension funds. With the reform, the level of contributions has been fixed at 12.22% for the first pillar and 7.3% for the second pillar. The reform did not change the statutory retirement age, which is set at 60 years for women and 65 years for men.

The reform has been implemented since 1999 and the first contributions to the second pillar were paid in April 1999. All workers born after 1968 were automatically covered by the new multipillar system while workers born before 1949 were not affected by the reform and remained in the old defined-benefit system. Those born between 1949 and 1968 have had their statutory pensions transformed into notional defined-contribution pensions, but they have been given the right to choose whether they want to join the second pillar or not. Because it was introduced immediately, the new system covered already 9,975,000 people in the first quarter of 2000 (i.e. approximately 58% of the active population)¹. This number has been growing steadily ever since, reaching 14,000,000 participants in 2009 (81% of the active population). One of the main aims of the “paradigmatic reform” of the Polish pension system was to help develop Polish capital markets (BPR ds. RZS 1997). Because of the size of the Polish working population, the reform has made Polish pension funds the largest pool of assets under management in Central and Eastern Europe. The assets invested by the funds represented 4.2% of GDP in 2001 (Stańko 2003) and 12.2% in 2007 (OECD 2009: 257). Collectively, the OPFs form the largest class of institutional investors in Poland. At the end of 2009, OPF investment accounted for 16% of the Warsaw Stock Exchange’s capitalisation and 35.2% of its free float (IPE 2010).

¹ own calculation – based on KNF (Polish Financial Supervisory Authority) and on Eurostat data.

The Polish second pillar is tightly regulated by the state. In order to be able to operate in the pension fund market, the OPFs must fulfil a number of capital and corporate governance requirements and must apply for a license from the pension fund watchdog (the KNF – Financial Supervision Authority). 21 OPFs were created in 1999, but the industry has gradually concentrated to reach 14 funds in 2010. Each open pension fund (OPF) is an independent legal entity set up and managed by a joint-stock company². The pension fund's assets and those of the pension-fund management company are thus kept separate. Pension funds also have to comply with regulations concerning the structure of investments. The regulatory framework includes a set of rules governing the diversification of a fund's investment portfolio and limits on particular investments (including equities – max. 40% and foreign investment – max. 5%). OPFs are required to achieve a minimum rate of return, based on the average return of all funds. In case of a poor performance, the pension fund management companies have to foot the bill from their own assets.

While the profits generated by the OPFs' assets are redistributed among the funds' members, the pension fund management companies earn profits by charging fees on participants. Polish pension funds charge two main types of fees³: a) distribution fees, i.e. a fixed charge imposed on contributions, each time contributions are paid into the scheme; b) management fees, which are a regular charge on the assets of the fund and remunerate the fund manager for administration costs. When the second pillar was created, the level of the distribution fees was left to the discretion of fund managers, but was in general linked to participants' seniority in the fund. In 1999, the average level of the distribution fee was 8.6%⁴. In 2003, the social-democratic SLD government introduced a cap on the fee, which was set at 7% in 2004 and was to be gradually decreased from 2011 to reach 3.5% by 2014. Simultaneously, the government reformed the rules regarding the management fee. While it was initially set at maximum 0.05% of the fund's asset value in a month, it was split into two parts. The stable component of the management fee is set at max. 0.045% of the fund's asset value in a month and decreases once it reaches a certain threshold in assets⁵. The reform also introduced a variable component to the management fee whose level depends on the investment performance of the fund. The pension management company that achieves the

² Called general pension fund society (PTE).

³ A third type of fee are transfer fees which are charged if an individual decides to change his or her OPF within 24 months of signing a contract.

⁴ Unweighted average – own calculation based data collected by the Polish Chamber of Pension funds (IGTE) and retrieved from http://www.igte.com.pl/notowania/OFE%20opl%20dystr_caly%20rynek.xls on May 15th 2010.

⁵ i.e. for instance, for the assets above PLN 65 billion, the fee is only 0.015% a month

best rate-of-return in a certain period of time can have the full percentage of the variable component (i.e. 0.005%), while the worst-performing pension funds are left with nothing.

Until 2007, Polish pension funds had fared relatively well. Since their inception in 1999, OPFs posted positive rates of return, averaging 200% at the end of June 2007. The good performance of the funds had been particularly fuelled by a booming local equity market which reached heights in 2006. In 2006, the Warsaw Stock Exchange's broad index rose by 41.6%, the WIG-20 index by 24% and the small cap index by 132.4% (IPE 2007b). At the time of the peak in financial markets, the funds invested an average of 37% of the assets in domestic equities, close to the 40% legal limit (IPE 2007a). State bonds, with significantly lower rates-of-return, accounted for around 60% of funds' investment portfolios. The performance of Polish pension funds started to deteriorate from October 2007, after the subprime mortgage crisis became apparent. It was initially thought the crisis would have only a very limited effect on the domestic financial market thanks to the low exposure of Polish financial institutions to the main infected markets. However, from the beginning of 2008, international investors became concerned about the situation of Central European markets due to inflation caused by rising food and energy prices. In Poland, another source of concern were rising wages because of the labour shortages resulting from massive emigration after Poland's accession to the EU. The funds posted their worst performance in October 2008, when their assets were down by 6.8%, making it the worst month in the history of the system. The highest loss prior to this had taken place in January 2008 when funds fell 3.9% in value. In 2007 and 2008, Polish pension funds massively reduced their equity allocation, to 21.4% in December 2008. By February 2009, the average value of OPF accounting units was down by 23.6% compared to June 2007. This meant that, when taking into account the fees paid by OPF members, the real rate of return of OPFs since their inception was approaching zero (compared to 34.6% in June 2008 – Parkiet 2009). However, from March 2009, the performance of the funds has been steadily improving, making up part of the losses posted during the financial crisis.

Polish open pension funds are in charge of investing workers' pension contributions during the accumulation phase, but ever since its creation *the Polish second pillar has lacked legislation for the pay-out phase*. This means that there has been a lingering uncertainty as to how pensions will be paid out, while the first payments from the second pillar were scheduled for January 1st 2009 as the first cohort of women covered by the new system were to retire. A

draft bill had been prepared at the time of the 1997-1998 reform and stipulated that pensions should be paid out by private-sector annuity companies. However, the bill was not introduced as part of the reform package, because more careful work was required on its technical aspects. The regulation of the pay-out phase was put on the political agenda from 2004-2005, when the left-wing SLD government charged a group of civil servants to work on possible solutions. A controversy broke out over whether pensions should be paid out by private providers or a single public institution, the first solution being strongly supported by the Polish Chamber of Pension Funds (IGTE), an interest group representing pension fund management companies. The controversy continued under the right-wing PiS-Samoobrona-LPR coalition (2006-2007) after the Minister of Social Affairs – from the agrarian-populist Samoobrona (Self-Defence) party – proposed to put the Social Insurance Institution (ZUS) in charge of managing and paying out pension annuities. The plan caused disagreements within the coalition and the senior coalition partner – the conservative PiS party – pushed for the creation of a working group on the issue at the cabinet level. The consultations resulted in a plan to introduce the market solution, but with a public option. The government also proposed to introduce three annuity products: an individual life annuity, a period-certain annuity with a minimum guarantee of 10 years and a “marital” annuity (or “joint life annuity”). However, the plan did not come before Parliament, because the coalition fell apart and an early election was called for October 2007.

3. The changing Polish party system

While the new Polish pension system had been introduced in a climate of relative consensus among political parties, this paper suggests that the regulation of pension funds has become an increasingly politicized issue, particularly during the financial crisis. Recent changes in the Polish party system may have largely influenced this change. Ever since the beginning of the democratization process, Polish party politics had been dominated by issues related to the “regime divide”, i.e. “the persisting conflict between the successors to the pre-1989 Communist parties and the parties emerging from the Communist-era opposition” (Grzymala-Busse: 85). Although they also structured political debates, issues related to the class divide and to redistributive policies were relegated to the background, notably because of the SLD post-communist party's embrace of economic liberalization as part of a strategy to present itself as committed to liberal democracy and the market economy (Grzymala-Busse 2002).

The Polish political landscape changed dramatically in 2005 (See Markowski 2006; Szczerbiak 2007; 2008; Markowski 2008). At the time the governing SLD party was severely weakened by corruption scandals and in the run-up to the parliamentary and presidential elections it became clear that the next Parliament would be dominated by two right-wing parties, the liberal-conservative Civic Platform (PO) and the conservative Law and Justice (PiS) party. In the weeks preceding the elections, the leaders of the PiS party, the Kaczyński brothers unexpectedly decided to redefine PiS party of “solidarity” and to ally themselves with the Solidarity union (NSZZ Solidarność), although PiS had been a traditional conservative party with a relatively liberal economic policy programme ever since its creation. Instead of being a potential coalition partner for PO, PiS became its main competitor, by drawing a new line of conflict which opposes “solidarity Poland” and “liberal Poland” embodied by PO, which has close ties with business groups, including with PKPP Lewiatan, Poland’s main employers’ association. The Kaczyński brothers’ move redefined the Polish political landscape and created a polarization between two parties on the right on the socio-cultural dimension, but which have an opposite discourse on the socio-economic dimension. A consequence of this change has been a greater emphasis on issues related to the distribution of income.

Table 1 – The Polish political landscape after the 2005 and 2007 parliamentary elections

	2005 election		2007 election	
	<i>% of votes</i>	<i>number of seats in the Sejm (out of 460)</i>	<i>% of votes</i>	<i>number of seats in the Sejm (out of 460)</i>
German minority	0.3%	2	0.2%	1
SLD (2007: LiD⁶)	11.3%	55	13.1%	53
PSL	7%	25	8.9%	31
PO	24.1%	133	41.5%	209
PiS	27%	155	32.1%	166
Samoobrona	11.4%	56	1.5%	0
LPR	8%	34	1.3%	0

Source: Państwowa Komisja Wyborcza

The subprime mortgage crisis coincided with a political crisis which led to the collapse of the right-wing PiS-LPR-Samoobrona coalition which was formed following the 2005

⁶ Electoral coalition of SLD (Alliance of the Democratic Left – post-communist/social-democratic party), SdPi (Polish Social Democracy), Demokraci.pl (Democrats – liberal-democratic party) and UP (Union of Labour).

election. In July 2007, Prime Minister Jarosław Kaczyński sacked his deputy Andrzej Lepper, the leader of the agrarian-populist Samoobrona (Self-Defence) party, amid corruption allegations. The far-right catholic League of Polish Families (LPR) broke its coalition agreement the following month and an early election was called for October 2007. The election⁷ was won by a landslide by the Civic Platform (PO), which had been the main opposition party in the outgoing parliament. However, the party did not secure a parliamentary majority and decided to form a government coalition with the agrarian Polish People's Party (PSL).

The two parties signed a relatively loose – two-page – coalition agreement, which did not list specific policy measures and highlighted the partners' "mutual trust" and their "will to seek compromises". However, the partners emphasized that they agreed that the separate farmers' social insurance scheme (KRUS) should be maintained and that any changes to the system should be introduced on the basis of social dialogue. The two parties have indeed quite opposite agendas on the reform of this scheme. PO, which attracts mainly the urban middle class, has set itself the aim to modernize the Polish economy and considers KRUS to be an impediment to its economic programme. Farmers' social insurance is considered to provide an incentive for farmers and their families to reduce their activity levels, because farmers pay only modest contribution rates and the institution is heavily subsidised by the state budget. PO has consistently been calling for a comprehensive reform of the system⁸ and in its 2007 election manifesto it argued that contributions rates should be significantly increased for farmers with middle and high incomes (Platforma Obywatelska 2007: 65-66). Meanwhile, PO has been very supportive of the new Polish pension system and has been calling for a "completion" of the 1997-1998 reform, by introducing a market solution for the pay-out of second pillar pensions (Platforma Obywatelska 2007: 47-49; see also Gazeta Wyborcza 2007). PO's programme has been at odds with PSL's traditional defence of the farmers' scheme. In its 2007 election programme, PSL did not mention the possibility of reforming KRUS and rather emphasized its commitment to "restore a fair and efficient functioning of the pension system" and to introduce "steady and significant increases in the lowest pensions and average pensions" (Polskie Stronnictwo Ludowe 2007).

From a policy point of view, a natural ally for PO could have been LiD, an electoral cartel composed of left-wing and liberal parties. In its electoral manifesto, LiD defended a

⁷ For more in-depth accounts of recent Polish elections and party politics, see: Markowski (2006) and Markowski (2008).

⁸ See Platforma Obywatelska (2005) in which PO proposed to merge ZUS and KRUS and to increase the insurance character of the system by tightening the link between contributions and benefits.

liberal economic policy, was in favour of a suppression of the farmers' social insurance scheme and called for a quick completion of the pension reform, by introducing a regulatory framework for the payout phase that would "minimize costs". However, despite programme affinities, an alliance with LiD was considered potentially too costly from an electoral point of view, because of LiD's communist roots. Later during the legislature, in March 2008, the LiD cartel broke down, after SLD, the senior partner, decided to turn to the left and compete with PiS. After the 2007 election, the Kaczyński brothers' Law and Justice (PiS) party, which increased its share of the vote during the election, became the main opposition party in the new Parliament. In line with its new socio-economic programme which emphasizes values such as solidarity and equality, PiS has become more critical of the new pension system. The party has defended the possibility to go back entirely to the PAYG system for individuals who have chosen to join the second pillar "by mistake" and whose benefits would be too low. For the payout phase, PiS is a defendant of the public option, which it considers more cost-effective than private-sector firms. During the 2007 campaign, Law and Justice also targeted voters in rural areas and pledged to "maintain a 'solidaristic' model of farmers' social insurance" (Prawo i Sprawiedliwość 2007: 61). Since a large part of the rural electorate is covered by KRUS, this has increased pressure on the agrarian PSL to present itself as committed to defend the farmers' scheme.

4. The Politics of Pension Regulation during the Financial Crisis

An analysis of developments in private pension regulation during the financial crisis shows that in this policy domain parties adopt distinct policy positions. The crisis and the losses incurred by pension funds has been used an opportunity for party actors to emphasize their commitment to defend the interests of future pensioners. I distinguish three phases of regulatory politics during the crisis. In a first phase, the politics of pension regulation continued to revolve around the payout issue which had dominated the political agenda over the previous years. In a second stage, the negative results posted by the pension funds have been used as arguments by politicians to revise the funds' cost structure. However, the most severe criticism against the open pension funds has been levelled in a third phase, when senior cabinet members proposed to decrease contribution rates to the second pillar and thus to reduce significantly the role played by private pension funds in pension provision. The proposal has been met with stiff opposition both from within the ranks of the Civic Platform

and from the Polish Chamber of Pension Funds (IGTE), which represents the interests of the pension funds industry.

Phase 1: Continuation of existing debates – Towards a legislative framework for the pay-out phase?

In January 2008, the new government announced it would carry out a policy review on the regulation of the second pillar and that it would focus on the regulation of the payout phase, since the first pensions had to be paid out in January 2009. Simultaneously, the government declared its openness to hold consultations with representatives of the financial industry (IPE 2008). In June 2008 and August 2008, the cabinet approved two draft bills regulating the payout phase. The first bill⁹ – on funded pensions – sets out the rules concerning the types of annuity products to be offered at retirement. Instead of the three types of annuities advanced by PiS, the PO-PSL coalition proposed to introduce only an individual lifetime annuity product from age 65. The government rejected proposals for a joint life product (or “marital” annuity) which would have allowed non-working spouses to draw a pension accrued by a single breadwinner. Moreover, while the PiS government was in favour of using differentiated mortality tables for both genders, the new government decided that annuities would be calculated on the basis of unisex tables. Because women’s statutory retirement age is set at age 60, the draft bill also planned for the introduction of a “programmed withdrawal product” to be provided by the open pension funds to women between the age of 60 and 65. Once they would reach age 65, women’s retirement savings would be converted into individual lifetime annuities.

A second bill¹⁰ – on life annuity funds – established a regulatory framework for the creation of special pension annuity companies, which would be established only in 2014, once the first life annuities would be paid out. The bill detailed regulations such as minimum capital requirements, investment rules, the separation of the annuity provider’s assets from the annuity reserves, solvency regulations and indexation. The government decided to opt for the creation of special annuity companies, instead of allowing existing life insurance companies to run the business. The decision was meant to prevent part of the Polish second pillar to fall under Solvency II regulations and thus to maintain domestic supervision of

⁹ <http://orka.sejm.gov.pl/proc6.nsf/opisy/743.htm>

¹⁰ <http://orka.sejm.gov.pl/proc6.nsf/opisy/865.htm>

Polish pension funds. The bill introduced the indexation of life annuities via the participation of pensioners in investment profits generated by the annuity provider. At least 90% of this gain would be credited to the pensioner while at most 10% would go to the account of the pension provider. Investment losses would be borne solely by the pension annuity company. In addition, the bill created a clearing house mechanism between providers for their lifetime annuity reserves.

The coalition thus resolutely opted for the market solution and the principles underlying the project strongly concurred with the preferences of PKPP Lewiatan, the largest employers' association and IGTE, the Polish Chamber of Pension Funds. Both organisations argued that the market solution would help avoid a potential "systemic risk" in case a state monopoly were to make wrong actuarial calculations and, as a result, the state were forced to subsidize the second pillar. The business community was also opposed to the creation of a marital pension, arguing that such a product would be costly and that women could not count on their husbands to provide them with income security in old age. Employers feared that a joint annuity product might create a disincentive for women to work, while one of the aims of the 1997-1998 reform was to increase the activity rate of the working age population. The government's project came under fierce criticism from the Law and Justice (PiS) party and from trade unions, which denounced the lack of provisions for a marital pension and for an indexation mechanism which would make second pillar pensions inflation-proof. For these organisations, marital pensions were seen as a necessary element of solidarity in the system. The issue was considered vital by the PiS party which presents itself as the champion of family values. PiS, which had allowed for the creation of a public institution in its own plan, also accused the government of having bowed to pressure from the pension fund lobby, because it had decided to open up the possibility for existing pension fund management companies to run an annuity activity on the same bases as the new annuity companies. IGTE denied having lobbied for such a change and said the provision had come as a surprise¹¹.

Despite attempts by the PiS and SLD parties to amend the project, the bills were adopted by Parliament in November and December 2008. Because of the urgent need to adopt a regulatory framework for the payout of women's pensions from January 1st 2009, President Lech Kaczyński agreed to sign the bill on funded pensions. However, following the criticisms formulated by his own party, he decided to veto the bill on life annuity funds in January 2009. The President motivated his decision by the fact that the bill did not guarantee

¹¹ Interview IGTE, 16th February 2010.

that pensions would be inflation-proof as well as by the fact it did not plan for the creation of a state-managed annuity provider. As a matter of fact, the President's decision rendered the government's project to introduce life annuities provided by the private sector null and void. In this first stage of the politics of pension regulation during the global financial crisis, the agenda was dominated by the issue of the regulation of the payout phase. To a large extent, actors expressed the same preferences and followed the same political strategies as before the crisis.

Phase 2: Using the crisis for political purposes – a reform of the cost structure

As the financial crisis deepened and pension funds' negative results became more conspicuous, the political climate around the Polish second pillar became tenser. In April 2008, Poland's main daily, the liberal-oriented *Gazeta Wyborcza* started a public campaign in favour of an immediate decrease in the distribution fee to 3.5% instead of the 7% charged by most open pension funds (*Gazeta Wyborcza* 2008a). The newspaper denounced a lack of competition between the funds on the distribution fee and blamed the charge for eating up a very large part of the profits generated by the OPFs. The journal reported that out of 15 funds 14 charged the maximum distribution fee and only one – Allianz – levied 4%. Political actors were prompt in seizing the problem and demonstrating their concern for the well-being of future pensioners. Two days after *Gazeta Wyborcza* launched its campaign, the SLD parliamentary group, which had recently broken the LiD electoral cartel and announced a turn to the left, submitted a draft bill in the Diet with a plan to reduce the charge to 3.5% in January 2009¹². The PiS parliamentary group announced similar intentions and submitted, a month later, another draft bill in the Diet with a plan to reduce the charge to 3.5% in January 2009 and gradually to 2% by 2013¹³. PiS MPs also proposed to decrease the stable part of the management fee to 0.031% and to forbid further mergers between funds, because of the risk of the emergence of an oligopoly in the pension market. In fact, Law and Justice's project to decrease the distribution fee did not result from a change in the preferences of the party. High-profile members of the party had already signalled their intention to go ahead with such a measure in March 2007. While the opposition quickly reacted to *Gazeta Wyborcza's*

¹² <http://orka.sejm.gov.pl/proc6.nsf/opisy/686.htm>

¹³ <http://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/755>

campaign, MPs of the ruling PO-PSL coalition declared they would also be in favour of such a move (Gazeta Wyborcza 2008c), but had to wait for an official stance of the government.

The Polish Chamber of Pension Funds expressed a strong opposition against the proposals. The pensions industry contended that without the distribution fee funds would hardly make any profits and would have to withdraw from the business (Gazeta Wyborcza 2008b). IGTE riposted by carrying out simulations which showed that, if other fees charged by pension funds such as management fees or charges on profits are taken into account, Polish pensioners can expect to have the highest second pillar benefits in Central Europe¹⁴. The results of the study were disseminated in mainstream media (e.g. Rzeczpospolita 2008). The OPFs argued that the government should rather focus on changing investment limits to allow pension funds to invest in foreign equities or derivatives which could yield increased profits. The Civic Platform which has strong ties with the business community¹⁵ attempted to appease the pensions industry and decided to hold a consultation over possible changes in the regulation of pension funds. The government suggested that in return for a decrease in the distribution fee it could respond to two long-standing demands of the OPFs and introduce changes in the regulation of the minimum rate of return and establish a framework for the creation of funds with investment strategies adapted to the life cycle of contributors (so-called “multifunds”) (Parkiet 2008). However, in March 2009, after a protracted consultation and pressure from the opposition, the PO-PSL government decided to push through a decrease in the distribution fee to 3.5% from January 2010 as well as a decrease in the asset thresholds from which the management fee decreases. The measure was passed by Parliament in June 2009 and signed by President Kaczyński in July 2009. In this second stage, political actors used the growing concerns surrounding the second pillar as an opportunity to formulate policies that demonstrated their commitment to defend the interests of contributors to the second pillar, i.e. the large majority of the working-age population. Whereas opposition parties such as SLD and PiS rapidly proposed to decrease distribution fees and thus tried to claim credit for a popular measure, PO initially chose to cultivate its ties with the business community. But, as a result of the media attention and the political saliency given to the issue, the ruling coalition decided to introduce the measure without compensation for the pensions industry.

¹⁴ <http://www.igte.com.pl/matiinf/2008/006.html>

¹⁵ Interview PKPP Lewiatan, February 2nd 2010.

Phase 3: Towards a more radical change in the Polish second pillar?

The negative climate surrounding the mandatory second pillar reached its climax in a third phase of the Polish politics of private pension regulation during the crisis. In this third phase, the pension system was affected not only by the negative results posted by open pension funds, but also by declining revenue in the PAYG system, because of the economic slowdown. In November 2009, Jolanta Fedak – the Minister of Social Affairs (PSL) – and Jacek Rostowski – the Minister of Finance (unaffiliated, but close to PO) – proposed to decrease the share of contributions going to the open pension funds from 7.3% to 3%. Both ministers argued that the measure would break the vicious circle in which OPFs invest on average 60% of their assets in government bonds, which themselves are used to finance the deficit caused by the loss of revenue for the PAYG system resulting from the introduction of a mandatory second pillar. The plan would result in a transfer of PLN16bn (3.9bn euros) of revenue from the second pillar to the first pillar. The ministers also argued that pensioners would get a higher rate of return in the first pillar – thanks to the indexation of contributions on the average wage - than the rate-of-return generated by government bonds. The announcement of the plan was accompanied by declarations of the Prime Minister which suggested he was in favour of the plan. PM Tusk (PO) declared that “pension contributions were not there for financial institutions to get loaded” (Gazeta Wyborcza – PAP 2009).

However, the project was greeted with outright hostility by senior members of the Civic Platform, including by Michał Boni, the Prime Minister’s chief adviser and a former adviser to the PKPP Lewiatan business association. The plan was bitterly denounced by PKPP Lewiatan and by IGTE whose president declared that the proposal meant „the beginning of the nationalisation of retirement savings” (Puls Biznesu 2009). IGTE also commissioned and published a poll which showed that 75% of respondents believed the government to “grab their money” (Rzeczpospolita 2009). While the OPZZ union welcomed the ministers’ announcement, representatives of the Solidarity union expressed their doubts and declared that an increase in the contribution to the first pillar at the expense of the second pillar could increase the risk that the pension system would not be able to cope with demographic changes. Given the negative reactions to the proposal, PM Tusk back-pedalled, emphasized it was not a project of the government and urged PO backbenchers not to take stance on the issue.

The months following the announcement of the plan have been marked by infighting among the coalition partners. The leaders of the agrarian PSL expressed their support for the project. Waldemar Pawlak – the deputy Prime Minister and the PSL's leader – said that “if the plan will result in higher pensions – because pensioners will pay lower distribution fees to the OPFs – it is a good idea” (Gazeta Wyborcza 2009). Members of PO argued that rather than dismantling the second pillar the government should try to negotiate with the EU on a new classification of the debt which would take into account future pension liabilities and would be more favourable for Poland. PO members also blamed their coalition partners for blocking a reform of the farmers’ social insurance scheme (KRUS) which is heavily subsidized by the state budget. The Minister of Social Affairs, Jolanta Fedak (PSL), reiterated her proposal in January 2010. But she suggested even more radical plans on the regulation of the payout phase, which exacerbated tensions within the coalition. First, Fedak proposed to put the Social Insurance Institution in charge of paying out second pillar pensions, a proposal which goes against the Civic Platform pro-market conception. Second, she suggested that in case the contribution rate was decreased to 3% the pensions could also be paid in the form of a lump sum. While the pensions industry condemned the plan, representatives of investment funds expressed their interest for the measure (Parkiet 2010). The minister’s plan would indeed open up a new market for the industry, since pensioners' savings could be reinvested in other financial products.

In the first half of 2010, tensions within the PO-PSL coalition on pension reform were growing. PSL members started to openly criticize the open pension funds for delivering a poor investment performance and even accused the funds of making arrangements to limit competition in the pensions market. On the contrary, the Civic Platform – backed by interest groups such as PKPP Lewiatan and the Polish Chamber of Pension Funds – placed their junior coalition partner under growing pressure to undertake a reform of the farmers’ social insurance scheme. The dialogue between the two partners on pension reform seemed to be reaching a deadlock. The proposal to decrease contribution rates in the second pillar was interpreted as a direct challenge to the legitimacy of the funded system and was largely a consequence of the financial crisis. However, the critical reactions to the proposal seem to suggest that the Polish second pillar continued to be defended by a constellation of political actors who are in favour of the existence of the system.

5. Conclusion

The analysis of developments in the Polish pension system during the financial crisis presented in this paper suggests that the politics of pension regulation may be a relatively salient political issue on which party political actors formulate distinct policy positions. As a result of changes in the Polish political landscape after the 2005 parliamentary and presidential elections, distributional issues have become increasingly important in Polish politics. Despite its technical aspect, the regulation of private pensions is crucial for the generation of future pensioners' incomes. As has been highlighted by the financial crisis, regulations such as those concerning pension funds' cost structure directly affect the way the profits or the losses generated by pension funds are distributed between contributors and the companies in charge of managing private pension plans. In areas where the regulatory state and the welfare state are intertwined, the nature of the policy-making style may become different from that generally presented by scholars of regulatory politics (Mabbett forthcoming). It might be argued that a supplementary factor affecting the salience given to this policy area in Central Europe is the fact that in these countries pension funds have been created via a “top-down” process in which the partial privatization of the system originated from a government decision rather than from decentralised decisions by private actors¹⁶. The security of investments in the second pillar is seen as a crucial factor contributing to the legitimacy of the reformed pension systems and as a result can be potentially mobilized by party political actors. A major limitation of this analysis is its focus on a single country during a relatively short period of time. Future research will be required to confirm if the politicization of pension regulation is a general phenomenon or if it is a relatively limited one because of the interplay of contextual factors.

¹⁶ In Western Europe and North America, second pillars usually developed in a “bottom-up” way, as employers and trade unions created occupational pension schemes for workers employed in different firms and sectors (e.g. Hacker 2002; Leimgruber 2008). To be sure, state intervention often contributed to extending coverage by such schemes or even making them compulsory, but the creation of second pillars did not originate from purely legislative intervention.

References

- BPR ds. RZS (1997) *Bezpieczeństwo dzięki różnorodności* (Security through Diversity). Warsaw: Biuro Pełnomocnika Rządu ds. Reformy Zabezpieczenia Społecznego (Office of the Government Plenipotentiary for Social Security Reform).
- Bridgen, P. and Meyer, T. (2005) "When Do Benevolent Employers Change Their Mind? Explaining the Retrenchment of Defined-benefit Pensions in Britain", *Social Policy and Administration*, 39(7), 764-785.
- Bridgen, P. and Meyer, T. (2009) "The Politics of Occupational Pension Reform in Britain and the Netherlands: The Power of Market Discipline in Liberal and Corporatist Regimes", *West European Politics*, 32(3), 586-610.
- Coen, D. and Thatcher, M. (2005) "The New Governance of Markets and Non-Majoritarian Regulators", *Governance*, 18(3), 329-346.
- Ebbinghaus, B. (forthcoming), *Varieties of Pension Governance: The Privatization of Pensions in Europe*. Oxford: Oxford University Press.
- Elgie, R. (2006) "Why Do Governments Delegate Authority to Quasi-Autonomous Agencies? The Case of Independent Administrative Authorities in France", *Governance*, 19(2), 207-227.
- Elgie, R. and McMenamin, I. (2005) "Credible Commitment, Political Uncertainty or Policy Complexity? Explaining Variations in the Independence of Non-Majoritarian Institutions in France", *British Journal of Political Science*, 35(3), 531-548.
- Gazeta Wyborcza (2007) "Reforma emerytalna według PO", September 3rd 2007.
- (2008a) "Niech fundusze emerytalne obniżą opłaty za prowadzenie naszych kont", April 28th 2008.
- (2008b) "Lewicka: Nie ma powodu, by obniżać prowizje OFE", April 29th 2008.
- (2008c) "PO: obniżymy prowizje OFE", May 14th 2008.
- (2009) "Składki do OFE: Nie ma zgody ani w rządzie, ani w koalicji", November 19th 2009.
- Gazeta Wyborcza – PAP (2009) "Tusk: składki emerytalne nie dla instytucji finansowych". October 28th 2009.
- Gilardi, F. (2002) "Policy Credibility and Delegation to Independent Regulatory Agencies: A Comparative Empirical Analysis", *Journal of European Public Policy*, 9(6), 873-893.
- Gilardi, F. (2004) "Institutional change in regulatory policies: regulation through independent agencies and the three new institutionalisms" in J. Jordana and D. Levi-Faur (Eds.), *The politics of regulation: institutions and regulatory reforms for the age of governance*. Cheltenham: Edward Elgar, 67-89.
- Gilardi, F. (2005) "The Institutional Foundations of Regulatory Capitalism: The Diffusion of Independent Regulatory Agencies in Western Europe", *The ANNALS of the American Academy of Political and Social Science*, 598(1), 84-101.
- Grzymala-Busse, A. (2001), "Coalition Formation and the Regime Divide in New Democracies: East Central Europe", *Comparative Politics*, 34(1), 85-104.
- Grzymala-Busse, A (2002) *Redeeming the Communist Past. The Regeneration of Communist Parties in East Central Europe*. Cambridge: Cambridge University Press.
- Guardiancich, I. (2009) *Pension Reforms in Central, Eastern and Southeastern Europe: Legislation, Implementation and Sustainability*. PhD dissertation. Florence: European University Institute
- Hacker, J. S. (2002) *The divided welfare state : the battle over public and private social benefits in the United States*. Cambridge: Cambridge University Press.

- Hacker, J. S. (2004) "Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States", *American Political Science Review*, 98(2), 243-260.
- Haverland, M. (2007) "When the welfare state meets the regulatory state: EU occupational pension policy", *Journal of European Public Policy*, 14(6), 886-904.
- Hennessy, A. (2008) "Economic Interests and the Construction of a European Single Pension Market", *British Journal of Politics and International Relations*, 10(1), 105-128.
- Immergut, E. M., Anderson, K. M. and Schulze, I. (eds.) (2007), *The Handbook of West European Pension Politics*. Oxford: Oxford University Press.
- IPE – Investment and Pensions Europe (2007a) "'New' Europe under the spotlight", June 14th 2007.
- (2007b) "Second pillar growth surges ahead", 7th October 2007.
- (2008) "Poland names pensions minister", January 14th 2008.
- (2009) "Record losses for Polish pension managers", March 24th 2009.
- (2010) "Poland: On a collision course", 4th January 2010.
- Jordana, J. and Levi-Faur, D. (Eds.) (2004) *The politics of regulation: institutions and regulatory reforms for the age of governance*. Cheltenham: Edward Elgar.
- Leimguber, M. (2008) *Solidarity without the State. Business and the Shaping of the Swiss Welfare State, 1890-2000*. Cambridge: Cambridge University Press.
- Levi-Faur, D. (2005) "The Global Diffusion of Regulatory Capitalism" *The ANNALS of the American Academy of Political and Social Science*, 598(1), 12-32.
- Levi-Faur, D. (2006) "Varieties of Regulatory Capitalism: Getting the Most Out of the Comparative Method", *Governance*, 19(3), 367-382.
- Lowi, T.J. (1972) "Four Systems of Policy, Politics, and Choice" *Public Administration Review*, 32(4), 298-310.
- Mabbett, D. (2009) "Supplementary pensions between social policy and social regulation", *West European Politics*, Vol 32, No 4.
- Mabbett, D. (forthcoming) "The regulatory state and the welfare state", in D. Levi-Faur (Ed.), *Handbook on Regulation*. Cheltenham: Edward Elgar.
- Majone, G. (1996) *Regulating Europe*. London: Routledge.
- Majone, G. (1997) "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance", *Journal of Public Policy*, 17(2), 139-167.
- Markowski, R. (2006), "Polish elections of 2005: pure chaos or restructuring of a party system?", *West European Politics*, 29(4), 814-832.
- Markowski, R. (2008), "The 2007 Polish Parliamentary Election: Some Structuring, Still a Lot of Chaos", *West European Politics*, 31(5), 1055-1068.
- Müller, K. (1999), *The political economy of pension reform in Central-Eastern Europe*. Cheltenham: Edward Elgar.
- Müller, K. (2003), *Privatising Old-Age Security: Latin America and Eastern Europe Compared*. Cheltenham: Edward Elgar.
- OECD (2009) *Private Pensions Outlook 2008*. Paris: Organisation for Economic Co-Operation and Development.

- Orenstein, M. (2008), *Privatizing pensions : the transnational campaign for social security reform*. Princeton: Princeton University Press.
- Parkiet (2008) “Szykują się zmiany w opłatach OFE”, August 22nd 2008.
- (2009) “W ZUS o 8 procent więcej niż w najlepszym OFE”, June 22nd 2009.
- (2010) “Kontrowersyjny pomysł na OFE”, January 9th 2010.
- Platforma Obywatelska (2005) *Państwo dla obywateli. Plan rządu 2005-2009* [The state for citizens. Governing plan 2005-2009]. Warsaw: Platforma Obywatelska.
- (2007) *Program PO. Polska zasługuje na cud gospodarczy* [PO's programme. Poland deserves an economic miracle]. Warsaw: Platforma Obywatelska.
- Polskie Stronnictwo Ludowe (2007) *Razem tworzymy lepszą przyszłość. Narodowe priorytety PSL na lata 2007 – 2011*. [Together we create a better future. PSL's national priorities for 2007-2011] Warsaw: Komitet Wyborczy PSL.
- Prawo i Sprawiedliwość (2007) *Program 2007 Prawa i Sprawiedliwości. Dbamy o Polskę, Dbamy o Polaków* [PiS 2007 Programme. We care about Poland, we care for Polish people]. Warsaw: Prawo i Sprawiedliwość.
- Puls Biznesu (2009) “Polacy wolą odkładać w OFE niż ZUS”, November 6th 2009.
- Rzeczpospolita (2008) “Polacy dostaną najwyższe emerytury”, June 30th 2008.
- (2009) “ZUS czeka na rządową pożyczkę”, 25th November 2009.
- Stańko, D. (2003) “Polish Pension Funds: Does the System Work? Cost, Efficiency and Performance Measurement Issues.” *Discussion Paper PI-0302*. London: The Pensions Institute. (<http://www.pensions-institute.org/workingpapers/wp0302.pdf>)
- Szczerbiak, A. (2007) “‘Social Poland’ Defeats ‘Liberal Poland’? The September-October 2005 Polish Parliamentary and Presidential Elections”, *Journal of Communist Studies and Transition Politics*, 23(2), 203-232.
- Szczerbiak, A. (2008) “The Birth of a Bipolar Party System or a Referendum on a Polarizing Government? The October 2007 Polish Parliamentary Election”, *Journal of Communist Studies and Transition Politics*, 24(3), 415-443.
- Thatcher, M. (2002a), “Analysing regulatory reform in Europe”, *Journal of European Public Policy*, 9(6), 859-872.
- Thatcher, M. (2002b) “Regulation after delegation: independent regulatory agencies in Europe”, *Journal of European Public Policy*, 9(6), 954-972.
- Thatcher, M. (2005) “The Third Force? Independent Regulatory Agencies and Elected Politicians in Europe”, *Governance*, 18(3), 347-373.
- Trampusch, C. (2006) “Industrial Relations and Welfare States: The Different Dynamics of Retrenchment in Germany and the Netherlands”, *Journal of European Social Policy*, 16(2), 121-133.
- (2007) “Industrial Relations as a Source of Social Policy: A Typology of the Institutional Conditions for Industrial Agreements on Social Benefits”, *Social Policy and Administration*, 41(3), 251-270.
- World Bank (1994), *Averting the old age crisis : policies to protect the old and promote growth*. Oxford: Oxford University Press.