

ANDRZEJ BUKOWSKI
Jagiellonian University

KAJA GADOWSKA
Jagiellonian University

PAULINA POLAK
Jagiellonian University

Formal and Informal Rules of Doing Business in Poland in the Context of Accession to the European Union: An Analysis of the Institutional Changes

Abstract: From the perspective of new institutionalism, this article studies the rules of doing business in Poland in the context of the country's accession to the European Union. The article's starting point is the premise that interaction between formal and informal institutions leads to an institutional balance or imbalance and determines the final shape of the economy and its effectiveness. Accordingly, the authors analyze four types of relations occurring between the formal and informal rules of doing business in Poland: (1) the influence of the restrictiveness of regulations on informal relations between the public administration and business; (2) the relation between the low effectiveness of the law in regards to running a business and informal adaptive reactions; (3) the effects of EU law on business strategies; (4) the effects of the global economy on the extent and forms of cooperation between the public administration and business. Analysis of empirical material provides a basis for constructing four institutional models of the rules of doing business in Poland: the 'antagonistic' model, in which the administration and business are striving for mutually exclusive goals; the 'parallel' model, where formal and informal institutions create separate orders; the 'alternative' model, in which formal, new, EU solutions are created; and the 'integrated' model, where actors are encouraged to realize common aims.

Keywords: New institutionalism, formal and informal institutions, Polish entrepreneurs, business law, public administration

Introduction

The aim of this article is to describe and analyze the institutional dynamics involved in the rules of doing business in Poland in the context of the country's accession to the European Union. Inspired by the views of new institutionalism, we assume that the interaction between formal and informal institutions determines the shape of the economy and its effectiveness. The small and medium-size business sector, which is the object of our study, creates over 6 million jobs in Poland and produces nearly half the country's GDP.¹ A careful and in-depth look at the informal strategies adopted by

¹ Data from 2011. Raport o stanie sektora małych i średnich przedsiębiorstw w Polsce w latach 2011–2012 [Report on the State of the Small and Medium-Size Business Sector in Poland in the Years 2011–2012]

entrepreneurs in regards to the law, the state administration, and finally the state as a whole, will provide a better understanding of the functioning of the largest economy in Central and Eastern Europe.

Grażyna Skąpska (Skąpska et al. 2010) regards Poland's entry to the European Union as a kind of a breakthrough or normative shift. Accession provided the impulse for substantial institutional change. It also required the modification of formal institutions in accordance with EU requirements; most importantly, it initiated the appearance of new informal patterns to replace those that were, among other things, a reaction to the somewhat too restrictive or unclear legal regulations previously blocking effective realization of business undertakings. Perhaps it was actually the moment of accession that prevented society from getting 'stuck' in a system of convictions and institutions that 'fail to confront and solve new problems of societal complexity' (North 1994: 364). To prove the above, we decided to concentrate on analyzing the relations between Polish businesspeople and public administrative bodies in the field of economic activities after Poland's accession to the European Union. These relations are the empirical canvas on the basis of which we analyze the ties between formal and informal institutions regulating business. In writing about the relations of small and medium-size Polish entrepreneurs with the public administration, we refer to the concepts of new institutionalism, as the problems and phenomena described here are primarily institutional in nature and the said relations are shaped in the context of both the constraints and the opportunities which institutions form: the formal ones, with law and administrative regulations in first place, and the informal ones, in the shape of norms, values, and previously developed and prolonged methods of dealing with various, often difficult, situations. We particularly want to concentrate on the dynamics of the informal institutions regulating key areas of economic activity in Poland.

The structure of our article is as follows: first we present selected new-institutional concepts of the relation between formal and informal institutions and the idea of an institutional-organizational field—an autonomous sphere of activity within whose circumference these relations occur. Next we define four phenomena involved in the relations between formal regulations affecting business activities and informal reactions to those regulations. Then we describe and analyze each of these phenomena, while considering the relations between entrepreneurs and public administration in Poland concerning business activity, the historical conditions of the creation of legislation, the broader political-economic context, and the consequences of these two last elements for ongoing relations between business and public administration. In the final part of our article we put the results of our research in a theoretical context, introducing the four models of relations between formal and informal institutions characterizing the field of doing business in Poland.

Research Methodology

Our article is based on research conducted within the framework of a project entitled ‘Models of Participation of Polish Entrepreneurs in the European Union: Socio-Cultural and Institutional Conditioning’, which was financed by the Ministry of Science and Higher Education and carried out by a group directed by Grażyna Skąpska in the years 2009–2011.² Over 100 in-depth individual interviews (IDI) with entrepreneurs,³ primarily from the small and medium-size business sector, but also with managers of large firms, were conducted in four voivodeships in the south of Poland: Małopolskie, Śląskie, Świętokrzyskie, and Podkarpackie. The aim was to reconstruct the opinions, experiences, and motivations of businesspeople in regard to doing business in Poland and other countries of the European Union, and to recreate the relation of business with its environment, particularly the administrative environment. We compared the results of this research with other data, including the World Bank’s annual *Doing Business* reports, which evaluate the ease of doing business in over a hundred countries on the basis of several standardized indicators (see *Doing Business 2006–2013*). While we are aware of the limitations of this aggregated set of data, we have used it for its variety and because it is relatively standardized and includes country comparisons. It is based on the opinions of ‘local experts’, including above all those who work for law firms, and also on more measurable and objective indicators.⁴

In our article we try to picture the institutional changes that have occurred in both formal and informal institutions of Poland’s business sphere. To capture these changes we used material from the interviews: one set of questions referred specifically

² Grant N116 2830 35 (2830/B/H03/2008/35); project realized at the Institute of Sociology of the Jagiellonian University.

³ The research was conducted by researchers, doctoral students, and undergraduates of the Institute of Sociology of the Jagiellonian University. Interviews enabled an in-depth exploration of the issues, within the framework of a flexible and dynamic structure of interaction with the interviewees in their natural environment (most often the firm’s headquarters). The interviewees were specifically chosen with regard to the size of the firm. In addition, an effort was made to ensure that the entrepreneurs represented various branches of business activity.

After a series of pilot interviews, an initial analysis of the gathered material was conducted, thus allowing the interview format to be modified. All the interviews were recorded and transcribed. The information acquired was encoded using MAXQDA software, to allow for easier data analysis.

The interviewees were asked several sets of questions about doing business: concerning aims, motivations, and causes for undertaking business activity; sources of financing; barriers and risks in doing business; comparison of Polish and EU law, as well as supra-legal norms (with consideration of formal and informal institutional changes); value systems, law, and supra-legal norms; trust and social relations; pathologies of the public sphere from the viewpoint of business activity (including in relations with the public administration); and also changes in the discourse connected with business.

⁴ The *Doing Business* report has been criticized from several standpoints, primarily on methodological grounds and on the quality of the data used. Even the creation of a ranking of countries meets with scepticism. One should be aware that a country’s change or maintenance of its position in the ranking does not yet testify to quantifiable institutional changes. Thus in the further part of our article we will refer above all to specific, objective data contained in World Bank reports concerning, for instance, the duration or number of procedures required in a given area of economic life. Many aspects of the tendencies indicated by the World Bank have been confirmed by our research, which shows ongoing changes to the business environment at the institutional level. The data contained in the *Doing Business* reports, in connection with the qualitative data we have gathered and analysis of the change in the state of law in our area of study, constitute significant and valuable information for our arguments.

to the entrepreneurs' perceptions of any institutional changes that may have occurred. Secondly, we analyze the legal regulations, pointing out specific reforms and legislative changes. Finally, we refer to earlier research⁵ confirming the hypothesis that 'pirate capitalism', based on corruption, influence-seeking, and lack of trust, developed in Poland in the 1990s (see Skapska 2002; Skapska 2003). On these bases, we discuss the institutional changes occurring in Polish business life.

Formal versus Informal Institutions: Institutional Balance and Imbalance in the Field of Business Activity

One indubitable achievement of the new institutional approach in comparison to classic institutional theories was to locate the informal institutions regulating daily interactions and behaviour at the centre of research interest. In institutional analyses, alongside the usual research on formal institutions such as constitutions, regulations, statutes, and other official documents (which are usually reactions to current challenges and problems, and are planned and implemented for the purpose of achieving set results), the informal, unwritten, and unadvertised rules (which are often formed in the long term as a result of daily, spontaneous contacts, and are of greater or lesser inertia as far as their susceptibility to change), have come to be studied (Chavance 2008; North 1990; Williamson 2000).

In this article, we are interested above all in the dynamics of informal institutions in the context of their relations with formal institutions. We assume that the links informal institutions have with formal institutions are a very important—but not the sole—source of their evolution. Although the form and direction of interaction between formal and informal institutions is described variously in new institutional literature, the majority of researchers agree that the two types of institutions cannot exist without one another and mutually condition each other. It is thus worthwhile to trace several of the most well-known new institutional concepts describing the relations between formal and informal institutions.

In the terms of economic new institutionalism, Portes and Haller (2005) frame this close interdependence as four paradoxes. For us, the 'paradox of embeddedness' is particularly important. In it, if the role of the state diminishes within the bounds of the 'free market', the role of informal regulatory institutions (for instance, trust, tradition, and custom) must increase, as an unregulated free market is unable to function without them. Someone or something (principles, rules) must secure market transactions, and if the state does not do it, then informal social institutions must. And therefore, as Portes and Haller seem to suggest, the lack of proper formal regulation is an invitation for the appearance of informal, substitute, institutions.

⁵ Grant 1H01F 06910 Tworzenie bogactwa. Społeczno-kulturowe uwarunkowania przekształceń ekonomicznych w Polsce [The Creation of Wealth: The Socio-Cultural Background of the Economic Transformation in Poland], a project realized at the Institute of Sociology of the Jagiellonian University in the years 1998–2000 by a team under the direction of Grażyna Skapska.

Within the framework of political new institutionalism Hans-Joachim Lauth (2000), referring to Guillermo O'Donnell's question (1996), asks whether informal institutions matter for democracy. To him a problem arises when formal institutions are unable to guarantee the order for which they were constituted, that is, when a divergence between the behavioural norms of formal institutions and the actual behaviour of individuals appears. According to Lauth, informal institutions do not need any external sources of legitimation to exist, which is not the case for formal institutions, legitimated through the state's agencies and its authority as the sovereign. Informal institutions have no centre directing and co-ordinating their actions and they collapse when they cease to be useful, whereas non-effective formal institutions can survive, at least in part. In democracies, formal and informal institutions can have different relationships to each other. Lauth distinguishes between three types of relationship: the complementary type, in which one can observe the co-existence of both types of institutions and their mutual reinforcement; the substitutive type, in which either formal or informal institutions are effective because of being functionally equivalent to each other; and the conflicting type, when the two systems of rules are incompatible. The conflicting type is particularly interesting. In this case, formal and informal institutions can displace each other or they can be mutually interconnected.

'Whilst displacement can be achieved through different strategies and has the elimination or occupation of formal institutions as its aim, interconnection demands a precarious coexistence on the part of both. The reason for this is that informal institutions are dependent upon the existence of formal institutions. They live, as it were, at the expense of the former, by exploiting them for their own purposes, by either partially occupying or penetrating them. In this sense they are parasitic institutions which, for example, find their expression in corruption. Such institutions, which should be understood, so to speak, as 'penetrating' environments evade to a considerable degree any quantitatively oriented empirical analysis. This is because they do not change the form of formal institutions and 'shy away from publicity' themselves. At the same time, however, their relevance is not to be underestimated, as they are capable of exerting quite considerable pressure upon the way in which formal institutions function' (Lauth 2000: 25–26).

Gretchen Helmke and Steven Levitsky, following Lauth, introduce two new aspects of the relation between formal and informal institutions. The first concerns institutional convergence, that is, the degree to which the effects of observing both types of rules converge. On the other hand, there is the effectiveness of formal regulations, and thus the likelihood that the written rules and procedures will be enforced and complied with in practice (Helmke and Levitsky 2004: 728). Beyond these aspects, four types of informal institutions are set forth: complementary, accommodating, substitutive, and competing (*ibidem*, pp. 728–730). The first two types of informal institutions coexist with effective formal institutions: complementary informal institutions aim at the same goals and increase the likelihood of their realization; while making use of accommodating informal rules, actors pursue goals that are different from those of the formal rules, but without directly opposing them. The latter type is usually created by actors who are dissatisfied with the results of formal institutions, but do not have the ability to change or openly violate them. The remaining two types of informal institutions appear in the case of a lack of—or the ineffectiveness of—formal rules. Substitutive institutions realize objectives that formal institutions should—but

for various reasons fail—to realize. In turn, the use of competitive informal rules leads to the breaking or ignoring of formal rules (*ibidem*).

To summarize this part of our considerations, it should be noted that the concepts presented here are based on two premises. The first, as we have already mentioned, is that formal and informal institutions create a certain whole, a dyadic system. According to the second premise, this system is either in a relative balance, when its parts are complementary or mutually reinforcing, we can then speak of a sort of institutional effectiveness, or in imbalance, where formal and informal institutions are in conflict with one another, which results in mutual hindrance or dismantling, invalidation, or possibly even an ‘enemy penetration’ by the informal institutions. In the context of the rules of doing business in Poland, the question of whether we are dealing with an institutional balance or imbalance appears to be a key theoretical issue. First, however, the question should be answered as to how the institutional whole, within which the balance or imbalance could occur, is to be understood.

Interaction between formal and informal rules occurs most often in a set organizational-institutional field, that is, in an autonomous separate sphere of activity, in which individual or organizational actors, in realizing their interests, engage in various relations such as conflict, rivalry, exchange, solidarity, or cooperation (DiMaggio and Powell 1983; March and Olsen 1989; Meyer and Rowan 1991; Scott and Meyer 1994; Nee 2005, Bourdieu and Wacquant 2006).⁶ The field that interests us is the part of business activities that is subject to various administrative regulations. In this manner relations are formed between the two main groups of actors in the field (businesspeople and bureaucrats), although there are also other actors operating, such as corporate lawyers, business journalists, and experts. In our understanding of the field, we refer partially to Victor Nee’s concept of the organizational field (2005: 56–57). Groups and organizations typically create an organizational field or a production market, consisting of a circle of firms or organizations closely tied by cooperation, rivalry, or exchanges. In referring directly to Powell’s and DiMaggio’s concept of institutional isomorphism (1983), Nee presents institutionalization processes in an organizational field or a production market as, on the one hand, rivalry for position or status, conducted by, for instance, firms in a certain production or service niche, and on the other hand, the search for a source of legitimization in some organizational field of activity characterizing non-profit organizations or public-service institutions: schools, museums, social-aid centres, and similar types of outlets. In either case, both resources and legitimization are necessary for firms and organizations (public administration offices) to survive in an organizational field, and the attempt to acquire them leads to subordination to the rules of the game and the cultural notions predominant in a given field (Nee 2005: 57). Next Nee introduces the notion of the institutional environment, which constitutes the formal context of activity for an organization in the form of the state-imposed and state-monitored regulatory principles governing property rights and markets, as well as the rules for creating and operating enterprises. This envi-

⁶ As Neil Fligstein has stressed, the concept of local institutional orders, called organizational fields, playing fields, or simply fields, is a common element of the various branches of new institutionalism (2009: 277).

ronment, however, does not constitute either an objective institutional framework, or a kind of abstract regulatory space (the invisible hand of the market); it is rather co-shaped by the actors operating in a given field (*ibidem*). In the case of business activities, which are the subject of our study, relations of cooperation, rivalry, or conflict could involve material resources (the firm's profit, a bribe, bureaucratic bonuses), as well as immaterial resources (prestige, position, respect, and also image, the brand), and we will place our primary emphasis on the (informal) rules of the game that are applied in play and which eventually lead to the institutionalization of the field in a particular form. We are also interested in how external (formal) institutional rules are established both by the actors in the field and by those outside of it.

We assume that the overriding aim of the formal and informal rules of the game in doing business should be effective economy fulfilling the principles of competition. The law should, in the simplest and most transparent manner, regulate economic activity so that it is conducted in accord with the principles of competitiveness. Public officials should uphold and preserve the legal regulations: for instance, those relating to the distribution of EU funds for entrepreneurs, or tax regulations, so they do not limit the competitiveness of native entrepreneurship, while entrepreneurs should strive to generate profit by raising their own competitiveness, but in accord with the legal regulations. This is how we understand, in the practical sense, the institutional balance we discussed earlier. After all, what counts is that the aims of the legislators, contained in the legal regulations and the activities of various groups of actors functioning in the business field, should maximize the common good: a competitive free market economy. In the theoretical sense, institutional balance and imbalance involve the network of relations between the formal and informal institutions regulating the activities of actors in a given organizational-institutional field from the viewpoint of the mutual relations between these groups. In introducing two levels of analysis— institutions and activities—we can simultaneously track the theoretical consequences these differentiations entail.

The Rules of Doing Business in Poland

Helmke and Levitsky consider several basic sources of changes in informal institutions, including at least two involving the relations between formal and informal institutions (2004: 731–733). The first source of change in informal institutions is the introduction of new formal projects, which could rapidly change the profit and loss balance connected with respecting informal rules. Changes within formal institutions could cause informal institutions to change in accordance with the objectives of the plan for institutional change. For example, Leszek Balcerowicz's 1989 reforms triggered the emergence of millions of private firms, which thenceforth, in accordance with the intentions of the reforms, could operate legally instead of functioning in a grey economy. But formal projects can also have unintended consequences. For example, the introduction of too restrictive tax regulations can lead to the appearance of a grey market. Another type of change involves strengthening the effectiveness of for-

mal institutions. By institutional effectiveness, the above-cited authors understand the probability of specific formal rules being adopted in practice. Improving the operation of tax institutions (strengthening the tax office's control, the introduction of PIT and CIT taxes) undoubtedly contributed to limiting informal market turnover and resulted in the overwhelming majority of today's business activity being recorded. However, strengthening the effectiveness of formal institutions may contribute equally well to the emergence of side effects in the form of informal institutions, which help actors who disagree with the spirit of law to respect its letter. For example, the reaction to tightening tax regulations could be that clients, being uncertain of administrative decisions, privatize their relations with bureaucrats, or that private firms poach tax officials.

However, there are sources of informal institutional change that are not connected directly with the formal context (see [Williamson 2000](#)). An essential source of this type of change is, for example, a transformation in the socio-cultural sphere, where it is a matter of slow and imperceptible changes in values, norms, convictions, or attitudes. An example here could even be the process of consolidating the private economy and private business in East-Central Europe during the last twenty-some years.⁷ Another source of change in informal institutions could be a transformation in the systems of power and the distribution of socially important resources. The gradual disappearance of the economy of shortage ([Kornai 1985](#)) and its replacement by the free market economy in Poland has caused the disappearance of the institution—typical of that period—of 'connections' and of that group of actors who, in the previous system, had access to rare economic resources.⁸ Finally, the last type of change occurs when informal institutions reach a critical mass, that is, the moment in which the overwhelming majority of actors is convinced 'this can't go on' and produce a breakthrough in terms of the previously prevailing rules of behaviour, connections, relations, etc. In Poland, such an event, which changed the rules of politics, was a 2002 corruption scandal known as the Rywin affair; in the opinion of experts, it not only led to the downfall of Leszek Miller's government, but also radically changed the manner in which politics was perceived and received by public opinion.⁹

In referring to the above discussion we are advancing the thesis that the relations and behaviour of actors in the field of activity of Polish business are the result of: (1) the internal dynamics of formal and informal institutions; (2) the mutual interactions of

⁷ On the concept of 'long duration' see [Braudel 1999](#). Cf. [North 1990](#); [Williamson 2000](#). The latter, distinguishing various determinants of economic behaviour (from institutions of long duration to current ones) sites informal socio-cultural institutions (habits, traditions, religions) at the most basic level of institutional influence, operating within the time frame of 100–1000 years (*ibidem*, pp. 596–598).

⁸ We are thinking here of the informal contacts, which, in the communist era, assured access to regulated and scarce goods. At present, acquaintance facilitates primarily access to information, and also to restricted services (for instance, medical ones).

⁹ After the Rywin Affair, and particularly after the revelation of behind-the-scenes political and administrative connections as a result of the parliamentary Committee of Enquiry investigation of cases of corruption during work on amending radio and television broadcasting law, the idea spread of a Fourth Republic, with postulates for radical changes to the system (cf. [Śpiewak 2003](#)). Formerly confined to narrow political groups, the idea of a Fourth Republic appeared in the parliamentary elections of 2005 in the platforms of all the major political parties.

both types of institutions; and (3) the external (formal and informal) institutional context. The internal dynamic of formal institutions is connected, in our opinion, with the historically preserved methods of creating the law regulating economic activity.

In the case of Poland, current events (scandals, affairs), the dependence of the legislative process on politics, and the non-transparent influence of various interest groups, favour the emergence of legal chaos and restrictive provisions. In turn, the internal dynamic of informal institutions is connected with spontaneous adaptive reactions, which occur, however, in accordance with the cultural patterns 'at hand' (Swidler 1986). Thus in functioning within the framework of specific formal institutions, actors reach for culturally preserved informal patterns of behaviour. At the same time, the reaction to chaos, ineffectiveness, and restrictive provisions will primarily be to set in motion culturally preserved patterns of behaviour, which have stood the test of time: for instance, they were proven effective in the communist period. We assume, following the suggestions of Lauth (2000), as well as Helmke and Levitski (2004), that institutions will be set in motion that are substitutive in regards to formal ones (private connections, 'making friends' with bureaucrats¹⁰), accommodating (poaching public functionaries), or competitive (favouritism, clientelism, corruption). Then, the external institutional context—in our case, EU law and the rules of global competition—will have an influence on the change of relations and the principles of operating in the national field. On the one hand, it should encourage actors to cooperate and to facilitate business activity (complementary institutions), on the other, it might, however, incline businesspeople to move that activity outside the jurisdiction of the Polish legal regulations, to other EU (or non-EU) countries, where the formal rules of the game allow for greater economic effectiveness.

In the empirical part of our article, we want to show the mechanisms by which the above-mentioned informal institutions are formed. For this purpose, we refer to four main phenomena:

1. The effect of the highly restrictive provisions regulating business activity in Poland on the informal relations between public administration and business, with their antagonizing influence on these groups and on the divergence in the objectives they pursue, resulting consequently in the informal institutions regulating business having a specific shape—distrust and mutual suspicion;
2. Poor effectiveness of law, which, with the long cultural tradition in regards to creating the law and attitudes towards the law, considerably favours the production of informal accommodating institutions (poaching officials) and substitutive institutions ('making friends' in bureaucratic offices) and competitive institutions (corruption);
3. The effect of EU law, which, as a partly new and partly alternative framework for informal institutions, changes the balance of power between the two groups (entrepreneurs and public officials) of interest to us, thus fostering: (1) the appear-

¹⁰ It should be added here that even though the use of acquaintance is usually substitutive in nature, that is, it serves aims that are basically convergent with aims, which, for various reasons, are not achieved by formal institutions, it may also have an accommodating nature, that is, it may be used to realize aims that are contrary to the spirit, though not the letter, of the aims realized by formal institutions.

ance of institutions which are partially substitutive in regards to Polish law, and partially complementary (facilitating business and cooperation); (2) the departure of entrepreneurs from their native ‘playing field’;

4. Transition in the external context, which influences the informal institutions regulating business activity in Poland—particularly the impact of the global economy, which shapes the rules of cooperation between public administration and business and generates the emergence of institutions that are substitutive in regard to unfavourable formal regulations.

The Restrictive Function of Law and the Antagonizing of Groups in the Field of Business Regulations

As we mentioned earlier, in the case of the ineffectiveness of formal institutions, informal rules may acquire a substitutive form, where they pursue goals in substitution for the lack or deficiency of formal institutions, or an alternative (competitive) form, where objectives are pursued that are contrary to the ineffective or restrictive formal regulations (Helmke and Levitsky 2004). Kazimierz Frieske writes that ‘in modern societies, the legal regulations are an important—perhaps the most important—tool for social change [...] they serve to realize specified social goals. Always? That depends on whether in fact the introduction of specific regulations leads to the realization of the goals the legislators want to achieve’ (Frieske 2001: 13). Let us assume that if formal institutions are characterized by a bit too much bureaucratization or are internally contradictory or, on the other hand, are unclear or favour one group of actors—they will foster the emergence of tensions and conflicts in a given field. The above-cited author writes further: ‘Law can play a positive role in maintaining good attitudes in citizens, but it can also disorient them, incline them to conduct themselves in accordance with their immediate benefit or to disregard the public interest’ (*ibidem*, p. 30). In our opinion, much depends on both the construction of the law itself and the historical context in which informal institutions are shaped. As Adam Podgórecki and others have shown, in the communist period, which still marks the present, public authorities officially recognized the law, as a form of public activity, but only on the premise that it was a facade (Podgórecki 1995). The law played a role in formal decorum, serving to maintain the integrality of the state party—but precisely because it might at any moment be used against the citizens.

Similarly, since the beginning of the 1989 transformation, the law has been treated instrumentally, due to the low political culture of the political elites and the lack of cohesive ideas for a long-term policy for the good of the state.¹¹ As Włodzimierz Wesołowski points out, the perspective of the ruling elites is dominated by the short-term view, limited most often to the next term of office, and in consequence politicians

¹¹ It has correctly been pointed out that the current crisis of the state institution is the consequence of neglecting—in connection with giving priority to the economic sphere—to plan the political system at the beginning of the transformation, with the result that the opportunity was missed to build an institution that would adequately consider the public good in its systemic solutions (see Kamiński & Kamiński 2004: 196–234).

are insufficiently concerned with the possible effects of the legislation they pass, which is often dictated by ad-hoc considerations of party tactics. Individual or group interests predominate (Wesołowski 2004). The legal regulations are insufficiently controlled in terms of their substantive value, including, above all, in regard to the general public interest.¹² Their excessive number means that state institutions are non-transparent and inefficient.

It would seem that in many areas the law currently, as in the recent past, functions more to hinder than to enable citizens' activities. It does not lead to the facilitation of business activity, but concentrates on the burdensome control of entrepreneurs.

As a result, the law sets public officials and entrepreneurs at one another, and consequently the two groups' objectives diverge radically. We advance the thesis that the law is the most important source of hostility, resentment, and distrust between public administration and business, which manifests itself in the form of suspicion toward businesspeople on the one hand and the low esteem in which public officials are held on the other. Generally, we are dealing with mutual suspicion and lack of cooperation. In addition, both sides operate in various regimes of legal responsibility: for entrepreneurs, it is individual, direct, immediate, and personal, through the firm's assets and in many cases, the entrepreneur's own; for public officials, it is generalized, indirect responsibility, deferred, and financially limited to 3 or 12 times their salary.¹³ This difference has an important impact on their mutual relations.

Distrust toward entrepreneurs and business in general is a broader problem in Poland, exceeding the bounds of the administration-business relation. Poles' distrust toward business and businesspeople has remained at a high level. According to the 2010 PBS DGA survey, only 19% of respondents perceive business success as the result of honest hard work. The same number of persons view it as the result of bending the law, and 34% see it as the result simply of having the right acquaintances. Furthermore, almost half the respondents (48%) considered entrepreneurs to be dishonest (PBS DGA 2010).¹⁴

¹² On the subject of irregularities in the legislative process see *Przejrzystość... [Transparency...]* 2008; Goetz & Zubek 2005; Staśkiewicz 2010.

¹³ Members of the civil service are liable to disciplinary action on the basis of principles set forth in the civil service act of 2008 (earlier in the civil service acts of 1996, 1998, and 2006). They are also liable on the basis of general criminal responsibility (The Criminal Code), as well as financial liability on the basis of provisions of Section V of the Labour Code on the financial liability of employees and financial liability on the basis of the act of 2011 on the financial liability of public functionaries for flagrant violations of the law. According to the Ministry of Finance, in 2012 there were no cases of employees of the public administration being held liable on the basis of the above-mentioned laws. One cause of this state of affairs is that the financial liability of employees is recourse liability, meaning that public functionaries can be held liable only when, on the basis of a final court judgement, compensation is paid for damages caused by a flagrant violation of the law in exercising public authority, resulting from a functionary's culpable act or omission (see Niedbał 2013).

¹⁴ From research commissioned from the GfK Polonia Institute for Market and Public Opinion Research by *Rzeczpospolita* it appears that Poles' opinions on entrepreneurs are full of contradictions. Over half the respondents expressed dislike for the group. In the opinion of the respondents, an entrepreneur is someone rich and educated, but whose ethical attitude leaves much to be desired. Scarcely one third of the respondents expressed the conviction that Polish businesspeople honestly pay taxes and observe the law. Opinions about Polish entrepreneurs still contained stereotypes from communist times (Biały 2006).

Our interviewees also emphasized the negative attitude of the state toward entrepreneurs and the maintenance of a hostile business climate.

An entrepreneur is also a citizen, so, in the end, or maybe at the beginning, that awful suspiciousness of part of the people in power toward private business should disappear, since private business is undoubtedly more effective, more efficient, and brings revenue to the state. A bureaucrat does not bring any revenue to the state—none, you know; enterprises, firms bring revenues, state-owned ones rarely, in general they are in arrears with Social Insurance [...] But the information is spread in the world, or in Poland, that... hmm... an entrepreneur, if someone has something, they're dishonest to begin with.

This general distrust in turn reinforces a negative image of public administration and public officials among entrepreneurs. The quotation below, like many similar statements, concentrates on the lack of competence of public functionaries, but this so-called lack of professionalism is, in our opinion, equally the effect of the complicated and often changing law—which we will discuss further on—and also the relations, full of reserve and distrust, between business and administration.

Looking back... at the last decade or maybe even earlier, not much has changed [...] There are a lot of incompetent people. The incompetence manifests itself in that... they... build a protective barrier of various documents around themselves... Just let there be documents—and there have to be lots of signatures... so they won't be responsible for any kind of decision. And this appears... in the most various areas of business life. In addition, they think up pointless dates, time periods, and so on... they can't act quickly, give a quick answer... They aren't at all competent. They aren't prepared.

Other quotes stress the formally sanctioned asymmetry between the sides in regards to legal responsibility. This also deepens the distrust of entrepreneurs toward public administration. The problem is the lack of responsibility for decisions and information dispensed in various areas of economic life.

I think that [public officials] are, first, badly informed, and second, they don't feel accountable for what they say. They just give out any information and aren't responsible if they're wrong or if they misread—they have nothing to fear on those grounds. They're anonymous, that's all.

It should be emphasized that the errors of public officials, the giving out of incorrect information, and the lack of consequences for wrong decisions have become, for many entrepreneurs, negative symbols of the functioning of public administration as a whole. Decisions that have led to the downfall of prospering businesses, particularly in some of the most publicly discussed cases, have influenced the respondents' imaginations and shaped their image of public administration as, on the one hand, unfriendly to business, and on the other, as capable of making decisions at will, even incorrect ones, without incurring any consequences whatever.¹⁵ Many entrepreneurs are frustrated by the functionaries' lack of accountability for their actions, and particularly by their incompetence or even off-handedness in making decisions.

¹⁵ As mentioned above, before the entry into force of the act on the financial liability of public functionaries, public officials were financially liable on the bases set forth in the Labour Code. This liability was of a recourse nature in regard to the State Treasury, while damages for an unintentionally inflicted injury could not exceed three times the official's monthly salary (in the case where the official had caused the damage intentionally, he or she was obliged to cover its entire cost). On the basis of the Labour Code there was no legal obligation to initiate recourse proceedings by entities that had previously paid damages. Because real perpetrators have comparatively rarely been held liable for damage, the conviction has spread in society that public officials have not at all been held responsible for their acts or omissions. The case of Roman

Functionaries are so irresponsible and are not held to any account for their actions—and they should be held responsible—and they endanger an entrepreneur, who is really the one driving this economy; it's he who gets up in the morning and works hard, tries to make it all go, to make ends meet—and this functionary doesn't have a clue about work. Really, really. He doesn't have an idea about real conditions, about any such... The regulations are so dense and senseless, like they were just made up from nothing...

Unflattering opinions are expressed on the subject of public officials.

Poles—well, perhaps not all—but I think the majority of Polish functionaries are hindering the country's economic development! [...] Excessive attention to detail [...] because for them what matters is covering their [behinds]! A functionary has to protect himself, with certificates, and receipts, and declarations, and who knows what else. So that if there is some investigation, even if they find him, even if his lack of knowledge, of diligence, say, is discovered, he'll be surrounded by so many papers that no one can do anything to him.

It is not only incompetence that is complained of, and the inefficiency of public functionaries, but also their dilatoriness, which differs from the standards that entrepreneurs are accustomed to in their business activities.

There is one other thing about the public administration [...] Namely, a tax office inspection would begin at one of the firms—whose names I won't reveal—at 10:00 a.m. and end at 2:00 p.m. [...] So the ineffectiveness of Poland's public administration doesn't lie in its lacking people, but in the fact that its people don't work effectively. That's for starters. I mean, let's say if you were to come and work, say, from 9:00 a.m. or 10:00 a.m. to 3:00 p.m., what do you do for the other three hours, for goodness sake? That is, if someone in a public office complains that they can't audit taxpayers because there are too few people, and taxpayers are unscrupulous, then instead of increasing the number of the office's employees in the form of new tax controllers, it would be better to make sure the old workers worked 8 hours a day, and not 5.

Excessive and restrictive regulations, as we know from the theoretical discussion, are often counterproductive. Instead of the expected results, they may produce the opposite to what was intended. In our case, restrictive, over-detailed regulation of business activity, often subordinate to current political requirements, has a negative impact on the work of public administration. The excessive production of legal provisions means that bureaucrats often get lost in their multiplicity and err in their decisions, and this increases the pressure to which they are subjected and generates an attitude of self-protection and a natural resentment toward clients. Businesspeople regard bureaucratic errors as manifestations of incompetence and a lack of professionalism. In turn, the restrictiveness of regulations is regarded as intended to hinder business. The consequence is mutual resentment and suspicion. Administrative officials defend themselves against complaints; businessmen react with distrust toward bureaucrats, and indirectly, toward the state as a whole. Thus lack of trust becomes a permanent, informal element of relations between entrepreneurs and the state administration.

Kluska, among others, contributed to this belief. The act on the financial liability of public functionaries for flagrant violation of the law, adopted in 2011, provides for the recourse liability of the functionary in regard to the State Treasury for unintentionally inflicted damage to the amount of up to 12 times the functionary's monthly salary (in the case of an intentional injury, in the full amount), as well as introducing the obligation, under criminal penalty, of the director of the organizational unit to apply to the regional prosecutor's office for investigatory proceedings. The introduction of new legal mechanisms intended to reinforce the rule of law in the settlement of administrative cases; however, the comparatively brief period in which the law has been in force does not allow any conclusions to be drawn as to its effectiveness.

Ineffectiveness of Formal Institutions

Poland's legal regulations for doing business are overly complicated, as Piotr Sztompka observes in describing the state of the law and its social effects in the middle of the 1990s:

The general feeling of uncertainty is also due to normative disorganization or anomie. The legal system is a fragmented mosaic of partial regulations, old and new, often inconsistent, repeatedly changed, and arbitrarily interpreted. The overload of rules, regulations, administrative codes, and conflicting interpretation of laws makes them incomprehensible [...]. The rule of law is compromised by extra-legal decisions of the highest authorities, including the presidential office, and by the retroactive legislation occasionally passed by the parliament. Trust in the continuity, stability, and orderliness of social life is effectively undermined (Sztompka 1999: 177).

After fifteen years, the legal regulations are still far from transparent (see, inter alia, *Przejrzystość... [Transparency...]* 2008; Goetz & Zubek 2005; Staśkiewicz 2010; Kochanowski 2005; Kochanowski 2008). They thereby lose their regulatory power; they become discretionary, chaotic, and in consequence—ineffective. The nontransparency of legal regulations produces uncertainty both on the side of the functionaries and of the entrepreneurs. This necessitates the emergence of accommodating institutions (private connections, poaching functionaries) or competitive institutions (high rotation of officials, corruption).

In the 2014 *Doing Business* report, Poland is placed in 45th position among 189 countries in terms of ease of doing business. In the years 2007–2012 the World Bank placed Poland somewhat lower. It was only the ranking of 2013 that showed a jump upwards, although unfortunately this still does not signify a clear qualitative change. The table below depicts the tendency.¹⁶

Table 1

Poland in the World Bank's Ease of Doing Business Index (*Doing Business* 2006–2014)

Year	2006	2007	2008	2009	2010	2011	2012	2013	2014
Poland's rank	54	75	74	76	72	70	62	55	45
Number of countries	155	175	178	181	183	183	183	185	189

According to the 2014 *Doing Business* report, Poland's most significant improvement in recent years has occurred in two areas. It is now easier to start a business (Poland moved up to 116th position). The reforms included simplifying the start up of a business by reducing the minimum amount of capital required for a limited liability company from PLN 50,000 to 5,000 and consolidating applications to the National Court Register for registration, tax, social security, and statistics (the so-called 'single counter' reform)—both in 2009—and eliminating the requirement to register a new company at the National Labour Inspectorate and the National Sanitary Inspectorate (2013). However, despite the 'single counter', starting a company still takes 30 days

¹⁶ Hereinafter the statistics for each year are quoted from the original data sets.

on average and is expensive (14.3% of per-capita income, while the OECD average for high-income countries is 3.6%). Another significant improvement involves dealing with construction permits (up to 88th place in 2014). As reported by the World Bank, an average application now requires 18 procedures and 161 days to complete, which is a major step forward when compared to 301 days and 29 procedures in the previous year. However, the number of procedures and bodies that are still involved, as well as the lack of local spatial-management plans in many places in Poland, may make the whole process much longer and more strenuous for investors. At the same time, registering property has become easier. The process currently takes an average of 35 days and 6 procedures, compared to 152 days in 2012 and 204 days in 2005. In the 2013 report, the World Bank noted that property registration had been made faster by introducing a new caseload management system for the land and mortgage registries, as well as by continuing to digitize the records of the registries.

The 2014 report stressed that over the last two years paying taxes has been simplified for businesses. However, Poland still ranks only at 113th place in this regard—tax burdens are high and require much time and effort. The total tax rate is 41.6% (almost average for OECD high-income countries). In a ‘standardized’ company¹⁷ analyzed by the World Bank, 286 hours are spent annually on making the required 18 payments (with an OECD average of 175 hours spent on 12 payments). Despite Poland’s low rankings, the situation in regard to taxes has significantly improved, considering that until 2010, the requisite 40 payments took an average of 395 hours of work, and earlier even as long as 418 hours.

Poland provides fairly good institutional possibilities for trading across borders (49th place in the 2014 *Doing Business*). Exporting a standard container of goods requires 5 documents, takes 17 days, and costs \$1050, while importing the same container of goods requires 4 documents, takes 14 days, and costs \$1025, which is only a few days longer than the OECD high-income countries’ average. The 2013 report saw a major leap in enforcing contracts (56th place, up to 55th in 2014): average proceedings last much less long than previously (685 days in 2014 instead of 830 in 2010, or even 1000 still in 2004; the whole process currently includes 480 days for trial and judgment) and requires fewer necessary procedures (33 instead of 37 in prior years). In terms of protecting investors (minority shareholders against directors’ use of power for their own gain or self-dealing), the World Bank ranks Poland in 52nd place, above the OECD high-income average (in 56th place). Entrepreneurs in Poland must go through a very long and costly process to get electricity (137th place—161 days in Warsaw according to the 2014 report), which, alongside taxes, is still one of Poland’s weakest points. On the other hand, Poland is one of the world’s leaders in the availability and ease of getting credit (3rd place in 2014).

Ironically for current businesses, Poland improved in resolving insolvency (up from 87th place in 2012 to 37th in the 2013 and 2014 reports), thanks to institutional changes allowing for an increase in the recovery rate, from 31–36 cents on the dollar to just below 55 cents on the dollar in the 2014 index (for more see: *Doing Business 2013 & 2014*).

¹⁷ A typical ‘standardized company’ in the report is a Limited Liability Company located in Warsaw.

As appears from the above data, Poland's increasingly high relative position in the ranking is something more than just the effect of change and fluctuation in other countries included in the ranking. Its gradual climb results from the introduction of desirable—although, unfortunately, most often not revolutionary—changes in the institutional sphere of the business environment. The best example could be the area of taxation, described below, which has been made more effective in recent years, with a significantly shorter time designated for tax accounting and also less activities needed for the purpose (although it continues to be a large organizational challenge and difficulty for entrepreneurs). Therefore, in the area of formal regulations, as a result of accession to the European Union, a gradual but consistent convergence is being made between Poland's regulations and EU law. However, as data still shows, Polish law is far from being simple and transparent in the area of business regulations.

Functionaries—Stewards of Administrative Decisions or Victims of Bad Law?

This objective data finds solid support in the empirical material we have collected. In the opinion of our respondents, the effect of complicated laws is that interpretations of provisions are varying and not infrequently divergent. Particularly before 2007, the different and often contradictory interpretations of the tax law were a plague, hampering the daily running of business and, worse, introducing uncertainty and reducing trust in the legal regulations, public administration, and the state as a whole.

It should be emphasized that in the last few years several very important changes in the tax regulations were introduced: above all in connection with the adoption of the so-called deregulatory law and the packet for business development. In 2006, a major effort was made to resolve the problem of the blatant inconsistencies connected with the issuing of divergent interpretations of the tax law by various tax offices. On the basis of the law of 16 November 2006 on changing the law—the Tax Code and on the amendment of certain other laws (Journal of Law 2006, no. 217, pos. 1590) and the decree of the Minister of Finance of 20 June 2007 on authorization to issue individual interpretations of provisions of the tax law (Journal of Law 2007, no. 112, pos. 770 with later amendments), since 1 July 2007 interpretation of the tax law is made, within certain limits, by the directors of the tax offices in Katowice, Warsaw, Poznań, Bydgoszcz, and, since 1 April 2011, also in Łódź, in the name of the minister. For the purpose of ensuring uniform application of the tax law by the tax organs and the tax inspection authorities, in addition to individual interpretations issued in response to taxpayer applications, the Minister of Finance issues general interpretations (also on taxpayer application, *ex officio* and since 1 January 2012 in connection with the entry into force of the law of 16 September 2011 on the reduction of certain obligations of citizens and entrepreneurs [Journal of Law, no. 232, pos. 1378]). Only 30 of these general interpretations were issued in the period from July 2007 to the end of 2011 and 44 to the end of 2012 (our own calculations on the basis of data from the Ministry of Finance). Unfortunately, contradictory individual interpretations by the tax offices are still a problem, as is their frequent low quality. In the years 2010–2012, around 2,500 interpretations were contested (of more than 30,000 issued in 2010 and over

36,000 in 2011) which constitutes, depending on the tax office, between 5% and 11% of all the interpretations issued. Over half were overturned by the court (see [Molik 2012](#)). In spite of systemic improvement in access to a rapid and transparent individual interpretation of the tax law since 2007, the institution of individual interpretations is unable to repair the basic faults of a system lacking good and reliable tax laws.

In 2009, another very important change for entrepreneurs was introduced in the Tax Code:¹⁸ the principle of the taxpayer's presumed honesty. On the strength of this principle, the decision of an inferior tax authority (that is, one from which there is a means of appeal in the normal course of proceedings) imposing on the taxpayer a tax obligation enforceable by administrative proceedings cannot be enforced unless it was granted immediate enforceability. Additionally, in the case of a complaint being made to the administrative court, and on the fulfilment of certain conditions, the tax authority of the first instance must refrain from enforcement of a final decision until the moment the decision acquires force of law. In the earlier state of law, a taxpayer's appeal to a second instance of a tax authority's decision on the amount of tax due did not stop the enforcement of the decision, thus forcing the tax to be paid. In this manner, the incorrect decisions of tax officials caused the bankruptcy of numerous companies before their decisions could be overturned by the courts.

However, in spite of the detailed legal regulations, a great deal still rests with the individual tax official.

The law should be transparent, legible, and unambiguous, not ambiguous. Then it could work. Now there are no proper, unambiguous laws; on every subject it is necessary to seek the opinion of several lawyers. Even government offices, in relation to the same matter, make various contradictory decisions depending on the person. It's tragic, because an entrepreneur doesn't know what he's supposed to do.

In connection with the possibility of various readings of the laws, entrepreneurs often complain about the arbitrary interpretation and application of the laws by government offices.

I wouldn't complain about the regulations themselves although... the law... although it is very lame in my opinion, well... Well, like everything... It's necessary again, in this... area also, it is necessary to make up for lost time. On the other hand, the worst is the free interpretation of the law by government offices. And its ambiguity. Because it can drive a person mad, because... there was a series of such questions where... the Tax Office in Bielsko, for instance, had a contrary opinion to the Tax Office in Opole, and... and it was a matter of the VAT. And now, they threatened us... one way or another the fine was inevitable, because if we counted that VAT or not, it would have been wrong. Because the sub-contractors were in Opole, and we... we're under the Bielsko office. So, such things can't be... because then it really is... It simply encourages a person to break the law... and not to observe it.

Similar problems, which existed until recently, connected with the *de facto* lack of possibility of appealing the decisions of tax officials, were discussed by another person running a company.

The question of interpretation, for instance... such provisions, such as what happens in the case of a dispute arising between a taxpayer and a tax office... are regulated differently in every office. That is, we have I don't

¹⁸ On the basis of the law of 7 November 2008 on amending the law—The Tax Code and certain other laws (Journal of Law 2008, no. 209, pos. 1318), which entered into force on 1 January 2009.

know how many different interpretations of the same provision; that's in general some sort of complete senselessness, that is... we can't even refer to some precedence; let's say... that, for instance, some tax office somewhere... Because this tax office has a completely different approach and... we don't have anything that would actually be... a reasonable means of appeal. That is, if I don't agree with this interpretation then... Actually, what can I do? All right, there's the Supreme Administrative Court, right? But so what?... Really no one in a matter of, say, the two-thousand-zlotys cost of acquiring revenue monthly is going to go to the trouble of the administrative court. There isn't any intermediate sort of possibility of appeal...

The possibility of various legal interpretations could lead to absurd situations, which one of the respondents described as 'over-interpretation of the law', that is, applying the most restrictive interpretation of the regulations. It can be supposed that the cause is the desire to secure one's own decisions, position, and office from being suspected of too liberal an application of the law. Perhaps it is also the result of the fear of accusations of favouring some actors and in consequence being suspected of corruption.

I think it's a matter here of the over-interpretation of the law, because, for instance, investment law is very complicated in Poland. That is, if you want to build something for your firm—I wouldn't wish that on my worst enemy. Really, I experienced it twice already, and there are barriers here—but often it is also the over-interpretation of the law by a public official, who could close his eyes to certain things, because in another office they say something different. That is, it could be done, but no, this bureaucrat will say that it has to be like he says [...]. Contrary to what could appear, environmental requirements are more onerous, because it's known that a construction project has to be good, so that nothing will collapse, everything has to be good, there are certain procedures, there are time periods, and all that—I understand that it has to be that way, because it has to be safe, but if we're talking about getting into an industrial investment, then the department of environmental protection enters in and makes conditions, and they don't always interpret the matter the way it could be done. The investment process in Poland is very complicated.

The liberty of action, the lack of specific interpretations, and various manners of interpreting the same regulations by different offices results in entrepreneurs feeling lost and uncertain, alone against the bureaucratic machine. Numerous examples could be cited here of entrepreneurs wronged by the state and of government offices making use of their dominant position.¹⁹

Entrepreneurs complain that it is difficult for them to navigate through the ever-changing regulatory thicket. Complicated provisions, scattered through various laws, give bureaucrats the ability to impose punishment on practically every entrepreneur. Given the height of the possible fines, to bring a company to the brink of bankruptcy does not seem difficult.

Unfortunately, an army of functionaries and fairly simple-minded parliamentarians have created in the meanwhile such bureaucratic barriers that are difficult to get through and overcome [...] Actually, today no honest entrepreneur is certain whether he isn't from time to time breaking some law or other: the law is so complicated. Having the best intentions in the world, we aren't certain that if someone looks he won't find

¹⁹ Among the most symptomatic and widely discussed cases were the bringing to bankruptcy of the computer potentates JTT and Optimus (cf., for instance, [Górecki 2013](#); [Fisher 2002](#)), the textile firm New Knitting (cf., for instance, [Solska 2003](#)), the automotive company Polmozyby Krakow (cf., for instance, [Królak 2011](#)), or the meat-processing plants of Krakmeat (cf., for instance, [Czuchnowski, Sidorowicz 2010](#); [Cieński 2010](#); [Isakiewicz 2011](#)). Some of these cases ended with awards of high damages for bureaucratic errors, as in the case of the legal battle of the JTT firm, which lasted for years (cf. [Górecki 2013](#)). Unfortunately, such sentences are delivered years after the fact and ordinarily after an enterprise's bankruptcy or major decline in value.

something that we unintentionally overlooked. I'll give you a simple example: if one of my employees doesn't take his vacation at the right time, and some one of the many inspectors decides—and I suppose over a dozen institutions could investigate us—that I've violated his rights, that I'm a bad entrepreneur, a bad boss, they can slap a fine on me on the order of, say, a hundred thousand zlotys. If it's twenty employees, that would be a sum that could bring down a company. And the point is, it's not applied at all, but such tools are given to functionaries that they could ruin very many enterprises if they wanted to. In accordance with the law.

The example, reported in the media, of a baker from Legnica whom the tax authorities decided in 2006 owed 200,000 zlotys in unpaid VAT tax from 2003 was also mentioned. As a result of the dispute with the fiscal authorities the company went bankrupt, and the media presented the entrepreneur as a victim of a soulless bureaucracy, which had hunted down a charitable entrepreneur who had been donating his leftover bread to a canteen for the poor (see [Mułek 2010](#); *Darowany chleb... [Donated Bread...]* 2010).

It's like with that VAT for those buns, which liquidated the bakery. A man gave the bread he hadn't sold to poor people for free, and for that they calculated he owed some hundreds of thousands in VAT—look how stupid that is, how senseless. And there are quite a lot of such obstacles.

Even though, in the end, according to the fiscal authorities, and also according to the Supreme Administrative Court (ruling of the Supreme Administrative Court of 28 January 2010, act signature I FSK 1895/08), the matter concerned larger and more serious tax irregularities than just donated bread for the poor,²⁰ such examples act on the imagination of entrepreneurs and increase their fear of bureaucracy and the unpredictability of bureaucratic decisions.

Another result of Poland's complicated and unclear laws is the rotation in public administrative positions. The multiplicity, complexity, and variability of regulations require functionaries to have experience and high qualifications. Larger firms, particularly those that do business in EU countries, poach the best public officials. Their places are taken by inexperienced persons. In turn, increased rotation causes a lowering of the average level of competence among personnel as a result of the limited knowledge and acquaintance with the regulations of persons entering the job.

The staffs of public offices are characterized by a high degree of rotation. It shouldn't be like that, because there is a continuity to the activities of every bureaucratic position and every change means beginning from the start. There are very many young, inexperienced people who are permitted to do things that are not infrequently very arrogant, but they have no knowledge. The result is that they pile up difficulties, they're afraid of everything, they don't know how to make decisions. In those important bureaucratic positions, where large amounts of money come in, there should be competent people. For example, EU projects, of which we've done a lot—I could say we dictated to them how it was supposed to be, and they were still afraid to make a decision. And inexperienced companies have a huge problem because of this; every young entrepreneur complains about functionaries, the system of accounting, the regulations, etc.

Such a diagnosis is confirmed by research according to which the rotation of personnel in public offices constitutes a serious problem for Poland's public administration. According to data of the Prime Minister's Office, the average level of turnover

²⁰ A baker who gave part of his unsold bread to the poor was charged by the tax office with having failed to pay the VAT on donations. However, as the Supreme Administrative Court emphasized in its ruling, this tax was only a small percentage of the tax due in the dispute; the matter concerned rather the improper recording of turnover.

in the civil service corps in 2007 was 12.8%. In voivodship offices the level of rotation in the staff exceeded 20% at the same time. There were, however, offices in which the level of fluctuation was significantly higher—in the General Inspectorate of Road Transport it reached 70% (*System wynagrodzeń [The Pay System] 2009*).²¹

Research into the use of EU funds in Poland leads to similar conclusions. The human barriers constitute one of the basic and most lasting problems of Poland's administration as a whole. However, the mirror reflection of the fall in competence and qualifications of bureaucratic personnel is the growth in competence in the sphere of economic regulations in the private sector. Well-trained functionaries leave for employment in business, where their knowledge and experience is considerably better paid, and the career possibilities are broader (*Bukowski, Gadowska, Polak 2008b: 451–452*).²²

The complicated and continually changing law constitutes, on the one hand, a danger for bureaucrats, because it facilitates the making of errors, as was mentioned, and on the other hand, it is a source of power over clients, as a result of the functionaries' liberty in interpretation, their discretion, and also their possessing greater knowledge than their counterparts in terms of knowing the regulations. In order to equalize the relations of power in the business field, entrepreneurs adopt various strategies.

Connections, Lobbying, 'Soft Corruption'

Public administration, both at the central and the local level, is perceived to be one of the country's most corrupt sectors, and for a long time has ranked below only politics and the health service in public opinion (see *CBOS [Social Opinion Research Center] 2010*). According to a CBOS study of 2010, an increasing number of Poles consider that corruption is most widespread in district, *powiat*, and voivodship offices. In 2010, the number was 31%, in 2009 28%, while in 2007 only 25% (*CBOS 2009, 2010*). A further 26%, slightly less than in the preceding years, pointed in 2010 to the existence of corruption in central government offices and ministries (*CBOS 2010*). As expected, in spite of such a clearly established negative opinion of the administration, our research has shown that entrepreneurs very seldom addressed the problem of corruption in the narrow sense (as passive or active bribery) in relations with public administration. Many respondents referred rather to general knowledge acquired from the media and other persons, and not to their own business experience.²³ Statements such as the one below were characteristic.

²¹ Further on the subject of irregularities in the public administration see Gadowska 2010b. See also *Wynagrodzenia w administracji publicznej [Public Administration Pay] 2006*.

²² On this subject, see also *Bukowski, Gadowska, Polak 2008a*.

²³ We will not attempt, here, to determine to what degree the lack of reference to experience of corrupt practices could indicate that the problem of corruption is not so markedly present in the business activities of Polish entrepreneurs, and to what degree it testifies to understandable unwillingness and reasonable fears of disclosing and discussing such instances in an interview situation. Researchers into corruption have long pointed to the difficulties connected with estimating the actual extent and intensity of the phenomenon. There are no objective statistics on corruption. Answers to survey questions indicate the widespread appearance of the phenomenon, while answers to questions about specific instances with which

They say that's the way it is, but I've never come across it. If someone does it, then it's done without leaving fingerprints and no one knows about it.

Several entrepreneurs mentioned solely the problems they had met doing business in countries recently admitted to the EU—Bulgaria and Romania, which are still held to be corrupt.

Another informal institution which our research uncovered is unregistered lobbying. The respondents stressed the importance of calling on connections in the highest business circles, giving examples of politically well-connected entrepreneurs who lobby for specific legal solutions for business.

In doing business on a large scale it is without doubt the case everywhere; that's where such lobbyists as Mr Dochnal or others come from; they aren't persons no one knows; everyone knows what it's about, generally, if it's about filling a position, you hear of it all the time, while at the lower level, at the voivodeship level, frankly, I don't have to, I don't need to, perhaps I never was in such a situation, that doesn't mean I'm a saint, only perhaps I just never had the need to make use of connections, links—to who knows what, but those are things that exist, have existed, and will exist in the future, and there's no way to eliminate it.

In spite of the negative connotations attached to the use of connections by larger entrepreneurs, hastening a bureaucratic matter or even avoiding the regulations thanks to connections was justified by some businessmen, or treated as a necessity or even as something natural. Symptomatic was the response of a Świętokrzyskie entrepreneur, who, to the question of whether having acquaintances in government offices in Poland was useful, answered unequivocally:

You ask me such indiscreet questions... I think good acquaintances are necessary.

Many entrepreneurs simply spoke of the large role played by acquaintance, which can facilitate doing business—for instance, enable the hastening of a matter or even getting around certain procedures in public offices. Connections thus pave the way through the jungle of complicated regulations and formal, bureaucratic requirements.

Whether under the table or not... Sometimes if one knows someone, shall we say, it's easier to get whatever done quicker... if one knows somebody, some offices somewhere, or something... then... that certain procedure can be got around, whatever it is can be done faster.

It would seem that getting close to public functionaries, particularly those at the local level, with whom there are regular contacts, can be treated as an attempt to break through the bureaucracy and formalism—on the one hand, due to rigid procedures, and on the other, in a situation of uncertainty and the considerable unpredictability of functionaries' work. Quotes from the interviews reflect this situation.

Of course, it's pleasant to go to someone one knows, because then that person will try harder to get the thing done, but that's rather not what is being suggested—rather not that. [...] It's not a matter here of

the respondent has met have resulted in a large fall in the indicators for the prevalence of corruption and susceptibility to corruption (cf., for instance, Czapiński 1999).

making use of acquaintance; I'm just saying that, for instance, if you go for the twentieth time about some matter to the same lady in the counter, then automatically that lady says hello to you when she sees you coming from a distance, and the matter is taken care of differently than if you go to someone you're seeing for the first time. So it's more on that basis.

Acquaintances and good relations with local authorities can prove very helpful in the daily running of a business. One of the respondents, from the Podkarpackie voivodeship, spoke of the dilatoriness of public officials, who deal with applications and issue decisions at the legally last possible moment. The way to hasten an affair is by the intervention of the functionary's immediate superiors or representatives of the authorities.

Every Polish functionary has a certain amount of time in which to consider an application—two weeks, a month. [...] There are situations where a functionary could make a decision, a simple decision, on the first day. They always wait to the last day, that is, we're already a month later. That is, they most often wait, because, you know, here I make a call to the mayor and the next day they write me that I have to do something or other. But that's the result of intervention, not the custom of bureaucrats.

Decisions are taken in accordance with the law; the problem, however, is the necessity of intervention—as in the case of the district mayor above—to hasten the procedure. Sometimes that 'hastening the procedure' occurs at the cost of other applicants who are waiting for an administrative decision. Even if it does not happen at the cost of others (which marks it as a 'soft form of corruption') many administrative decisions are the result of personal intervention and not of an impersonal procedure. One way or another, the results of our research show that these are precisely good relations with the authorities and high representatives of the administration, both at the local and the central level, that often constitute the key to running a company efficiently, unhampered by bureaucratic decisions.

To summarize: as a result of the simultaneous restrictiveness and complexity of the law, a sphere of informal personal contacts spreads between entrepreneurs and functionaries. The nature of these contacts is undergoing a certain change, however. Giving bribes is currently connected with ever greater risk. However, 'private connections', that is, making use of personal connections or maintaining direct acquaintanceship with public functionaries, is becoming increasingly more pronounced. This phenomenon could be described as a manifestation of 'soft corruption' in the relations of business and public administration.²⁴ Such soft and hard-to-pin-down corruption takes the form of the creation of a network of mutual assistance, which the participants could consider to be something normal and positive, helping them overcome the thicket of regulations, the bureaucracy, and the dilatoriness of public offices. Thus a sphere of institutions is formed parallel to the ineffective official institutions. They constitute, however, a sort of pathology, excluding 'outsiders'—firms from outside the district or region, firms without connections, new entrepreneurs, or competition from abroad.

²⁴ It can be imagined, however, that this assistance could occur at the cost of other participants, and serve to 'oil' the badly functioning system (Merton 2002).

Accession to the European Union: Formal and Informal Consequences

The result of Poland's accession to the European Union has been dual in terms of relations between public officials and entrepreneurs. First, accession has led to successive changes in Polish law. The EU, at least indirectly, has required the simplification of provisions and the transparency of audit principles. At the same time, accession made it easier for entrepreneurs to do business abroad and paved the way for the comparison of regulations in Poland and other EU countries. This has changed the balance of power in relations between public functionaries and businesspeople (Bourdieu and Wacquant 2006). The need to adapt the Polish legal regulations to those prevailing throughout the EU and the need to increase the competitiveness of Polish entrepreneurs beginning to do business in the EU market has resulted in a series of changes to the administrative regulations for doing business. Here in particular it should be stressed that there have been major changes to the legal regulations in the question of auditing businesses in order to improve conditions and often simply to enable the normal functioning of business.

The first simplification was introduced in 2004. In accordance with art. 82, section 1 of the Act of 2 July 2004 on the Freedom of Economic Activity (Journal of Law 2004, no. 173, pos. 1807 with later amendments, uniform text: Journal of Law 2013, no. 0, pos. 672) it is not possible to initiate and conduct more than one audit in a company at a time; thanks to this, the practice of various authorities conducting several audits simultaneously, in the form of 'raids' on selected firms, has been curbed. Succeeding important changes appeared in 2009 together with the amendment of the act on the Freedom of Economic Activity introduced by the act of 19 December 2008 (Journal of Law 2009, no. 18, pos. 97), which contained, among other things, the principles for conducting nearly all audits. Limitations were introduced to the extent of audits and to the tax office's discretion in their performance, including the institution of notification of an intended audit, whereby an entrepreneur must be informed that an audit is to occur and the audit must take place within 7 to 30 days of notification. The length of time within a calendar year during which an enterprise can undergo auditing was decidedly shortened as well: previously it amounted to 4 weeks (8 weeks at the largest firms). Presently, depending on the size of the firm, it cannot exceed 12 working days in micro-enterprises, 18 working days in small enterprises, 24 days in medium-size firms, and 48 days in the remaining enterprises. Evidence from misconducted audits cannot be used as evidence in cases against entrepreneurs, and entrepreneurs can object to the tax authorities' undertaking and execution of activities violating certain provisions of the law on the freedom of economic activity, thus resulting in the cessation of auditing from the moment the tax authority receives notification of the objection until the objection has been examined. In addition, entrepreneurs who incur losses as a result of tax audits occurring in violation of the provisions are entitled to compensation (cf. also Welsyng 2009).

An overgrown bureaucracy, high taxes, and unstable law were often indicated as important factors causing Polish entrepreneurs to move their businesses to other EU countries. The respondents contrasted the discretion of Polish public functionaries

with the more formalized, and simultaneously clearer, procedures in other EU countries. They also regarded accomplishing administrative matters in other EU countries as easier. There, there are:

... simpler principles, you don't have such broad interpretations; everything is clear and is applied just as it's written. The public official is always competent, and even if he doesn't know something, he'll know where to turn. The public official is there for the applicant, and not the opposite, while in Poland—it depends on which functionary you land with.

For many entrepreneurs the certainty and predictability of procedures is the key trait they expect from a properly functioning public administration. They find such traits in offices in EU countries, where contacts with officials are often reduced to a minimum.

There, nothing can be hastened. There, everything is so transparent—you just go and everyone knows how long it will take—and that's the way it should be. But there it really is quick.

As a model of transparent regulations and straightforward bureaucratic functioning, entrepreneurs from the Podkarpackie voivodeship held up not only Germany, but also England, France, and even—although it may seem surprising given popular convictions—Italy.

There it is very simple; the provisions are short, legible, there's practically only a table, where you have to fill in the appropriate spaces, put in the numbers, and you're done. [Functionaries] are very competent; they're unambiguous, mature, and know what to do. Of course, there are restrictive provisions, too, but they're legible, clear, and available to everyone. At any level of knowledge, you can understand them. Here in Poland, court specialists and experts have various opinions on the same subject. That's tragic, because if Poland can't find powers-that-be who understand the economy and if they don't make legible regulations it will stay like it is now: 'it's easier to swim in murky water'. But the point is to create an effective, growing economy, which is competitive with other countries.

The difference in the very logic of the public administration's functioning was pointed out. Attempts to hasten the course of proceedings in an informal manner through the help of an administrative superior or through pleas directed at the personnel themselves, which characterize daily relations with bureaucracy in Poland, are considered to be impossible in the countries of the 'old EU'. According to our interviewees, bureaucratic work there is characterized by punctuality, is very formalized, and does not allow the client-applicant to influence procedures. In Poland:

If some paper lies in an administrative office for a long time, the matter has to be moved on by telephone calls—'what's happening? etc.' 'could you look into it?' as a priority, naturally. [...] I think that abroad, particularly in [EU countries], nothing can be hastened, because everything has its order, but on the other hand, you can be sure that if there is a set length of time for an administrative office to deal with a matter, it will be dealt with, while here that's not the case, which is why one has to make those telephone calls.

The work of western European counterparts looks particularly good in comparison to the Polish public administration. The effectiveness and speed of administrative offices in EU countries is particularly emphasized. The example of Germany is spoken of in superlatives.

Abroad, I had very brief contact with bureaucrats—when founding companies; later, everything is done by mail, one practically doesn't go to administrative offices. Everything is done by mail, by fax, by telephone, maybe by writing. It works very efficiently. Only with us it's like this—if something needs to be clarified you have to go to the office; you have to make an appointment. Here, you're working, but you have to go at a specific hour to the administrative office, and once there you have to wait, because, let's say, the functionary has appointments with who-knows-how-many people, because she's working too. And there [in Germany] it's not like that. If you have an appointment, it has to happen, but here—not yet... You write, you don't write, you always have to go personally and you have to waste time, instead of working.

An example of long procedures and bureaucratic difficulties even at the beginning of doing business was given by one entrepreneur who complained of the superficiality of the facilitations, such as the so-called 'single window', for establishing a business.

There in Germany you simply don't wait, you act. And here, for instance, I can't do anything without that business registry number, which I get in the mail after a month or a month and a half. And in Germany, you're working—they give the number, it comes and either something else needs to be filled in there or needs to be given to the administrative office. But a person is already working there [while waiting for the registry number] and here in Poland you have to have everything first and only then can you begin. For example—the stupid telephone—I can't get a telephone for the company without the registry number. In my opinion, that's stupidity.

Capitalism, Public Administration, Business: New Rules of the Game?

The context of globalization makes political success at the central, regional, and local levels dependent on the economic situation, and thereby connects the fates of politicians and businessmen. We are thus dealing on the one hand with the appearance of parallel fields of activity, as mentioned earlier, and on the other with the emergence of common domains, thanks to which the common intentions, narratives, and values of businessmen and public officials could be formed. It is worth taking a closer look at this subject.

In the interviews we conducted, the very important role of local governments in creating a favourable business environment was pointed out. A good illustration of this, for example, is Rybnik, a city in the Silesian voivodeship, which created a special economic zone for investors, thus attracting large foreign producers (among other things, of automotive parts and heaters), and in their wake, other, smaller entrepreneurs, often producing sub-assemblies for the larger companies.

There are two different things... there's the business climate in... in cities and the general climate... the regulations, various things hampering that activity... there are maybe even various behaviours, some sort of habits, various bureaucrats or institutions. It's another subject in the cities. In cities the situation is different... Generally, it all depends on the town; for instance, here in Rybnik there's a super business climate. And from the beginning of my working here, we always had help in every instance—always, as much as the town could help us [...] But Rybnik in all those rankings is... always in one of the top places.

The importance of effective local government was often emphasized. It is not the national government, but the local authorities, who, with competent and efficient people, can create a positive atmosphere for conducting and increasing economic activity, lessening the inconsistencies created by the law and the central administration. Friendly local administration can create an excellent business climate.

You know, the process is long and it seems to me, nevertheless, I would dare to claim, that it [should] change from the top, although in reality the good changes are happening at the bottom. Here the local governments are the most important; what we've managed to achieve, it's the local governments; that is, after '89 Poland's biggest success is that, in towns, wherever someone intelligent has appeared in the ranks of the mayors or *wójtów* [local administrators], then those towns have developed very much. Wrocław is a good example; Poznań is probably a good example, hmm... a lot of small localities.

One respondent, the head of a large Silesian firm, gave the example of investment to expand the enterprise, when the main barrier was the central administration, which delayed the investment process in spite of the firm's previously obtained permits and agreements at the regional level.

Thus I would dare to claim that the higher you go—the worse. Why?—Because in Katowice we still... got along well, I know that situation from the period of building, creating our factory in Gliwice [...] Well, and here at the voivodeship level everything went smoothly; the people were very helpful, both in the Gliwice sub-zone and in the Katowice zone... You could even say that they took us by the hand. In all these... in those solutions, in overcoming all those legal problems. In Warsaw, on the other hand, there we had to wait... And then we all know the example [...] when Mercedes had decided to invest in Poland, here, not far from Gliwice, and the reason it all collapsed, it would seem... I say, it would seem, because... we read about it in the newspapers... in Warsaw, it was withdrawn [...] So, like I said, the higher—the worse.

Such positive examples, which appeared in the interviews, clearly show the significant and increasingly important role of local governments and administration in creating a friendly climate for investment and business, not only on the large scale, as in the above-mentioned special economic zones, but among firms in the small and medium-size sector, which are the real fabric of business and development. We are dealing here with changes in the external economic context. The actors are beginning to become aware of their common goals. Political pressure is producing changes in public functionaries' attitudes toward entrepreneurs: with emerging consciousness of a convergence of interests. Thus an institutional balance between the formal and informal institutions regulating business is produced at the local level. At the higher levels of the administration, however, there is still a long way to go to achieve a state of balance. Higher public officials, it appears from the interviews, still view the law as an instrument of power and not a means of achieving common political goals (the development of the country) or economic goals (more competitive economy).

Models of Relations between Formal and Informal Institutions in the Field of Business Activity

Our analyses lead to the conclusion that in the sphere of formal and informal institutions regulating business activities we are dealing with both elements of institutional balance and imbalance. The emergence of substitutive or competitive regulations and norms in the sphere of business activity results from historically preserved methods of constructing and interpreting the law and also the enduring informal adaptive reactions. The long tradition of statelessness, partitions, and dependence on foreign powers, followed by the period of communism, favoured the birth of a general conviction that law is a tool of foreign powers (Podgórecki 1995). The period of so-called real

socialism supported and preserved this type of attitude. After 1989 as well we were dealing with unusually unfavourable phenomena from the viewpoint of the quality of the law. Law-making became hostage to ongoing political games, and the law itself began to be treated above all as an instrument of immediate political interests, and not an important institution serving society.

Our research proves that we are still dealing with such an understanding of the law and with such rules of law-making. Complicated, unclear, internally contradictory, and fragmentary legal regulations, together with their restrictive, discretionary, and free interpretations, create an environment fostering uncertainty in business, and consequently entrepreneurs' deeper, generalized, distrust towards the state, the law, and the public administration. As a result, in the economic field, we have the problem of that uncertainty being overcome through informal acts of 'private connections' and other forms of soft corruption. Actors make use of the informal institutions 'at hand', which have existed since the times of 'real socialism'. The task of these institutions in this case is to raise the effectiveness of business activity, which is hampered or sometimes even blocked entirely by faulty regulations. On account of the severity of the state authorities in executing certain regulations, we rarely encounter open opposition to the official norms. Thus from the statements of the interviewees we more often hear about substitutive institutions (private connections, acquaintances) and accommodating institutions (poaching public officials) than about competitive ones (in this case, corruption).

Under the influence of the new formal context (the European Union and simplification of the law²⁵), and the economic pressure of global capitalism in contact with both entrepreneurs and functionaries, new types of informal institutions develop. As discussed, to a large degree, formal institutions impose the rules of the game on the actors in a given field. These could be, for instance, regulations favouring the birth of conflict, as mentioned, or cooperation, and one of the deciding factors in whether there will be conflict or cooperation is the convergence or divergence of the aims of the various groups of actors affected by the given regulations. EU regulations are constructed so that while entrepreneurs and public functionaries retain the separateness of their tasks, their aims are convergent. Thus some Polish entrepreneurs prefer to take their enterprises abroad, and the majority of our interviewees had a very positive opinion of the regulations and administrative functioning in western European countries. Another force for change in the sphere of informal institutions is the global economic context, which impels politicians, and consequently public officials, to change their attitude toward entrepreneurs. The growth of entrepreneurship is in their best political interest, and this requires creating the best possible conditions for doing business in a given territory. This leads to the emergence at the local level of informal complementary institutions (cooperation, the simplification of administrative

²⁵ We have in mind here the simpler legal regulations in other countries of the old EU, which were often mentioned by interviewees who had done business abroad. The opposite to this, of course, is the filtering of EU legal requirements through Polish legislation, and the introduction on the occasion of additional legislation—which is often not even the result of adapting Polish laws to EU legislation—with the result that it all becomes even more complicated.

procedures) intended to help formal institutions as a framework regulating business activity. However, from the viewpoint of higher level public functionaries (regional, and especially central ones), this convergence of aims with the aims of entrepreneurs is significantly looser. One way or another, the examples of informal—which does not mean private—cooperation between politicians, public officials, and entrepreneurs are increasing in the field of business activity.

On the basis of our analysis we can differentiate four models of relations between formal and informal institutions:

1. The ‘antagonistic’ model reflects a situation in which the effect of formal regulations has an antagonizing impact on relations between the main actors in the business field. In the case we analyzed, the multiplicity and severity of the regulations generates opposition in the objectives of both groups, and in consequence results in the informal institutions regulating business activity having a specific form: distrust and mutual suspicion. This model reflects a state of institutional imbalance as the result of conflict between the main groups of actors in the field of business activity. Formal and informal institutions become hostage to the hostile relations between the groups.
2. The ‘parallel’ model refers to a situation in which the effect of the formal regulations induces the main actors in the business field to adopt various informal strategies. The ineffectiveness of the law, which is the result of long cultural traditions in law-making and attitudes to the law, leads to the creation of parallel, informal, adaptive institutions (buying bureaucrats), substitutive institutions (making acquaintances in administrative offices), and competitive institutions (soft corruption). In this model, the institutional imbalance refers to the relation between formal and informal institutions. The main groups of actors make use of informal institutions to realize objectives different from those officially premised.
3. The ‘alternative’ model describes a situation where an alternative institutional environment appears, and thus changes the balance of power between the two groups, favouring (1) the appearance of partly substitutive and partly complementary institutions (facilitating business activity and cooperation) in regards to Polish law, as well as (2) the departure of entrepreneurs from their native ‘playing field’. In the case we analyzed, an alternative institutional environment tends to produce the emergence of a new institutional balance in the field, since the new formal institutions introduced (here, EU law) foster the realization of common economic goals by the most important actors.
4. The ‘integrated’ model refers to a situation where changes in the external context (external informal institutions) require the main actors in the field to realize common goals. Here, it is particularly a matter of the effect of the global capitalist economy shaping the rules of cooperation between public administration and business. The necessity of coping with global competition requires the emergence of institutions complementary to the formal regulations, particularly at the local level. In this manner informal institutions appear (for instance, administrative fast-tracks for local entrepreneurs), which help realize the objectives premised by formal institutions.

These models are separate constructs solely in the analytical sense. They function simultaneously in the field of business activity. The qualitative nature of the research does not allow us to define the exact proportions of each of these models shaping business activity; nevertheless, on the basis of an analysis of the empirical material, we can state that the first two models still dominate in the field of business activity in Poland, while the latter two are beginning gradually to increase their reach.

Summary

The aim of our article was to describe and analyze the institutional dynamic in the sphere of business activity in Poland, in the context of accession to the European Union. We assumed that the dynamic of the relation between formal and informal institutions leads either to institutional balance or imbalance, which in the end contributes to the higher or lower effectiveness of the economy as a whole. We then advanced the more specific hypothesis that the relations and behaviours of actors in the field of Polish business activity constitute the result of the internal dynamics of formal and informal institutions, the interactions of both types of institutions, and the external institutional context. We assumed that the dependence of the legislative process on politics, the non-transparent influence of various interest groups, and current events will foster the emergence of legal chaos and restrictive regulations. In turn, on the assumption that informal institutions are spontaneous adaptive reactions based on culturally available patterns, institutions will emerge that are, in regards to the law, substitutive (such as, for instance, private relations or 'making friends' with public officials), accommodating (among other things, in the form of poaching bureaucrats), or competitive (in the form of favouritism, clientelism, or corruption). As to the external institutional context, in the shape of EU law and the rules of global competition, we assume it will have a dual influence on the change of relations and principles in the Polish business field: on the one hand, it creates an incentive to cooperate and facilitate business activity, on the other, it could incline businessmen to move their activity abroad, to other EU countries where the formal rules of play allow for greater business effectiveness.

Empirically-based models of relations between formal and informal institutions connected to the goals of the main groups of actors operating in a given organizational-institutional field allow the hypotheses presented to be confirmed and the observations collected to be generalized and associated with the basic differentiation of institutional balance/imbalance in the field of business activity.

Thus from the theoretical viewpoint, states of institutional balance and imbalance are related first with the convergence or divergence of formal and informal institutions, and second, with the convergence or divergence of the goals of important groups of actors in the given organizational-institutional field. In consequence, bringing the concept of institutional balance/imbalance to the category of the field makes it possible to better understand the structure of interaction in the dual arrangement: relations between the entities and relations between the rules of the game. Such a procedure

makes it possible to transfer theoretical categories to empirical observations and *vice versa*. In this sense, the problem of economic effectiveness/ineffectiveness can, on the theoretical ground, be understood as a problem of institutional balance/imbalance. Another element that needs to be taken into account is the dynamic of mutual references between formal and informal institutions in time. The dependence on the institutional path (North 1990) portrayed in the article supplements the picture of the shaping of institutional models in a given organizational-institutional field by showing the history of mutual relations between formal and informal institutions and its internal logic.

References

- Biały, Aleksandra. 2006. Bogaty, wykształcony, ale nie lubiany [Rich, Educated, but Disliked]. *Rzeczpospolita*. 20.02.2006. <http://archiwum.rp.pl/artukul/600044-Bogaty--wykształcony--ale-nie-lubiany.html>
- Bourdieu, Pierre; Wacquant, Loic J. D. 2006. Logic of the Fields in: Aleksandra Jasińska-Kania, Lech M. Nijakowski, Jerzy Szacki & Marek Ziółkowski (eds). *Współczesne teorie socjologiczne* [Contemporary Sociological Theory] Vol. 2, Warszawa: Scholar, pp. 651–662.
- Braudel, Fernand. 1999. *Historia i trwanie* [History and the Social Sciences: The Long Duration]. Warszawa: Czytelnik.
- Bukowski, Andrzej; Gadowska, Kaja; Polak, Paulina. 2008b. Barriers and Obstacles in the Process of Awarding and Implementation of EU Funds in Poland: Systemic Analysis. *Polish Sociological Review* 4(164): 437–469.
- Bukowski, Andrzej; Gadowska, Kaja; Polak, Paulina. 2008a. Bariery w dystrybucji środków unijnych a mechanizmy systemowe w (schyłkowym) państwie bezpieczeństwa socjalnego. Przypadek Polski. [Barriers to the Distribution of EU Funds and Systemic Mechanism in the Declining Social Welfare State] *Studia Socjologiczne* 1(188): 5–43.
- CBOS [Social Opinion Research Centre]. 2009. *Opinia społeczna o korupcji w Polsce*. Komunikat z badań nr BS/62/2009 [Social Opinion and Corruption in Poland. BS/62/2009].
- CBOS. 2010. *Opinia publiczna o korupcji i lobbingu w Polsce*. Komunikat z badań nr BS/63/2010 [Public Opinion on Corruption and Lobbying in Poland. BS/63/2010].
- Chavence, Barnard. 2008. Formal and Informal Institutional Change: The Experience of Post-Socialist Transformation, *The European Journal of Comparative Economics* 5(1): 57–71.
- Cieński, Jan. 2010. 'Arresting Development'. *Financial Times*. 9.03.2010. <https://docs.google.com/file/d/0BjBQEdkCdPVM2YxYTUyMGQtZDcxNS00YTAwLWFwNmQtZjA3OGYwNGE1NTI2/edit?hl=en&pli=1>
- Czapiński, Janusz. 1999. Urzędnik państwowy w oczach obywatela. [The State Functionary in the Eyes of the Citizen] A report on surveys commissioned by the Civil Service Office from the Laboratory for Social Research in November 1999 and conducted on a nation-wide sample of adults and a selected sample of clients of central and voivodeship offices. Warszawa.
- Czuchowski, Wojciech; Sidorowicz, Jarosław. 2010. Pan prokurator ma rację. Mamy w Polsce... [The Prosecutor is Right. In Poland We Have...], *Gazeta Wyborcza*. 13–14.02.2010. http://www.archiwum.wyborcza.pl/Archiwum/1,0,7164326,20100213RP-DGW,Pan_prokurator_ma_racje_ma_my_w_Polsce,zwykly.html
- Darowany chleb był opodatkowany VAT [Donated Bread was Subject to VAT] 2010. *Dziennik Gazeta Prawna*. 29.01.2010. http://podatki.gazetaprawna.pl/orzeczenia/393932,darowany_chleb_byl_opodatkowany_vat.html
- Doing Business 2014. Understanding Regulations for Small and Medium-Size Enterprises. 29.10.2013. <http://www.doingbusiness.org/reports/global-reports/doing-business-2014>
- Doing Business 2013. Smarter Regulations for Small and Medium-Size Enterprises 23.10.2012. <http://www.doingbusiness.org/reports/global-reports/doing-business-2013>
- Doing Business 2012. Doing Business in a More Transparent World. 20.10.2011. <http://www.doingbusiness.org/reports/global-reports/doing-business-2012>
- Doing Business 2011. Making a difference for entrepreneurs. 4.11.2010. <http://www.doingbusiness.org/reports/doing-business/doing-business-2011>

- Doing Business 2010. Reforming through difficult times. 9.09.2009. <http://www.doingbusiness.org/reports/doing-business/doing-business-2010>
- Doing Business 2009. 10.09.2008. <http://www.doingbusiness.org/reports/doing-business/doing-business-2009>
- Doing Business 2008. 26.09.2007. <http://www.doingbusiness.org/reports/doing-business/doing-business-2008>
- Doing Business 2007. How to reform. 5.09.2006. <http://www.doingbusiness.org/reports/doing-business/doing-business-2007>
- Doing Business 2006. Creating jobs. 13.09.2005. <http://www.doingbusiness.org/reports/doing-business/doing-business-2006>
- Doing Business 2005. Removing obstacles to growth. 8.09.2004. <http://www.doingbusiness.org/reports/doing-business/doing-business-2005>
- Doing Business 2004. Understanding regulations. 09.2003. <http://www.doingbusiness.org/reports/doing-business/doing-business-2004>
- O'Donnell, Guillermo. 1996. Illusions about Consolidation, *Journal of Democracy* 7(2): 32–51.
- Działalność przedsiębiorstw niefinansowych w 2011 r. 2013. Główny Urząd Statystyczny [Main Statistical Office]. Warszawa. http://www.stat.gov.pl/cps/rde/xbcr/gus/PGW_Dzialalnosc_przedsięb_niefinans_w_2011_not_inf.pdf
- Fisher, Anna. 2002. Kluski na szaniec [Kluska on the Ramparts]. *Tygodnik NIE*, 35/2002. <http://archive.is/YRli>
- Fligstein, Neil. 2009. Kompetencje społeczne a teoria pola ['Social Skill and the Theory of Fields'], in: Aleksander Manterys & Janusz Mucha (eds). *Nowe perspektywy teorii socjologicznej* [New Perspectives in Sociological Theory]. Kraków: Nomos, pp. 273–300.
- Frieske, Kazimierz. 2001. *Socjologia prawa* [Sociology of the Law]. Warszawa–Poznań: Polskie Wydawnictwo Prawnicze [Polish Legal Publishers].
- Gadowska, Kaja. 2010a. 'National and International Anti-Corruption Efforts: The Case of Poland'. Routledge, Taylor & Francis Journals. *Global Crime*, Vol. 11(2): 178–209.
- Gadowska, Kaja. 2010b. Patologie relacji między grupami interesu a administracją publiczną w Polsce. Referat wygłoszony w ramach XIV Ogólnopolskiego Zjazdu Polskiego Towarzystwa Socjologicznego *Co dzieje się ze społeczeństwem?* ['Pathology of the Relations between Interest Groups and the Public Administration in Poland', a report presented during the XIV National Congress of the Polish Sociological Association, 'What is Happening to Society?']. Kraków.
- Giddens, Anthony. 2001. *Nowe zasady metody socjologicznej* [New Principles of Sociological Methods]. Kraków: Nomos.
- Goetz, Klaus H.; Zubeck, Radosław. 2005. *Stanowienie prawa w Polsce: Reguły legislacyjne a jakość ustawodawstwa* ['Lawmaking in Poland: Legislative Rules and the Quality of Legislation']. Ernst&Young, Efficient State Program. [http://webapp01.ey.com.pl/EYP/WEB/eycom_download.nsf/resources/Stanowienie_prawa_w_Polsce_raport.pdf/\\$FILE/Stanowienie_prawa_w_Polsce_raport.pdf](http://webapp01.ey.com.pl/EYP/WEB/eycom_download.nsf/resources/Stanowienie_prawa_w_Polsce_raport.pdf/$FILE/Stanowienie_prawa_w_Polsce_raport.pdf)
- Górecki, Emil. 2013. Skarb Państwa ma zapłacić MCI blisko 50 mln zł. ['The State Treasury Must Pay MCI Nearly 50 Million PLN'] *Puls Biznesu*, 17.01.2013, <http://www.pb.pl/2963004,18809,skarbpanstwa-ma-zaplatc-mci-blisko-50-mln-zl>
- Helmeke, Gretchen; Levitsky, Steven. 2004. Informal Institutions and Comparative Politics: A Research Agenda. *Perspectives on Politics* Vol. 2(4): 725–740.
- Isakiewicz, Elżbieta. 2011. Stan zamrożenia ['A State of Freeze']. *Tygodnik Powszechny* No. 19 (3236). 8.05.2011. <http://tygodnik.onet.pl/kraj/stan-zamrozenia/jhjh3>
- Kamiński, Antoni Z.; Kamiński, Bartłomiej. 2004. *Korupcja rządów. Państwa pokomunistyczne wobec globalizacji* [The Corruption of Governments: The Post-Communist State and Globalization]. Warsaw, Trio, ISP PAN [Institute of Political Studies of the Polish Academy of Sciences].
- Kochanowski, Janusz. 2005. Deregulation as the first stage in reforming the system of creating law. *O naprawie Rzeczypospolitej*. ['On Repairing the Republic'] *Ius et Lex* No. (III) 1/2005. Warsaw, pp. 213–235.
- Kochanowski, Janusz. 2008. O naprawie procesu stanowienia prawa. Zeszyt II Ruchu Prawniczego, Ekonomicznego i Socjologicznego. Uniwersytet im. Adama Mickiewicza w Poznaniu i Akademia Ekonomiczna w Poznaniu ['On Repairing the Legislative Process', *Notebook II* of the Legal, Economic, and Sociological Initiative of Adam Mickiewicz University in Poznań and the Poznań University of Economics], pp. 5–8.
- Kornaí, János. 1985. *Niedobór w gospodarce* [Economics of Shortage]. Warsaw: Państwowe Wydawnictwo Ekonomiczne [National Economic Publishers].

- Królak, Jarosław. 2011. Urzędnik i prokurator dopadli Polmozbyt [‘The Public Official and the Prosecutor Caught Up with Polmozbyt’]. *Puls Biznesu*. 21.10.2011. <http://pwp.pb.pl/2507621,7063,urzednik-i-prokurator-dopadli-polmozbyt>
- Lauth, Hans-Joachim. 2000. ‘Informal Institutions and Democracy’. *Democratization* Vol. 7(4): 21–50.
- DiMaggio, Paul J.; Powell, Walter W. 1983. ‘The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organisational Fields’. *American Sociological Review*, Vol. 48(2): 147–160.
- March, James, G.; Olsen, Johan P. 1989. *Rediscovering Institutions: The Organisational Basis of Politics*. New York, Toronto: The Free Press.
- Merton, Robert. 2002. Funkcje jawne i ukryte [‘Open and Hidden Functions’] in: Robert Merton. *Teoria socjologiczna i struktura społeczna* [Social Theory and Social Structure]. Warsaw: PWN, pp. 117–152.
- Meyer, John W.; Rowan, Brian. 1991. Institutionalized Organisations: Formal Structure as Myth and Ceremony. in: Walter W. Powell & Paul J. DiMaggio (eds). *The New Institutionalism in Organizational Analysis*. Chicago, London: The University of Chicago Press, pp. 41–62.
- Mohr, John W.; White, Harrison C. 2008. ‘How to Model an Institution’. *Theory and Society*, Vol. 37(5): 485–512.
- Molik, Przemysław. 2012. Izby skarbowe wydają setki interpretacji podatkowych. Połowa z nich jest uchylana przez sądy [‘The State Treasury Issues Hundreds of Interpretations of the Tax Laws: Half Are Overturned by the Courts’]. *Dziennik Gazeta Prawna*. 8.11.2012. http://podatki.gazetaprawna.pl/artykuly/660138,izby_skarbowe_wydaja_setki_interpretacji_podatkowych_polowa_z_nich_jest_uchylana_przez_sady.html
- Mulek, Zygmunt. 2010. Fiskus postawił przed sądem legnickiego piekarza, który rozdawał pieczywo biednym. *naszemiasto.pl*. <http://legnica.naszemiasto.pl/artukul/555806,fiskus-postawil-przed-sadem-legnickiego-piekarza-ktory,id,t.html>
- Neer, Victor. 2005. ‘The New Institutionalism in Economics and Sociology’ in: Neil J. Smelser & Richard Swedberg (eds). *The Handbook of Economic Sociology*, New York: Russell Sage Foundation, Princeton & Oxford: Princeton University Press, pp. 49–74.
- Niezbął, Justyna. 2013. Odpowiedzialność majątkowa urzędników to mit [‘The Property Liability of Public Functionaries is a Myth’]. *Bankier.pl*. 22.05.2013. <http://www.bankier.pl/wiadomosc/Odpowiedzialnosc-majatkowa-urzednikow-to-mit-2835490.html>
- North, Douglas C. 1990. *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press.
- North, Douglass C. 1994. Economic Performance Through Time. *The American Economic Review*, Vol. 84, No. 3. (Jun., 1994), pp. 359–368.
- PBS DGA. 2010. *Opinie o przedsiębiorcach* [Opinions on Entrepreneurs]. <http://pbs.pl/x.php/1,788/Opinie-o-przedsiębiorcach.html>
- Podgórecki, Adam. 1995. *Spółczeństwo polskie* [Polish Society]. Rzeszów: Wydawnictwo Wyższej Szkoły Pedagogicznej [Higher Pedagogical School Publishers].
- Portes, Alejandro; Haller, William. 2005. ‘The Informal Economy’ in: Neil J. Smelser & Richard Swedberg (eds). *The Handbook of Economic Sociology*. New York: Russell Sage Foundation, Princeton & Oxford: Princeton University Press, pp. 403–425.
- Przejrzystość procesu stanowienia prawa. Raport z realizacji projektu “Społeczny monitoring procesu stanowienia prawa”* [Transparency in the Lawmaking Process: A Report of the Project—‘The Social Monitoring Process of Lawmaking’]. 2008. Stefan Batory Foundation. The Programme Against Corruption. Warsaw. http://www.batory.org.pl/doc/Proces_stanowienia_prawa_raport.pdf
- Raport o stanie sektora małych i średnich przedsiębiorstw w Polsce latach 2011–2012* [Report on the State of the Small and Medium-Size Business Sector in Poland in the Years 2011–2012] 2013. Polish Agency for Enterprise Development. Warsaw. <http://www.parp.gov.pl/files/74/81/626/18355.pdf>
- Scott, Richard W.; Meyer, John W. 1994. *Institutional Environments and Organisations. Structural Complexity and Individualism*. Thousand Oaks, London, New Delhi: SAGE Publications.
- Skąpska, Grażyna (ed.). 2002. *Buddenbrookowie czy piraci: polscy przedsiębiorcy okresu głębokich przemian* [Buddenbrookes or Pirates: Polish Entrepreneurs in the Period of Far-Reaching Transformation]. Kraków: Universitas.
- Skąpska, Grażyna (ed.). 2003. *Bieda i bogactwo w polskiej kulturze i świadomości* [Poverty and Wealth in Polish Culture and Consciousness]. Kraków: Universitas.
- Skąpska, Grażyna; Gadowska, Kaja; Polak, Paulina. 2010. *Polish Businessmen in the European Union: Behavioral Patterns, Values and Norms (A Work in Progress)*. Paper presented at the Annual

- Meeting of the Law and Society Association, *After the Critique: What is Left of the Law and Society Paradigm?* Chicago.
- Solska, Joanna. 2003. Podatkowy terror ['Tax Terror']. *Polityka* No. 36(2417). 6.09.2003. <http://archiwum.polityka.pl/art/podatkowy-terror,380611.html>
- Staśkiewicz, Wiesław. 2010. Między dyskrecją a dyskrecjonalnością w tworzeniu prawa ['Between Discretion and Discretion in Creating the Law'] in: Wiesław Staśkiewicz & Tomasz Stawecki (eds). *Dyskrecjonalność w prawie. Materiały XVIII Ogólnopolskiego Zjazdu Katedr Prawa* [Discretion in the Law: Material of the XVIII National Congress of Law Departments]. Warsaw: LexisNexis, pp. 531–539.
- Swidler, Ann. 1986. 'Culture in Action: Symbols and Strategies'. *American Sociological Review* Vol. 51(2): 273–286.
- Sztompka, Piotr. 1999. *Trust: A Sociological Theory*. Cambridge: Cambridge University Press.
- System wynagrodzeń w polskiej służbie cywilnej na tle rozwiązań zagranicznych — analiza i propozycje zmian* [The Pay System in the Polish Civil Service in Comparison with Foreign Civil Services: Analyses and Proposals for Change]. 2009. Prime Minister's Office. Polish Institute of Directors. [http://www.dsc.kprm.gov.pl/userfiles/\(2\)\(1\).pdf](http://www.dsc.kprm.gov.pl/userfiles/(2)(1).pdf)
- Śpiewak, Paweł. 2003. Koniec złudzeń ['The End of Illusions']. *Rzeczpospolita*. 23.01.2003.
- Welsyng, Anna. 2009. Jakie zmiany wprowadzono w zakresie kontroli przedsiębiorców ['What Changes Were Introduced in Auditing Entrepreneurs'], *Monitor Prawa Pracy i Ubezpieczeń* [Labour Law and Security Monitor]. 23.03.2009. <http://mojafirma.infor.pl/dzialalnosc-gospodarcza/101816/Jakie-zmiany-wprowadzono-w-zakresie-kontroli-przedsiębiorców,0,Jakie-zmiany-wprowadzono-w-zakresie-kontroli-przedsiębiorców.html>
- Wesołowski, Włodzimierz. 2004. Warstwa polityków: ewolucja bez postępu ['The Political Sphere: Evolution Without Progress']. *Studia Socjologiczne* [Sociological Studies] No. 3(174): 19–62.
- Williamson, Oliver E. 2000. 'The New Institutional Economics: Taking Stock, Looking Ahead'. *Journal of Economic Literature* Vol. XXXVIII: 595–613.
- Wynagrodzenia w administracji publicznej w Polsce i w Europie. Hipoteza na temat motywacji i jakości służby cywilnej w Polsce* [Public Administration Pay in Poland and Europe: Hypotheses on the Subject of Motivation and Quality in Poland's Civil Service] Hay Group Report. 2006.

Biographical Notes:

Andrzej Bukowski, PhD, is an associate professor at the Institute of Sociology of the Jagiellonian University in Krakow. He is the author and editor of eight books and over fifty articles published in Poland and abroad. His main research fields are local democracy, local and regional development, social-innovation processes and civil society in the EEC. He has taken part in several national and international projects financed by the State Committee for Scientific Research Grants, the Ministry of Science in Poland, the European Union, and the World Bank. His last book, *Region tradycyjny w unitarym państwie w dobie globalizacji. Przypadek województwa małopolskiego (The Traditional Region in the Unitary State in the Age of Globalisation: The Case of the Małopolskie Voivodeship)* (2011) is devoted to the mechanisms of social structuring in a contemporary region. Since 2012, he has been Deputy Chairman of Research and Development at the Institute of Sociology of Jagiellonian University.

E-mail: a.w.bukowski@uj.edu.pl

Kaja Gadowska, PhD, is an associate professor at the Institute of Sociology of the Jagiellonian University in Krakow. She is the author and co-author of a number of books and articles published in Polish and foreign academic journals and she has edited books on social, political, and economic changes in post-communist countries. She received the First Klemens Szaniawski Prize and the First Stanisław Ossowski Prize for best PhD dissertation in the Social Sciences and Humanities for her book *Zjawisko klientelizmu politycznego. Systemowa analiza powiązań sieciowych na przykładzie przekształceń sektora górniczego w Polsce (Political and Economic Clientelism: A Systemic Analysis of Clientelistic Networks in the Restructuring of the Polish Coal Mining Industry after 1989)* (2003). Her research interests concentrate on dysfunctions of the public sphere, i.e. the impact of clientelist networks on the process of political and economic transformation in post-communist countries after 1989, the problem of clientelism and corruption among Poland's political

and economic elites, and irregularities in political and administrative relations in Poland. In the past several years she has led and participated in several research projects financed by the State Committee for Scientific Research Grants in the Ministry of Science in Poland. From 2004 to 2008 she was a member of the editorial board of the quarterly *Studia Sociologiczne (Sociological Studies)*, where she has been a reviewer since 2009.

E-mail: kaja.gadowska@uj.edu.pl

Paulina Polak, PhD, is an associate professor at the Institute of Sociology of the Jagiellonian University in Krakow. Her main research areas include socio-legal problems, the public sphere, health care, and corruption analyses. In *Nowe formy korupcji. Analiza socjologiczna sektora farmaceutycznego w Polsce (New Forms of Corruption: A Sociological Analysis of the Pharmaceutical Industry in Poland)* (2010), she analyzed the Polish pharmaceutical sector and its interface with the public health-care system, proving how the pharmaceutical industry uses corruption on a regular and standardized basis. She is the author and co-author of a number of books and articles (published in Polish and English-language journals and collected works) on corruption, socio-legal problems, legal cultures, health care, and problems at the intersection of state and business. In 2007/2008 she worked as a research fellow at the European University Institute in Florence.

E-mail: paulina.polak@uj.edu.pl