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## The emergence of unintended fit and the theory of gradual institutional change: a case study of Polish employment regulations and post-crisis public policies<sup>1</sup>

### Abstract

*Objectives:* This paper aims to theorise that unintended fit may emerge not only when institutions are creatively adapted by actors within the boundaries of formal rules, but also when formal rules are violated or circumvented.

*Research design & methods:* To that end, this paper links unintended fit more closely with the theory of gradual institutional change coming from historical institutionalism. Theoretical developments are illustrated by a case study on Polish employment regulations and post-crisis public policies.

*Findings:* This paper finds that unintended fit may emerge in two situations: when rules are creatively adapted by actors who use them (“conversion-type” unintended fit) or when they are both adapted and circumvented or violated (“drift-conversion-type” unintended fit). The requirements for the formation of both types of unintended fit are discussed.

*Implications/ Recommendations:* This paper suggests that violations and circumventions should be treated as methods of engaging institutions and that the concept of ambiguity in historical institutionalism should be revised in respect to drift.

*Contribution / Value Added:* This approach opens new possibilities for analysing the formation of institutional complementarities.

*Article Classification:* Research article.

*Keywords:* public policy, institutional change, unintended fit, complementarity, historical institutionalism, drift, conversion.

*JEL classification:* K4, O1, O2, Z1.

### Introduction

In theory, policy makers may design effective institutional framework top-down. This possibility is, however, substantially limited, due to path dependency mechanisms, the impossibility of anticipating how various elements will interact

in case of change, and the fact that policy makers’ tools are mostly limited to elaboration of formal rules. More often efficient institutional systems are worked out gradually by actors finding better ways of operating independently from governments’ intentions. Unintended fit is a description of

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a situation in which effective functioning of a particular institutional framework is not a result of conscious policy design. Aoki (1997) was the first to use this notion, in a paper where he argued against the view that the foundations for Japanese post-war economic success were intentionally designed by policy makers. The term was quickly adapted by new economic sociologists, as it fitted very well the basic assumptions in which the paradigm conceptualised institutional transformation and design (Mica, 2017). Unintended fit was used as a broad description of the outcome of the developments relieving tensions and producing complementarities between mismatched elements of an institutional framework, which, however, caused the dynamics behind its emergence to be overlooked.

This paper argues that in order to investigate the formation of unintended fit, one should link it more closely with the theory of gradual institutional change. By doing so, it is possible to distinguish two different situations in which fit may emerge. The distinction is made on the basis of the mode of institutional transformation leading to the formation of the given fit, but this paper will argue that it is more deeply rooted in possibilities that institutional framework presents to the actors. Firstly, it is possible that fit is created when actors find more efficient ways of using formal institutional framework. In this case, institutions are adjusted through the process of conversion, as actors bend flexible rules to their needs within the boundaries designated by formal framework (“conversion-type” unintended fit). Secondly, fit may emerge when some elements of institutional framework are directly violated or circumvented by actors, who find another substitute institution that they start to utilise in place of the evaded one. Here, the premise for the formation of the fit are simultaneous processes of conversion and drift: some elements of institutional framework are re-interpreted, whereas others are violated or circumvented (“drift-conversion-type” fit). This situation may take place only when actors can bypass regulations. It creates a somewhat paradoxical situation where the very violations and circumventions of formal

rules may contribute to alleviating mismatches and a more effective functioning of institutional framework. I will argue that some elements of this understanding of unintended fit can be reconstructed from the existing state of research, but have not been expressed consistently. This drift-conversion-type unintended fit will also be a focal point of the case study of Polish employment regulations, where drift and conversion resolved tensions between policy that increased minimum wage and other policy that pushed for severe cost reductions in public sector employment. Conversion and drift of different elements of institutional framework mitigated mismatches between the policies and made them mutually complementary.

By stressing the gradual character of most institutional changes and the role ambiguity plays, this paper positions itself in a tradition of historical institutionalism that sees institutions as both legacies of particular policies and objects of continuous contestation by the actors (Thelen & Conran, 2016). Institutions “consist of normatively founded and collectively enforced rights and obligations [that] may be [...] regarded as regimes for specific sets of actors and activities, for which they represent both constraints and opportunities. As actors almost always have a degree of choice as to whether or not to make use of a given institution or comply with its rules, institutions can only condition but cannot determine action” (Streeck, 2004, p. 103). Institutions offer possibilities of solving actors’ problems in a generalised fashion and there is always some freedom in how they are used. This influences how institutions transform.

This paper begins with an introductory section that explains the notion of unintended fit and its relationship to the concept of complementarity, and subsequently reviews current approaches to formation of unintended fit that see it as a result of adaptations remaining within the boundaries of formal rules. It then advances a theory on unintended fit by arguing that fit can also emerge when elements of institutional design are subject to both conversion and drift. Next, this paper presents a case study on how the interaction between drift

and conversion in Polish employment regulations mitigated contradictory policies and produced drift-conversion-type unintended fit. That is then followed by a discussion section, where it is argued that the emergence of unintended fit should be analysed in relation to the ambiguity of institutional framework, understood in a broader sense than current interpretations in historical institutionalism. Ambiguity should not only be referred to possibilities of creative interpretation and application of formal rules, but should be understood as a general possibility of taking strategic action with reference to those rules, which includes circumvention and violation as well.

### Unintended fit and complementarity

Unintended fit was developed as a concept critical towards ideas that effective institutional orders must be designed top-down. Aoki (1997) used this term to criticise the rational design interpretation of post-war Japan's economic success. He showed that the framework behind the Japanese economic miracle emerged with little conscious governmental intervention, as a result of simultaneous institutional adjustment that created complementarities between *zaibatsu* ownership structures, financial institutions, workplace culture, and employment philosophy. It involved changes in market practices, political power-games and bureaucratic conversions focused on dealing with administrative problems. The notion was subsequently adopted by new economic sociology to describe developments resulting from gradual adaptations that resolved tensions in interactions between inconsistent elements of institutional design. At the same time, it became helpful in departing from functionalist approaches arguing that the existence of a particular solution somehow triggers the emergence or adoption of others as well (Mica, 2017; Streeck, 2009). New economic sociologists used unintended fit to interpret various developments in what were referred to as coordinated market economies: most often in Japan and Germany, and particularly

in the case of the German system of codetermination (e.g. Jackson, 2001; Jackson, 2005; Streeck, 2009; Streeck & Yamamura, 2001; Yamamura & Streeck, 2003).

Unintended fit in general refers to a situation in which not fully consistent elements of institutional design are adjusted to each other by actors who find more efficient ways of using them, and altered so that they become complementary (Streeck, 2004). Because institutions regulate behaviour in a general fashion (are at least partially ambiguous), more efficient or socially acceptable ways of using institutional framework may appear. "Complementarity" describes here a situation in which the presence of one institution increases the efficiency of another (Hall & Soskice, 2001; Höpner, 2005). Historical institutionalism assumes that institutions must fit each other to a certain degree to constitute an effective institutional framework (that does not mean this matching is optimal; Aoki, 2001; Thelen, 2010). Institutional complementarity may be intentionally designed ("intended", "by design", "ex ante" complementarity; Boyer, 2005; Trubek & Trubek, 2005). For instance, policy makers in liberal economies may deregulate labour law, thus enabling firms to more quickly react to market changes by hiring and firing workers, which is necessary for the functioning of the liberal capital market. Complementarity may also be unintended ("unplanned" or "ex post" complementarity; Streeck & Yamamura, 2001; Trubek & Trubek, 2005), in the sense that it may emerge as an unintended consequence, seen from the perspective of the government. Public policies are often fragmented and various policy fields address different goals, and pursuing them may sometimes unintentionally either hinder or foster the emergence of complementarities. Moreover, it is also possible that policy makers plan or assume that an institution will be creatively used by actors (even that formal rules will be circumvented!), but do not control the precise way in which that is done. Unintended fit refers to this type of unintentionally created complementarity as well.

## What we know so far about the emergence of unintended fit: “conversion-type” fit

How does it happen that two co-existing institutions begin to complement each other? Historical institutionalists have used various concepts of institutional change to explain the emergence of institutional complementarities, such as: “hybridisation”, defined as either separation of forms and practices (e.g. Aguilera & Jackson, 2002) or as mixing components taken from different models (Callaghan, 2010); “recombination”, understood as blurring of boundaries of institutions (Stark, 1996), “co-evolution”, described as adjustment processes of trial and error between institutions (Boyer, 2005; Aoki, 1997); “translation”, depicted as the process of rearrangement of principles and practices; and “bricolage”, the blending new practices into existing institutional framework (Campbell, 2004).

I suggest starting from the adaptation by Mahoney and Thelen (2010) of the theory of gradual institutional change. Those two authors, modifying the approach of Streeck and Thelen (2005), distinguished four types of change: displacement, layering, conversion and drift. Displacement is a mode of change where new rules replace the previous ones, which cease to exist. Layering involves amendments, revisions, and small adjustments that supplement the old rules but do not remove them, resulting in changes of incentives or a hybridised logic of action. Both drift and conversion are “hidden” methods of institutional change as they involve changing an institution without altering formal rules. Streeck and Thelen argued that differences between practice (actual functioning, enforcement, and implementation) and formal framework are vital for understanding institutional transformations. Conversion involves a change in how an institution functions or in the goals that it serves, but within the existing formal rules, without any change of the legal form (Mahoney & Thelen, 2010). This may happen through “redirection, reinterpretation, or re-

appropriation” (Hacker et al., 2015, p. 185). Drift is a failure to update policies or institutional rules in circumstances of substantial external change, resulting in “slippage in institutional practice” (Streeck & Thelen, 2005, p. 31). In spite of a lack of formal change, the institution subject to drift loses its ability to structure targeted behaviour and becomes increasingly neglected by actors who use it. Drift is a reminder that institutions need to be reinvented and adjusted to perform their functions.

In the sense of the theory of gradual institutional change, unintended fit has so far been mainly explained as a result of conversion-type change of practical application and implementation of institutions that remain within the sphere of possible actions from the formal point of view, with no substantial change in formal rules. As actors engage in “ongoing efforts [...] to try out and establish new interpretations of pertinent norms that better fit their interests” (Streeck, 2004, p. 103), complementarities are produced as unintended consequences resulting from “the mutual adjustment of institutions as an ongoing process needed to reduce ambiguities, debug frictions, and establish satisfactory performance” (Jackson, 2005, p. 235). In this perspective, unintended fit is created when institutions are subject to conversion in such a manner that they become complementary to each other. Aoki stressed that we can speak of unintended fit when “institutions modified their functions considerably from the original intention of the government” (Aoki, 1997, p. 235), whereas Jackson (2005) argued that unintended fit is a result of interactions between two or more institutions that, independently of the intervention of governments, influence the consequences they produce and, as a result, the way they function in practice.

I suggest calling a fit that emerges as a result of actors adapting an institution within the boundaries of formal rules a “conversion-type fit”. It is present and well documented in the literature. Conversion-type adaptations are the focal point of Aoki’s 1997 paper in which he describes multiple conversion-type changes in the public sector (administrative-bureaucratic practices) that

complemented conversion-like transformations in the private sector (the development of market practices and customs such as lifetime employment, long-term relationships between banks and groups of firms and between firms and their suppliers). Both German and Japanese institutional frameworks were interpreted in a similar way, as products of conversion-like adaptations (Aoki et al., 2007; Jackson, 2001; Jackson, 2005; Streeck, 2009; Streeck & Yamamura, 2001; Yamamura & Streeck, 2003). This type of unintended fit is common, because actors always try to find more efficient ways to use existing tools (Sheingate, 2010; Streeck, 2004). The potential for conversion is determined by the range of interpretation of formal rules available to actors, courts, and administration: ambiguity of formal rules enables broader adaptations. This fact also presents policy makers with an opportunity to deliberately broaden scope of implementation or application of a particular institution to stimulate and facilitate processes of adoption and adjustment. This may, for instance, take the form of delegation of particular interpretation to independent or semi-independent bodies, e.g. bureaucratic agencies or courts, which are left with the possibility of introducing a new interpretation (Hacker et al., 2013).

### **“Drift-conversion-type” unintended fit**

I argue that actors do not necessarily have to limit themselves to adaptations that stay within the boundaries designated by formal rules. Fit may emerge even when rules are violated and circumvented. It depends on how formal rules structure behaviour. Institutions need to be able to cope with the problems they intend to solve or facilitate (co-ordination, protection, social needs, etc). If there is a change in factors important for an institution’s performance (e.g. fragmentation of families, in the case of social policy; de-standardisation of tasks in the economy, in the case of labour law), it often needs to be adjusted to still serve its purpose (e.g. a redefinition of family in social policy or core notions in labour law). If that does not happen in a formal way (for

example because barriers to reform are too high) or in a conversion-type change within existing rules (for example because, for some reasons, actors find it difficult to adjust formal rules), formal rules may increasingly be violated or circumvented. At the same time, actors may try to cope with institutional maladjustment by adapting (converting) some other institution to their needs. I will define this situation as “drift-conversion-type” unintended fit. We can speak of it when the fact that an institution is subject to drift actually helps to alleviate mismatches or resolve institutional frictions, brings some positive effects from a certain standpoint, and/or contributes to the production of complementarities.

Some elements of drift-conversion-type unintended fit may be reconstructed from the existing literature; however, they have not been expressed in a consistent manner. Aoki’s (1997) fundamental paper on the unintended fit did not use the theory of gradual institutional change, but that paper does focus mostly on conversion-type adaptations within formal rules. However, on close examination, one may find some developments resulting from drift-conversion-type interaction, which have not, however, been sufficiently theorised. Aoki shows that in Japan during Second World War professional engineers were often conscripted into the army. That undermined Taylorist hierarchical/specialisation type of dealing with the problems in firms by experts (=drift). Underqualified workers had to complement for temporary labour shortages, and problems were increasingly solved by collective team effort, which became the new standard (=conversion). This type of work organisation became an excellent base for the development of flexible, lean-manufacturing production which became Japan’s comparative advantage. We can see the conditions for drift-conversion dynamics. One institution is either maladjusted or not properly enforced, whereas another institution has formal rules ambiguous enough to be converted so that it can serve as a form of substitute for the former.

The possibility that circumvention or violation of formal rules can contribute to alleviating

mismatches and generating complementarities has been under-represented in historical institutionalism, due to several reasons. Firstly, since historical institutionalism has been developed mostly in Western Europe and US, it has focused mostly on highly developed countries, where the problem of general compliance with the regulations seems to be less pervasive than among late achievers such as, for example, Central and Eastern European countries. Mainstream literature generally assumes that, in comparison to late achievers, Western European and American formal institutional frameworks are more efficient, sanctions for breach are more effectively enforced, and political systems are more responsive towards societal developments. As a result, it seems less common that actions that violate or circumvent rules become so widespread that they become the source of alleviation of mismatches and production of complementarities. Conversion-type adaptations within existing formal rules are, however, more widespread. Secondly, historical institutionalist theory of gradual institutional change is primarily focused on the endogenous mechanisms of institutional change, where the triggering factor is either the internal dynamics of institution or the behaviour generated by it (Beckert, 2010; Streeck & Thelen, 2005). This approach is perfectly suitable for analysis of three remaining forms of institutional change, because the social phenomenon tackled by an institution remains “inside” formal rules that construct an institution: displacement and layering involve changes of formal rules, whereas conversion is a change in how rules are understood and applied. However, it creates problems with regard to drift, as drift only tells us that institution is being increasingly neglected, leaving open how the actual problem is approached after the institution fails to adapt. That leads us to the third, and probably most important, reason for under-representation of drift-conversion-type unintended fit, which is the understanding of ambiguity in historical institutionalism. So far, institutional ambiguity in historical institutionalism has been understood

as a possibility of creatively adapting institutions to fit actors’ needs within the boundaries of formal rules. It effectively means that “uses” of ambiguity have been narrowed to only conversion-type adaptations (Hacker, Pierson & Thelen 2015; Jackson, 2005; Mahoney & Thelen, 2010; Rocco & Thurston, 2014). Jackson (2005) even explicitly links ambiguity exclusively with conversion-type institutional adaptations. Furthermore, drift is even sometimes presented as being caused by lack of ambiguity, due to inability of actors to adapt institution to their needs. Rocco and Thurston (2014, p. 41) note that “highly ambiguous institutional rules elicit change through layering and conversion, while less ambiguous institutions elicit change through drift”.

This assumes that bypassing formal regulation is not a method of engaging institutions, but rather an action that transcends them. However, circumventions and violations characteristic for drift are also ways of approaching institutions, similar to actions enforcing specific meaning of formal rules to “bend” institutions that are characteristic for conversion. Ambiguity should therefore be understood as an opportunity that an institution presents to actors in how they can approach, interpret and use it in a creative way, including an opportunity to circumvent and violate formal rules. We will get back to this problem in the discussion. Before doing that, I will present one more precise example of how drift-conversion-type unintended fit can emerge in the example of Polish employment regulations, where contradictions between public policies were worked out thanks to drift and conversion-type developments.

### **Mismatched public policies introduced after the crisis in Poland**

The following sections introduce a case study that presents a formation of drift-conversion-type unintended fit between different public policies implemented during the economic crisis and developments on the labour market in Poland.

It depicts the dynamics behind the emergence of this fit with the use of concepts coming from the theory of gradual institutional change.

During the economic turmoil caused by the global financial crisis, policy makers in Poland introduced two important policies affecting labour market. Firstly, the government<sup>2</sup> opted for substantial minimum wage increases. Between 2001 and 2007 the minimum wage was raised by 23%, while in the period between 2007 and 2013 it was increased by 70%. The minimum wage amounted to 35% of the average wage in 2006, and almost to 45% in 2014. Secondly, between 2005 and 2015 subsequent governments (formed by both the right-wing Law and Justice party from 2005 to 2007 and the liberal conservative Civic Platform from 2007 to 2015) conducted an austerity policy with regard to employment in public sector. Within a new paradigm commonly known as “cheap state”, public agencies were expected to lower overall costs by reducing excessive employment, introducing activity-based budgeting, focusing on core goals, and, possibly, outsourcing tasks outside of that realm (Duda, 2016). One of the elements of the cheap state paradigm was the liquidation of what were known as “supportive units” (*gospodarstwa pomocnicze*), which provided auxiliary services (such as cleaning, security, minor administrative services) to public agencies. Such services were to be acquired on the market via public tenders (Dylong & Klatka, 2014).

The policies of minimum wage increases and cheap state seem somewhat contradictory. The former intended to increase wages of low-income workers, while the latter focused on cost-reducing activities with a substantial emphasis on employment in auxiliary services in general provided by low-income workers. In other words, the cheap state paradigm aimed to save money on

<sup>2</sup> The minimum wage level is established by social partners sitting on the Council of Social Dialogue (previously known as the Tripartite Commission). However, if employers and employees do not reach an agreement (which is usually the case), the government may make its own decision.

the same workers whose wages were increased by minimum wage rises. How were frictions between those two policies resolved? I argue that negative, cost-increasing effects of minimum wage policy were buffered by drift and conversion-type adaptations made by employers which at the same time contributed to the effectiveness of the cheap state paradigm. Interaction between drift of labour law and conversion of civil-law contracts in Poland enabled employers to circumvent labour law and use civil-law contracts as substitutes for more expensive labour-code contracts. This in result enabled administrative bodies to implement the cheap state paradigm that pushed for reductions of employment costs in public sector in the face of the concurrent policy that increased the minimum wage. Public sector subcontractors could meet public agencies’ cost expectations by using non-standard forms of contracts that were outside of the remit of the minimum wage.

### **Impact of public policies and institutional transformations**

In order to understand the dynamics behind the emergence of this fit, one must first analyse the way in which policies of minimum wage growth and cheap state were implemented. In both cases, the government intended that the practice regarding particular elements of institutional design would transform as a result of policy changes. Both policies in fact stimulated conversions that were followed by drift. Minimum wage growth policy was started by the liberal conservative Civic Platform party. The policy was intended to address various problems, including: compensating for years of slow growth of the minimum wage; complementing stagnating exports with increased internal consumption (NBP, 2009); increasing cash inflows into the social security system; improving the welfare of low-wage workers; and reducing income inequalities (OECD, 2015). The government indirectly switched the role of the minimum wage, with highly limited power to control the outcome. The cheap state paradigm policy was also conducted

in a fashion that fostered conversion. This policy was started by the right-wing Law and Justice party and was continued by the Civic Platform. It primarily intended to promote effectiveness, institutional innovation and financial transparency that would limit the risk of corruption (Sześciło, 2014). The actual implementation of the paradigm was delegated by the government to public agencies, which in theory were relatively free to choose what path they would follow to reduce costs. Delegation, as shown earlier, may provoke conversion. Both conversion-like policies stimulated drift of labour law and conversion of civil-law contracts as well.

Minimum wage growth policy changed the role of the minimum wage: it improved the wages of lower-income workers (OECD, 2015) and contributed to the general wage pressure (Tyrowicz, 2015), but also raised labour costs of low-wage workers. Conversion of the role of minimum wage was concurrent with the drift of labour law, as employers tried to avoid minimum wage increases by circumventing labour law. Fast and substantial increases of minimum wage may lead to growth of informality on the labour market (see a review in Neumark & Wascher, 2006). Some employers resorted to simple labour law violations to make up for increased labour costs. Around 50% of the enterprises inspected by the Labour Inspectorate were violating some of some provisions of the Labour Code (the Labour Inspectorate, 2005–2014), with economically oriented violations being particularly common (Muszyński, 2018). The percentage of minimum wage violations, i.e. the percentage of employees who received less than minimum wage, increased by around a half (Goraus & Lewandowski, 2016). Violations were made possible by weak surveillance mechanisms, as inspections by the Labour Inspectorate were rare and sanctions for labour law violations were low and subject to stagnation (Muszyński, 2016).

However, most employers made use of ambiguous regulations, and tried to circumvent labour law by way of the use of civil law to avoid minimum wage increases, as civil law contacts were not covered by minimum wage regulations. In order

to understand how that happened it is important to note that under Polish law there are two ways of structuring employment contracts. It is possible to choose between labour-code contracts governed by labour law and civil-law contracts governed by civil law. These two methods differ significantly. Civil-law contracts provide lower employment protection, are easier to conclude and resolve, are taxed significantly lower, and are, in principle, outside of the remit of minimum wage regulations.<sup>3</sup> As a result, they make it possible to achieve greater flexibility in terms of structuring employment relationships, and to reduce employment costs, because of much lower taxation. The difference between overall costs for the employer and net remuneration received by employee can be as much as 40% for labour-code contracts and can be as low as 9% for civil-law contracts (Arak, 2016). At the same time, civil-law contracts could in fact be used as substitutes for labour-code contracts for two reasons. First, labour law surveillance was very weak and how contracts were utilised was not properly monitored. Secondly, from the formal point of view the boundary between labour code and civil-law contracts was highly ambiguous. The notion of “supervision” was used to distinguish situations where labour-code contracts should be used from situations where civil-law contracts are permitted, but it has become subject to divergent interpretations created in the jurisprudence and doctrine which have not been clarified by legislative intervention.<sup>4</sup> The boundary between labour-code and civil-law employment became blurred (Pisarczyk, 2015), thus allowing employers to use less expensive and more flexible civil-law

<sup>3</sup> Since January 2017 one form of civil-law contract (*umowa zlecenie*) has been subject to an hourly minimum rate.

<sup>4</sup> The basic legal notions of the Labour Code were created more than 40 years ago, in the era of a socialist economy where the State basically provided full employment and secured a particular level of working conditions and proved to be path dependent. Moreover, there are plenty of rulings from the 1980s and 1990s that are still referred to in case law.

contracts in creative ways to structure rather typical employment relationships with them (which should also be understood as conversion).

Kamińska and Lewandowski (2015) calculated that between 2002 and 2013 more than 100,000 workers with labour-code contracts were fired each year due to minimum wage increases that made their employment less profitable. Most of those workers were re-hired on “converted” civil-law contracts that were not governed by the minimum wage. Between 2007 and 2013, when minimum wage increases were most radical, the number of employees working on civil-law contracts rose from around 0.5–0.6 million to 1–1.1 million (Muszyński, 2016). At the same time, the percentage of civil law contracts found to be concluded in breach of labour law increased dramatically, from 8% in 2008 to more than 20% in 2014 (the Labour Inspectorate, 2009–2014). Here we can see the self-reinforcing dynamics of drift and conversion. “Converted” civil-law contracts provided an attractive alternative to labour-code contracts that became circumvented, thereby contributing to the drift of standard contracts, understood as the diminishing importance in terms of structuring employment relationships (Muszyński, 2016; GUS, 2016).

Concurrently to the change in use of labour and civil law by enterprises, the cheap state paradigm played a role in the process. Officials had to adapt to new requirements and they did so by taking a very cost-reduction focused approach to public tender procedures. Such procedures have become dominated by what is known as the “lowest price dictate”, i.e. choosing the cheapest possible offers for auxiliary services and new employees (Duda, 2016). Numerous other reasons fostered this type of conversion. First, cost assessment was easiest for public officials, as the cost element is self-explanatory and somewhat “objective”, whereas using other criteria would require more subtle analysis, and would also be vulnerable to corruption allegations (Schimanek & Kunysz-Syrczyk, 2014). Secondly, the introduction of the cheap state paradigm co-incided with

Poland’s accession to the EU (2004), which resulted in very rapid growth of the public procurement market, due to an influx of European funds, from PLN 48 billion in 2004 (5.3% of Polish GDP) to PLN 103 billion in 2007 (8.8% of Polish GDP) and PLN 167 billion in 2010 (11.8% of GDP). Officials were overwhelmed by proceedings and were incentivised to take the easiest route. Moreover, activity-oriented rules of financing and monitoring incentivised public agencies to inflate the number of tasks completed, and particularly promoted tasks that brought savings. For instance, outsourcing of cleaning services brought costs down but also enabled officials to easily perform tasks such as carrying out a tender, choosing an offer and signing a contract. Conversely, having a long-term employee performing cleaning services would not entail completing any tasks, it is not reportable, implies that the agency does nothing on this level, and, moreover, this idleness does not bring any savings. The result was cost-reduction focused conversion of public agencies’ practices. The percentage of public tenders in which the sole criterion was price skyrocketed, from 29% in 2004 to 85–90% between 2007 and 2013, while the rate of tenders in which cheapest offer was chosen increased by some 10–15 pp, from approximately 80% to 95% (the Public Procurement Agency, 2001–2015). This was accompanied by a very relaxed approach with regard to employment standards among public sector subcontractors. As outsourcing concerned mostly labour-intensive services, it boosted labour-cost competitiveness among public sector subcontractors. It led to a situation where cleaning and security services, which were most commonly outsourced, often stipulated hourly wages substantially below the hourly minimum wage<sup>5</sup>. While in 2015, the hourly minimum wage was around PLN 8 net, public tenders assumed as little as PLN 3.4, averaging

<sup>5</sup> There is no hourly minimum wage for labour code contracts under Polish law but it can be calculated by dividing the monthly minimum wage by average number of working hours in a month. Hourly minimum wage for contracts for mandate was introduced in 2017.

PLN 4–5, for an hour of outsourced work (Duda 2016). Public sector subcontractors reacted to stringent public sector cost requirements with adaptations that intended to circumvent labour law and lower costs. If subcontractors acted in accordance with formal regulations, they would not be able to win the tenders. To meet public agencies' cost requirements, subcontractors engaged in multiple strategies that circumvented or violated regulations: minimum wage violations, other labour law violations, conversion of civil-law contracts, or concluding civil-law contracts directly in breach of labour law. In fact, the implementation of the cheap state paradigm was made possible by the fact that subcontractors concluded non-standard contracts with their staff. Public agencies were indirectly accepting the fact that their subcontractors were violating regulations and circumventing labour law by using of civil-law contracts that were outside of the scope of the minimum wage. Again, this drift-conversion interaction had self-reinforcing dynamics: the enterprises that functioned in accordance with the regulations (i.e. would hire workers on labour-code contracts and pay minimum wage) would not be able to win the bids, as in the overwhelming majority of cases public agencies used exclusively cost criterion to assess the offers received. The competition between public sector subcontractors therefore focused on finding non-standard solutions to lower costs, mainly revolving around circumventing labour law (thereby subjecting labour law to drift) and using civil-law contracts instead (thereby subjecting them to conversion).

### **Drift-conversion-type unintended fit between minimum wage growth and the cheap state paradigm**

Minimum wage growth increased labour costs for low-wage work, which could have negatively impacted the effectiveness of the cheap state paradigm. Thanks to institutional adaptations made by the actors utilising drift-conversion dynamics, frictions were resolved and policies in fact were

adjusted to mutually complement each other. Minimum wage growth, by increasing labour costs of low-wage workers, incentivised and provoked strategies that focused on reducing labour costs of low-wage workers. Vague boundaries between labour-law and civil-law contracts, intertwined with a highly ineffective supervision system, allowed employers to circumvent labour law and use civil-law contracts and other non-standard solutions that lowered labour costs.

Institutional adaptations mutually complemented and reinforced each other. While the government increased the minimum wage, more and more workers were pushed outside of the scope of labour law protection due to drift-conversion dynamics. This substantially enhanced the effectiveness of the cheap state paradigm: stringent public sector expectations were met because public sector subcontractors could engage in extreme cost-reduction strategies. At the same time, the cheap state paradigm and drift-conversion dynamics allowed the government to substantially increase the minimum wage with no harm to employment outcomes, as dismissed workers found employment on converted or even illegally concluded civil-law contracts used as substitutes for labour-code contracts. Without drift-conversion dynamics, substantial growth of the minimum wage may have been halted due to the manifestation of negative employment outcomes, such as an increase in unemployment. In the case of Poland, the cheap state paradigm promoted stringent cost-reductions that at the same time created employment opportunities for workers dismissed as a result of minimum wage growth. Drift-conversion dynamics made two contradictory policies complementary.

### **Discussion and conclusions**

Complex societies inherently consist of a multitude of interrelated and interacting elements that very often do not fit each other. Historical institutionalism has developed language to describe how these elements may be adjusted so that they contribute

to the effective functioning of an institutional framework. The emergence of unintended fit, as a summary description of developments leading to the working out of discrepancies and the producing of complementarities, has been characterised mainly as a result of adaptations taking place within the boundaries designated by formal rules. This paper intends to argue that the theory of unintended fit can benefit from linking it more closely with the theory of gradual institutional change, which stresses gaps between the formal meaning of institutions and their practice and enforcement as key factors behind the dynamics of change.

This allows us to see unintended fit not only as an effect of redirecting institutions in a way that is formally permitted, but also conceptualising it as a result of adaptations that involve circumvention or violation of formal rules. Drift-conversion-type unintended fit happens when one institution is subject to a drift and another institution is adjusted to serve a similar purpose that the first one no longer serves. This may make possible the reconciling of the tensions between mismatched elements of institutional design or policies and contribute to the production of complementarities. The emergence of this fit is best shown when self-perpetuating mechanisms are triggered: on the one hand, when new institution is adapted to actors' needs, the old one is being abandoned; at the same time, "rediscovery" of another institution in fact makes it less pressing for the abandoned institution to be adapted, because actors are presented with a viable alternative, and that again increases the drift, as governmental intervention in that case may be no longer needed.

In general, it should be noted that the emergence of both types of unintended fit is conditioned by the possibility that actors have to adapt elements of institutional framework to serve their needs. In other words, it is enabled by institutional ambiguity. Conversion-type fits are conditioned by "[formal] rules ambiguous enough to permit different (often starkly contrasting) interpretations" (Mahoney & Thelen, 2010, p. 21), i.e. the form

of legal provisions or specific relations between them are characterised by vagueness stemming from the openness of linguistic structures in which formal rules are communicated. If those rules can be understood in a different manner, there is a gap between strategic action and institutionalised expectation that can be filled with interpretation and application (Jackson, 2010) which may allow actors to adopt institutions so they can fit each other.

Drift-conversion-type unintended fits are conditioned by interaction of different types of ambiguities. Conversion, again, necessitates vague formal rules. But drift happens when an institution performs in an ambiguous manner, when it is no longer able to resolve actors' problems, and is accompanied by weak surveillance mechanisms. This allows actors to approach the formal rules in a different manner. Because "a gap opens up between rules and enforcement" (Mahoney & Thelen, 2010, p. 21), actors are "abdicating previous responsibilities" (Streeck & Thelen, 2005, p. 25), and changing their established way of action: they can strategically circumvent or violate regulations. This was the case with the Polish institutional system. Vague boundary between labour-law and civil-law employment, intertwined with maladjustment of labour law and very weak surveillance system allowed actors to "innovate" by circumventing labour law and using civil-law contracts as substitutes. Expectations were created on the basis of that, e.g. administrative bodies were assuming in their public tenders that subcontractors were violating labour law and using cheaper non-standard forms of contracts. Complementarities between contradictory public policies were produced thanks to both drift and conversion-type adaptations, made possible by institutional ambiguity.

A more precise conceptualisation of this type of unintended fit is beneficial for several reasons. Firstly, it enables us to consistently treat conversion and drift as forms of institutional adaptations, which may create complementarities and contribute to more efficient functioning of institutional change.

Secondly, it adds another layer to our understanding of the dynamics of institutional change. An

Table 1. Comparison of conversion- and drift-conversion-type unintended fit

	<b>Conversion-type fit</b>	<b>Drift-conversion-type fit</b>
Mechanism of complementarity production	Conversion(s)	Interaction between conversion(s) and drift(s)
Type of institutional ambiguity	Formal ambiguity (vague formal regulation)	Formal ambiguity + ambiguity of performance (weak surveillance, non-compliance, etc)
Actions contributing to production of fit	Creative adaptations, “redirection, reinterpretation, re-appropriation” (Hacker, Thelen & Pierson, 2015, p. 185)	Circumventions and violations of regulations, adaptations on the verge of regulations

Source: own elaboration.

idea that policy transformations do not necessarily rely on one type of change and that there may be “patterns of sequencing of mechanisms” in which one transformation (e.g. layering or conversion) leads to another (e.g. drift or displacement) is common in historical institutionalism (see literature in van der Heijden 2014, p. 13), but the theoretical implications were not stretched towards unintended fit. However, as shown in the case study, it is possible that drift results from a situation in which actors are dropping an institution in favour of another existing institution which is in that case subject to conversion and adjusted to serve similar (but not necessarily the same) purpose as the “abandoned” institution. Usually these three elements (external event, conversion, and drift) are interrelated, as external events pressure the conversion of the new institution and aggravate the drift of the previous one at the same time, which in a self-reinforcing fashion contributes to the conversion, and the latter may actually boost the drift, as it presents actors with potentially more beneficial alternative. As shown in the case study, hiring non-standard workers may consist of both conversion of non-standard employment (so that they could be substitutes for regular workers) and drift of standard employment (as it intends to circumvent it). Additionally, while actors try to bend an institution to their needs, they may also break it. Actors using non-standard employment in a “creative” fashion may end up simply violating some regulations.

Third, just as policy makers may intentionally make formal rules more flexible or ambiguous to facilitate and promote conversion-like adaptations, they may very well influence the development of drift. Policy makers may choose drift as a policy solution, i.e. accept that some institutions are systematically circumvented or violated (Callander & Krehbiel, 2014), for instance as means of welfare state retrenchment (Hacker, 2004; Starke, 2007), with blame avoidance being probably the most common cause for such strategies (Vis, 2016). This can lead to paradoxical consequences, as policy makers may intend that an institution will be subject to drift, but may in fact provoke conversion of some other element of institutional design, unintentionally contributing to the emergence of unintended fit. That may “lock-in” circumventions and violations of law as elements of a more broadly understood institutional framework (Streeck, 2004).

Lastly, drift-conversion type dynamics may help better understand the relationship between creative institutional adaptations and the issue of stability. Since historical institutionalism was focused on conversion type changes, it was argued that working out of complementarities can either “reinforce” or “weaken” the institutional network, i.e. increase or decrease its stability (Amable, 2016; Deeg & Jackson, 2007; Hall, 2016). Drift-conversion type unintended fit presents us with a different possibility: fit may be based upon interaction between a “weakening” of some elements of an institutional network (drift) and a “sharpening” of another (conversion). This

allows us to understand the stability of some continuous violations and circumventions of formal rules, as they may contribute to debugging frictions between mismatched elements and to the emergence of complementarities. Finally, drift-conversion dynamics makes it possible to better integrate some problems within a historical institutionalist framework, such as those of Central European economies, in which massive non-compliance with the regulations did not disturb notable economic development.

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