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The influence of the European Union on the Range of Employees' Management participation in the Companies from Poland

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Abstract

Acknowledging the accession, and as a result, joining the European Union in May 2004 required Poland to make a number of changes, including a number that related to labor rights. These changes were partially based on resolving legal barriers in Polish law in order to bring them into compliance with the European Union's law. These efforts are reflected in the laws related to the so-called employee participation. Generally speaking, this is the right of workers to co-manage and be consulted in the activities of the enterprise for which they work. The most important provisions in this regard (those which Poland had to implement in the past few years) are, among others, the directives on the development of the European Works Councils and on the right of workers to establish councils of workers within their company. When the European Parliament and the Council of the European Union established the directives which referred to employee participation, it was the result of the

promotion of social dialogue between representatives of management and representatives of workers (which is a particular goal of the EU community and its member states). Unfortunately, in Poland these rights are not honored for the majority of employees.

Keywords: participation of employees, co-decision making, work council, European Works Council, workers' rights.

Introduction

Undoubtedly, an important element in everyone's life is the opportunity to participate in social and economic activities. This also applies to one's professional life. Therefore, every employee should have the right to cooperatively decide to participate in matters related to the company or associated with employees' job (in the company in which he is employed), either for himself or through those representing him. Given these rights, we can talk about the so-called employee participation. The term 'participation' derives from the Latin word 'participio' and means taking part in something, becoming involved in something. To describe this term in the simplest way "Participation of employees" means sharing, having influence and being co-decision makers in all activities which involve the company which they were hired into. Co-decision making must be based on the presumption that employees will be informed about the company's activities, they have the right to consult and negotiate and this right will be recognized and honored within the company.

When considering the last hundred and fifty years of the world's economic development and the acceleration of industrial development, the need for fighting and respecting those employees rights associated with appropriate working conditions, working hours, remuneration system, occupational health and safety, as well as the right to employee participation, must particularly be noted.

The changes may be observed in the European Union itself, which since the early years of its existence has put great emphasis on improving the working conditions and welfare of employees by designating certain minimum standards included in EU's regulations,

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especially through its directives. Directives are the legal acts obliging member states to adopting specific conditions into their national law. Since Poland has been a member country of the European Union for several years, it is obliged to adapt domestic laws conforming to the directives of the European Union. Although the objective of the European Union in terms of legal policy is to reach all the citizens of all the member states, when referring to the regulations which are related to the right of workers' participation, the position of Polish workers is among the worst. Even though Poland is implementing the directives into Polish law, the majority of workers enjoy not the rights associated with the employee participation.

Material and Methods

The article aim to present the most important legislation in force proposed by the European Union authorities relating to employee participation and the corresponding Polish legal regulations. Presentation of selected labor rights will indicate how many legal options exist (unfortunately many are not available for most workers in Poland) in terms of employee participation. The presented data will indicate which of the several million workers employed in enterprises in Poland can benefit from rights relating to employee participation.

The basic legislation of the European Union in the field of employee participation implemented into Polish law

The European Union insists that all citizens of their member states are entitled to benefit from all of the same as employees. The legislation of the EU aims to unify or at least to establish a defined legal minimum level of involvement in the legislation of member states, including matters relating to employees' participation through the guarantees written into their domestic laws. In terms of the rights of the employees the legislation "aims to encourage companies and employees to anticipate and adapt to the changes they must deal with. Through the appropriate involvement of employees, it contributes to improving the dialogue between management and workers within transnational companies and to construct a climate which fosters the search for tools

which combine flexibility and security.”¹ There are many directives and ordinances related to the decision-making participation of employees within companies. The most important directives and ordinances of those which have been incorporated into Polish law are the following:

1. Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), (Text with EEA relevance), This directive is included in the Polish legislation in the Act of 5 April 2002 on European Works Councils².
2. Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE). This directive is included in the Polish legislation in the Act of March 2005, a European Economic Interest Grouping and European Company³.
3. Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. This directive is included in the Polish legislation In the Act of 7 April 2006 on informing employees and conducting consultations with them⁴.
4. Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the

1 The proposal for the European Parliament and the European Council of the directive on establishing the European Works Council or a procedure in community-scale companies and community-scale groups of companies for the purposes of informing and consulting employees (Brussels, 7.2.2008; com/2008/0419 final-cod 2008/0141), p. 3; Source: http://eur-lex.europa.eu/resource.html?uri=cellar:7b4b93eb-7e7d-441d-9942-246e87023c87.0003.03/DOC_1&format=PDF

2 The Act of 5 April 2002 on the European Works Councils (Journal of Laws 2002. No. 62, item. 556, as amended).

3 The Act of March 2005 on the European Economic Interest Grouping and European Company (Journal of Laws 2005 No. 62, item. 551).

4 The Act of 7 April 2006 on Employee Information and Consultation (Journal of Laws of 2006. No. 79, item. 550, as amended).

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involvement of employees¹, This directive is included in the Polish legislation in the Act of 22 July 2006 on the European Cooperative Society².

5. Proposal for a Council Regulation on the Statute for a European Private Company, Brussels, 25.6.2008³.

Results and Discussion

According to the Article No. 1 above, the main goal of establishing the EWC directive was to fully inform employees hired into the companies or groups of companies which operate in two or more member countries and to agree to consult with them on company matters. In order to do so, it was necessary to establish the European Works Council or some other super national institution to make sure that workers would be informed and consulted regarding company matters. That is why the system of informing and consulting EWC should allow for the sharing of opinions in a timely manner without questioning its ability for adaptation. According to the Article No 2.1 of directive EWCs are established in companies and groups of companies which operate inside of the EU. Operating in the EU means hiring at least 1000 people within the EU territory including hiring of at least 150 workers from two or more member states. The goal is to inform and consult the workers. In turn, Article 9 describes the role of the European Works Councils and specifies the procedures required for informing and consulting employees. However, more details which are helpful in achieving the objectives of the directive related to the establishment of a European Works Council, Council's composition and powers, are included in Annex 1 of the directive. The Annex sets out, among other issues, that the information provided to the European Works Council

1 This Directive governs the involvement of employees in the affairs of European Cooperative Societies, as referred to in Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).

2 The Act of 22 July 2006 on the European Cooperative Society (Journal of Laws of 2006. No. 149, item. 1077, as amended).

3 Proposal for a Council Regulation on the Statute for a European Private Company, Brussels, 25.6.2008; 2008/0130 (CNS) KOM(2008) 396 and: European Parliament legislative resolution of 10 March 2009 on the proposal for a Council regulation on the Statute for a European Private Company (COM(2008)0396 — C6-0283/2008 — 2008/0130(CNS)).

shall relate in particular to the structure, economic and financial situation, the probable development, production and sale of the company or group of companies within the EU.

In Poland, the legal act which includes the directive's regulations is the Act on European Works Councils¹. The Act on European Works Councils reflects the majority of the requirements of the directive. According to Article 29 of the Act on European Works Council, the Council has the right for information and consultation provided by the Central Board, particularly regarding the issues of:

- the structure of the company and group of companies which exist within the EU;
- financial and economic condition and the possible development of activities, including production, sales and investments;
- levels of employment and the possible increase/decrease in employment;
- implementing important organizational changes;
- introducing new working methods or new production processes;
- changing the localization of the company, working place or its important parts and the moving of production to another working place or company;
- joining or dividing companies or working places;
- resizing, closing either the company or working place or its important parts;
- group layoffs.

The goals of the European Company are set based on the preamble to Regulation No. 2157/2001. The European Company is to support European Companies organized as capital companies, especially joint-stock companies in combining economic potentials, establishing cross-border cooperation, and reorganizing their activity within the entire EU. The issue of labor rights, among others, has been addressed in paragraph 4 of Article 1 of the Regulation, which indicates that the participation of employees in the SE shall be governed by the provisions of Directive 2001/86 / EC and in legitimization of the Regulation, which

¹ The Act of 5 April 2002 on the European Works Councils (Journal of Laws of 2002. No. 62, item. 556, as amended).

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establishes that the Directive 2001/86 / EC is to ensure that employees have a right to participate in issues and decisions affecting the life of their SE. Other social and labor legislation, in particular that dealing with the right of employees to information and consultation in accordance with the national legislation of the member states (incomplete sentence). The national legislation is subject to the applicable national law, which under the same conditions applies to public limited companies. The provisions included in the above mentioned directive and regulation have been implemented by the Act on European Economic Interest Grouping and European Company¹. In terms of the involvement of employees in the European Company, Article 97 of the Act on European Economic Interest Grouping and European Company indicates that the right to information and consultation of employees in particular relates to:

- the structure of EC and its dependent companies;
- financial and economic condition and the possible development of activities, including production, sales and investments;
- employment and its possible increase/decrease;
- implementing important organizational changes;
- introducing new working methods or new production processes;
- changing the location of the company, working place or its important parts and moving the production to another working place or company;
- group layoffs.

Unfortunately the list of companies registered as SE in the National Court Registry contains few companies. For example:

- MCAA Europejska Spółka Akcyjna, Brzeg Dolny,
- LETUMO SE, Wrocław,
- "AMREST HOLDINGS SE", Wrocław,

Another two are not located in Poland, but with Polish departments:

- ALPIQ ENERGY SE, Warszawa,
- LIMAGRAIN CENTRAL EUROPE SOCIETE EUROPEENNE, Poznań

¹ The Act of 4 March 2005 on the European Economic Interest Grouping and the European Company (Journal of Laws 2005 No. 62, item. 551).

The aim of the directive establishing a general framework for informing and consulting employees in the European Community will be accomplished by establishing general frameworks which include rules, definitions and agreements related to informing and consulting. The provisions included in Article 3 of the directive apply to enterprises employing at least 50 employees in any member state or in companies employing at least 20 employees in any member state. Whereby member states may choose the method for calculating the thresholds of employees employed. Article 4 of the directive provides certain practical arrangements for information and consultation which should include: information on the conduct of business activities and the economic situation; as well as information and consultation on the situation, structure and probable development of employment within the company and on any other anticipatory measures envisaged. This directive was implemented in 2006 and included provisions about informing employees and conducting consultations for them. These laws pertain only to those employers who undertake economic activity and employ no fewer than 50 workers. Article 4 of the Act states that the right for information and consultation appertain to employees' representatives who are members of workers council – chosen by workers from the candidates selected by employees. According to Article No. 13 the right to information consist in the employer passes on to the Work Council the information about:

- the economic condition and economic activities of the employer and all changes planned in this field;
- employment and its possible increase/decrease as well as all activities undertaken to sustain the level of employment;
- activities that may cause relevant changes in the organization of work or the employment.

The European Cooperative Society Act became effective on 18th of August 2006¹. It was passed by the Polish Parliament on the basis of Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European cooperative society with regard to the involvement of employees and Council Regulation (EC) No. 1435/2003 of 22 July 2003

¹ The Act of 22 July 2006 on the European Cooperative Society (Journal of Laws of 2006. No. 149, item. 1077, as amended).

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on the Statute for a European Cooperative Society (SCE). The provisions contained in Article 1 of the Act provide the rules for organization and operation of a European Cooperative Society (not covered by Council Regulation No 1435/2003 / EC) and the principles of involvement of employees in the European Cooperative Society.

Issues related to employee participation in the European Cooperative Society are included in the Title III of the Act. Article No. 73 of this Act states that a representative body is entitled to obtain information about the economic situation and prospects of the SCE and, as in the case of European company the right to obtain information and consultation concerning in particular:

- the structure of EC and its dependent companies;
- financial and economic condition and the possible development of activities, including production, sales and investments;
- employment and its possible increase/decrease;
- implementing important organizational changes;
- introducing new working methods or new production processes;
- changing the location of the company, working place or its important parts and moving the production to another working place or company;
- group layoffs.

Another piece of legislation related to the European Company is a regulation of the Council on the Statute for the European Private Company (Societas Privata Europaea, hereinafter "SPE"). This regulation is intended to facilitate labor rights for workers employed in small and medium-sized enterprises. In the justification of the regulation (presented in the part indicating an explanation of the proposal) and in Article 34 (Chapter VI: Participation of employees) and Article 38 (concerning the arrangements for employee participation in Chapter VII: Transfer of the registered office of the SPE), the Council referred to the employee participation justifying the need for its existence with the fact that the participation of employees in small companies takes place only in a few member states (eg. Sweden, Denmark) and determining the level of employee participation.

The regulation states that the rights of participation should be governed by the legislation of the member state in which the SPE has its

registered office (the "home member state") and these rights should not be ignored and should be maintained on the appropriate level¹ (in accordance with the law of the country in which the registered office of the company is located) and when there are no appropriate employee participation rights, such rights should be negotiated. When negotiations are pending or are not concluded after moving the office, the negotiating parties should refer to the regulations used before the transfer. In addition, workers' rights other than rights of participation should remain subject to the directive on the EWC and to the directive on a general framework for informing and consulting employees in the European Community. According to the Article No. 47 of Council Regulation on the Statute for a European Private Company these regulations should be examined by the Commission in terms of its use by EU member states until 30 June 2015.

The above outlines for the most, those important legal acts concerning the rights of employees related to employee participation primarily aimed to indicate the legal solutions available for employees. Although there are many legal solutions which provide employees with participation rights, the analysis based on statistical data shows that these rights are not available for the majority of workers employed in Poland. According to statistical data the majority of workers in Poland work in companies employing up to 49 people. This tendency has persisted for many years. The table below shows the number of companies that employed various numbers of workers in years 2004-2014.

¹ According to the Article 38.2 (a) the level of employee participation is measured by the proportion of employee representatives in the administrative or supervisory body or their committees or of the management group which covers the profit units of the SPE, if the employee representation.

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Table no. 1. Companies of the national economy by size ¹						
Number of employees	2004	2006	2008	2010	2012	30.06. 2014
0 -9	3 402 150	3 455 565	3 568 137	3 713 677	3 794 489	3 914 195
10 – 49	141 499	147 393	154 833	161 550	146 489	145 932
50 – 249	28 309	28 406	29 323	29 731	29 787	29 587
250 – 999	4 009	3 863	3 996	4 033	3 779	3 719
1000 and more	863	812	804	811	790	776
Total	3 576 830	3 636 039	3 757 093	3 909 802	3 975 334	4 094 209
Source: The Central Statistical Office of Poland, www.stat.gov.pl .						
¹ Companies of the national economy included in the regional register						

By analyzing this data, together with the Polish law (the implemented EU directives) associated with employee participation it may be noted that the number of companies does not translate into opportunities offered to employees in respect of their right to employee participation. Nearly 99% of entities operating in the Polish national economy are those whose employment ranges 0-9 workers (approximately 95%) and 10-49 (4%) workers. This means that employees do not have the possibility to use the rights from the legal acts discussed above. The right for that group of workers which is entitled by law to co-decide, consult and be informed is generally very limited in Poland. It should be noted that many of these entities are sole proprietorship. From the point of view of employee participation this seems to be a comfortable situation for them, because of a dual role, namely the employee-employer. However, this is only an illusion. In most cases, these companies provide only the services. In fact, the real impact on their employment rights and in fact the absence of the employment rights, has the entities which they provide services for.

Many large and medium-sized companies limit the number of workers hired based on an employment contract. Employees willing to start working or current employees are encouraged to start their own business. This would result in providing the work services to the company while the company could reduce labor costs (related to recreational annual leave, sick leave). Such actions deprive employees (often former employees who agreed to this form of cooperation) of many labor rights including those stemming from the regulations of the

Labor Code, the Law on Trade Unions, as well as the previously discussed legal acts related to employee participation. This applies particularly to people who run sole proprietorship often for the benefit of one entity (and as such are "forced" to do so) or to provide work services for a given entity based on their employment in another entity (outsourcing), or work based on a mandatory contract.

The situation is no better among workers in other groups of economic entities constituting only about 1% of the subjects, specifically, those enterprises which employ more than 50 people. This is due to the fact that not all acts listed in this article apply to this group. According to the data – available on the website dedicated to social dialogue – there are 3418 companies in which employees have work councils under the Law on Employee Information and Consultation¹. Not all companies have EWC representatives, because according to the Directive and the Act on European Works Councils not all companies are cross border companies². Entities that are part of a European Company or a European Cooperative Society particularly do not exist in Poland. According to the National Court Register³ there were eight companies registered as European Companies and only one company registered as SEC in Poland⁴.

1 The website monitored by the Ministry of Labour and Social Policy, Department of Social Dialogue and Partnership. Information on the amount of works councils is available in the database at this website as of 15.08.2014. Source: <http://www.dialog.gov.pl/dialog-krajowy/informowanie-i-konsultowanie/rady-pracownikow/> 17.10.2014.

2 There are approximately 200 cross boarder companies in Poland. More information about the activities of the EWC, their premises, quantity, number of representatives is available in the database on <http://www.ewcdb.eu/index.php?survey=later>, provided by the European Trade Union Institute, 16.10.2013.

3 On 17 October 2013 in the National Court Register were registered 8 European Companies and one European Cooperative Society, <http://www.krs-online.com.pl> , 17.10.2013.

4 European Cooperative SCE „Flandria” was initiated by SWP „Flandria”, FWP and their Belgian partners: Escapo, De Lindeboom and National Hulpfonds. It is the first European Cooperative in Poland.

Conclusion

It would seem that the EU's influence on employee participation in Poland is significant. This influence is proven by numerous regulations and directives implemented into Polish law, which have given employees the right to information, consultation and negotiation. When analyzing the extent of these acts and the intent of the law, it can be concluded that Polish workers should not be satisfied. General analysis based on the data provided by the Central Statistical Office indicates the number of entities in the national economy (by size) and information from the National Court Register; the analysis showed that in Poland there are only a few entities in which employees can exercise their right to co-determination, involvement, consultation and information (1%). Most employees may benefit from the provisions of law included in the Employee Information and Consultation Act.

This situation may be changed in favor of employees by improving the legislation related to employee participation, among other matters, in the aforementioned Act for Employee Information and Consultation, so that works councils would also be established in companies hiring less than 50 employees¹. Inconsistent regulations of labor law, tax law, different labor costs and various laws relating to business activities in each member state of the European Union also do not support the emergence and development of European companies and cooperatives. It is high time to implement the derivative on a European private company, because the derivative was designed to provide the employees from small and medium-sized enterprises with the same participation rights.

However, it should be noted that all changes should have their origin in the form of social dialogue and should balance the interests of both, employees and employers and this is an extremely difficult task.

¹ This act also should not "limit" the role of trade unions to represent workers only, because the intention of the European Parliament – in issued the resolution on the implementation of the directive declaring the right of workers to information and consultation – among others, declares that it is important "to include unions represented in the enterprise, in order to strengthen the social dialogue".

Bibliography

- Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE).
- Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community.
- Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.
- Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast), (Text with EEA relevance).
- European Parliament legislative resolution of 10 March 2009 on the proposal for a Council regulation on the Statute for a European Private Company (COM (2008) 0396 — C6-0283/2008 — 2008/0130(CNS)).
- Proposal for a Council Regulation on the Statute for a European Private Company, Brussels, 25.6.2008; 2008/0130 (CNS) KOM (2008) 396.
- Proposal for the European Parliament and the European Council of the directive on establishing the European Works Council or a procedure in community-scale companies and community-scale groups of companies for the purposes of informing and consulting employees (Brussels, 7.2.2008; com/2008/0419 final-cod 2008/0141).
- Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).
- The Act of 22 July 2006 on the European Cooperative Society (Journal of Laws of 2006, No. 149, item. 1077, as amended).
- The Act of 5 April 2002 on the European Works Councils (Journal of Laws 2002, No. 62, item. 556, as amended).

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The Act of 4 March 2005 on the European Economic Interest Grouping
and European Company (Journal of Laws 2005, No. 62, item.
551).

<http://stat.gov.pl/en/>, The Central Statistical Office of Poland.

<http://www.ewcdb.eu>, The European Trade Union Institute.

<http://www.dialog.gov.pl>, The Ministry of Labor and Social Policy,
Department of Social Dialogue and Partnership.

<http://www.krs-online.com.pl>, The National Court Register.