

Łukasz Pisarczyk
University of Warsaw

INFLUENCE OF EU LAW ON COLLECTIVE LABOUR LAW IN POLAND (INSTITUTIONS AT THE NATIONAL LEVEL)

1. INTRODUCTORY REMARKS

Since the 1970s, the European Community (later the European Union) has developed various standards in the area of labour and social security law. Initial social action was undertaken as a response to the economic crisis of the early 1970s (protection of workers in case of employer redundancies, transfer of undertaking, collective redundancies)¹. It became obvious that the achievement of Community objectives was impossible without an intervention in the social sphere. Protection concerned both individual employment standards as well as collective relations. The 1990s and the 2000s brought further development of European standards concerning collective labour law (first of all, a general framework for information and consultation)². Finally, some collective freedoms and rights have been recognized by the Charter of Fundamental Rights of the European Union³ while spe-

¹ R. Blanpain, *European Labour Law*, Alphen aan den Rijn 2013, p. 823. See Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies replaced by Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, hereinafter referred to as “Directive 98/59”, and Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of businesses replaced by Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, hereinafter referred to as “Directive 2001/23”.

² 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. Some collective procedures were introduced also in other legal acts (e.g. Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, hereinafter referred to as “Directive 2008/104”) and agreements concluded by European social partners (e.g. Framework Agreement of 16 July 2002 on Telework, hereinafter referred to as “Framework Agreement on Telework”).

³ Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom stipulates that the Charter does not extend the ability of the

cific legal mechanisms assuming the involvement of social partners are provided for by the Treaty on the Functioning of the European Union. At the same time, some aspects of collective relations are excluded from the legislative competence of the European Union (*inter alia* the right of association, the right to strike or the right to impose lock-outs). Nonetheless, collective labour law standards constitute an important element of *acquis communautaire*, which plays an increasing role in shaping a common legal area. They can be particularly important in countries of Central and Eastern Europe where industrial relations could not develop in a natural way for almost 50 years⁴.

In Poland, the process of harmonization in the area of collective labour law began before the accession to the European Community. The first symptoms of convergence could already be seen at the beginning of the transformation (the Act on Collective Redundancies from December 1989). A planned implementation action was launched after the Association Treaty was signed. In some areas the transposition led to significant changes of the whole system of collective representation. The implementation has not been limited to directives only, however. An example of a broader approach is the implementation of the Framework Agreement on Telework. At the same time, adjustment to the European standards encountered in Poland a number of peculiar obstacles. They arose from some specific features of the Polish social dialogue such as the lack of sectoral negotiations, an absence of stable non-trade union representation as well as tension between social partners⁵. As a result, the implementation in the field of European collective labour law, however completed, provokes a number of questions and comments concerning, *inter alia*, the consistency of domestic law with the requirements set up by the European Community (European Union).

Institutions of collective labour law shaped by the European standards are located at various levels: national as well as supra-national (European). In the latter case, employee involvement in the functioning of transnational entities is pro-

Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms (Art. 1.1). In particular, and for the avoidance of doubt, nothing in Title IV of the Charter (Solidarity) creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law (Art. 1.2). See more Z. Hajn, L. Mitrus, (in:) *Poland*, (in:) R. Blanpain (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Alphen aan den Rijn 2016, p. 58. The legal importance of the Protocol is, to a certain extent, disputable.

⁴ See e.g. M. Seweryński, *Polish Labour Law from Communism to Democracy*, Warszawa 1999; L. Florek, *Labour Law*, (in:) S. Frankowski (ed.), *Introduction to Polish Law*, Kraków–Alphen aan den Rijn 2005, pp. 275–276; Z. Hajn, L. Mitrus, (in:) *Poland*, (in:) R. Blanpain (ed.), *International...*, p. 31 *et seq.*; M. Wujczyk, (in:) K. W. Baran (ed.), *Outline of Polish Labour Law System*, Warszawa 2016, p. 77.

⁵ The social dialogue in Poland undergoes a deep crisis. About its real situation see e.g. L. Mitrus, (in:) Z. Hajn, L. Mitrus, *Poland*, (in:) R. Blanpain (ed.), *International...*, p. 44.

vided for and promoted⁶. The paper concentrates on institutions of a domestic dimension, and sets out to describe changes occurring in the sphere that had been regulated (at least partially) before the accession took place. The text analyzes changes caused by the transposition and attempts to evaluate national regulations from the perspective of European standards.

2. EMPLOYEE REPRESENTATIVES

Collective instruments provided for by EU law must be carried out by bodies representing workers. In its initial period, the Polish transformation led to the creation of a single-channel representation system with a dominant role of trade unions. At the same time, trade unions experienced serious problems including a significant decrease in the number of members. In many establishments employees were not represented by any trade union⁷. Moreover, the question arose whether some collective rights (e.g. to information and consultation) can be carried out by trade unions. Taking into account the decrease in unionization, an appropriate implementation of the European standards would not have been guaranteed. As a result, the Act of 6 April 2006 on Information and Consultation with Employees⁸, that transposed to the Polish legal system the provisions of Directive 2002/14, established new elected bodies representing worker interests: employee councils. However, their establishment triggered the opposition of both employers and trade unions, which caused a delay in the implementation process. In theory, employee councils constitute a general form of representation of employees' interests that are set up at workplaces with more than 50 employees which carry out economic activity (with some lesser exceptions)⁹.

⁶ The most important example is 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. See more R. Blanpain, *European...*, p. 914 *et seq.*

⁷ Polish law provides for a specific system of trade union representation. To carry out its functions in a given establishment a trade union has to establish a formal structure (company-level organization) uniting at least 10 members who are employees engaged by the employer. See more K. W. Baran, (in:) K. W. Baran (ed.), *Outline of Polish Labour Law System*, Warszawa 2016, pp. 400–401. Z. Hajn, (in:) Z. Hajn, L. Mitrus, (in:) *Poland*, (in:) R. Blanpain (ed.), *International...*, pp. 243–244.

⁸ Polish Official Journal of Laws of 2006, No. 79, item 550, as amended (English translation abridged from www.mpips.gov.pl (Ministry for Family, Labour and Social Policy, accessed 25 May 2017).

⁹ The law does not apply to: 1) state-owned enterprises where an employee self-government has been established; 2) mixed enterprises employing at least 50 employees; 3) state-owned film institutions.

However, the legislator weakened this result significantly. First, the law in its initial version guaranteed the main (representative) trade unions the right to pick the members of employee councils. This solution was challenged before the Constitutional Court¹⁰. As a result, employee councils became (at least formally) separated from trade unions. Second, a significant threat for the functioning of the second channel of representation is the procedure of its creation. Establishment of a council requires an application of 10% of employees employed by a given employer. Unfortunately, applications are submitted rather rarely. This can be caused by various reasons: the negative approach of employers, employees' concerns and, last but not least, the lack of interest in being involved in company issues. Consequently, employee councils have been established only in few companies. In other companies collective rights to information and consultation cannot be exercised. This raises fundamental doubts as regards the effectiveness of the implementation process.

As regards the structure of employee councils, the number of their members depends on the employer's staff levels. It amounts to 3 members (from 50 to 250 employees), 5 members (from 251 to 500 employees) and 7 members if the employer employs more than 500 employees¹¹. After a judgment of the Constitutional Court¹² candidates are indicated by a group of employees (10 or 20 depending on the employment level) and elected by the whole workforce. Legislation guarantees council members a relatively high level of protection. The employer may not terminate the employment contract and change unilaterally any terms and conditions of work or pay to the detriment of an employee who is a member of an employee council unless a works council consents thereto. Moreover, an employee who is a member of an employee council is entitled to time off to carry out such duties, which cannot be carried out outside of working hours. The employee retains the right to remuneration. The above-mentioned guarantees are, as a rule, sufficient to meet the requirements arising from Directive 2002/14 (protection of employee representatives).

Finally, an alternative way of employee representation has been accepted. The law regulating the establishment of employee councils does not apply to employers which were parties to an agreement concerning information and consultation of employees, one that had been binding prior to the date of entry into force of the discussed legislation. However, the agreement must provide for a framework for information and consultation which is no less favourable than the one established by statute.

¹⁰ Judgment of the Polish Constitutional Court of 1 July 2008, OTK-A 2008, No. 6, item 100.

¹¹ Polish legislation does not require temporary workers to be calculated as employees in the user undertaking (such a possibility is provided for by Article 7(2) of Directive 2008/104).

¹² Judgment of the Constitutional Court of 1 July 2008, OTK-A 2008, No. 6, item 100.

Another problem is employee representation in negotiating collective agreements provided for by EU law¹³ where there are no trade unions¹⁴. Employee councils, as bodies involved in information and consultation procedures, are not entitled to negotiate with the employer (unless they obtain a separate mandate). As a result, in the absence of trade unions, employees elect their representatives according to the rules adopted at a given workplace (*ad hoc* representation).

The main problem is the position of *ad hoc* bodies versus their rights. For they can agree to worsen the working conditions and to make provision of work more flexible. At the same time, the law does not provide for any elements of the election procedure. The only reference points are supranational standards determined e.g. by the International Labour Organization¹⁵. Moreover, *ad hoc* representatives are not directly protected against repressive measures on the part of the employer (e.g. dismissal). They can only rely on general anti-discrimination provisions which makes their situation much weaker than the situation of other employee representatives (including trade unionists). Such a position of employee representatives does not guarantee an equilibrium during the bargaining process. Therefore, it can be disputed from the perspective of EU law that accepts some exceptions from protective standards on the condition that they are introduced by means of collective agreements. The above-mentioned mechanism can be understood in the way that exceptions are acceptable if they are agreed with employee representation which has an equal position to that of the employer (such a construction is considered to safeguard the workplace equilibrium). Otherwise, the exceptions based on collective agreements could not be justified. *De lege ferenda*, to eliminate any arising doubts it is necessary to establish stable representation that can be treated as a real partner for the employer.

The Polish legislator has not decided to establish a system of guarantees for employee representation in case of a transfer of undertaking. Such guarantees are provided for by Article 6 of Directive 2001/23. As a result, employee representatives are protected under the general rules of collective labour law and their pro-European interpretation. Taking into account the current practice and emerging doubts this is not sufficient to satisfy the European standards.

¹³ An important example are agreements concluded to extend the reference periods of working time. According to Article 18 of Directive 2003/88 of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, hereinafter referred to as "Directive 2003/88", such an extension may be introduced by means of collective agreements.

¹⁴ Trade unions have priority in negotiating the agreements.

¹⁵ Article 3 of the Workers' Representatives Convention, 1971 (No. 135) refers to representatives who are freely elected by the workers of the undertaking. See also A. Sobczyk, *Non-Union Forms of Representation within the Collective Employee Representation System – Current Situation and Trends*, "Studia Iuridica" 2015, Vol. LX, p. 218. See also Z. Hajn, (in:) Z. Hajn, L. Mitrus, *Poland*, (in:) R. Blanpain (ed.), *International...*, p. 261.

3. INFORMATION AND CONSULTATION

Polish law provides for a general information and consultation procedure which was established to satisfy the requirements set up by Directive 2002/14¹⁶. Workers are represented by employee councils unless there is another (equivalent) form of representation in existence.

The employer is obliged to provide the employee council with information on: 1) recent and probable development of the employer's activities and economic situation; 2) the situation, structure and probable development of employment, and on any measures envisaged with a view to maintaining current staff levels; 3) measures likely to lead to substantial changes in work organisation or in contractual relations. The information must be provided if any changes are anticipated or action is planned or upon a written request by the works council. The employer provides the information at such time, in such mode and with such content as appropriate to enable the members of the works council to acquaint themselves with the subject matter, analyze the information and (if consultation is required) prepare for consultation. In response to the employer's information the employee council may submit its opinion. Each member of the works council may also present to the employer their dissenting opinion.

The scope of consultation, compared to information, has been limited. A consultation with an employee council shall encompass 1) the situation, structure and probable development of employment, and any measures envisaged with a view to maintaining current staff levels; 2) measures likely to lead to substantial changes in work organization or in contractual relations. The consultation shall take place at such time, in such fashion and with such content as appropriate to enable the employer to take action in the subject matter of the consultation. The consultation is to take place at a relevant level of management and representation, depending on the subject under discussion. The starting point for a consultation is information supplied by the employer as well as the opinion formulated by the works council and dissenting opinions of council members. The council must be able to meet with the employer and obtain a response, as well as reasons for that response, to any opinion it might formulate. A consultation should be conducted with a view to reaching an agreement between the works council and the employer. Both parties, the employer and the employee council, should act in good faith. While carrying out its tasks, the works council may be assisted by persons having specialist knowledge.

A general information and consultation procedure in such a form had not existed before the implementation of Directive 2002/14. Impact of EU law in this field is, thus, evident. Moreover, domestic standards of information and consulta-

¹⁶ See more *ibid*, p. 301 *et seq.*

tion mirror the provisions of the Directive. On the one hand, this may guarantee consistency with EU standards. On the other hand, the regulation is very general and abstract as an opportunity was lost to specify the conditions and content of the procedure which could improve the standards of employee engagement. Such formal implementation may even represent an obstacle in the development of collective relations as these are often found ambiguous and constitute a source of interpretation problems.

As regards protection of data delivered by the employer, the employee council and its experts must not disclose any information, obtained in connection with the carrying out of their tasks, that constitutes a business secret and has expressly been provided to them by the employer in confidence. The confidentiality obligation in respect of the information obtained shall continue to apply even after the expiry of the council members' term of office, but not longer than for a period of 3 years. In specific cases, the employer shall not be obliged to communicate information to the works council when the nature of that information is such that, according to objective criteria, a disclosure would seriously harm the functioning of the undertaking or establishment, or would be seriously prejudicial thereto. If the works council challenges the confidentiality of information or a refusal to disclose, it may apply to the court to exempt the employer from the confidentiality obligation or to order it to disclose the information or undertake a requisite consultation¹⁷. The procedure described above can be considered consistent with the standards laid down by Article 6 of Directive 2002/14.

Information duties towards collective bodies representing workers have also been provided for in special situations such as collective redundancies and transfer of undertaking. Moreover, within these procedures social partners are required to negotiate with a view to reaching an agreement that can be considered a stronger form of employee involvement than simple consultation¹⁸. The procedure of collective redundancies was established first in 1989 at the beginning of the post-Communist transformation. A reconstruction of the procedure occurred in 2003 just before the accession to the European Union¹⁹. The transfer of undertaking collective procedure, introduced in 2001, was clearly intended to adjust Polish law to the requirements set up by Directive 2001/23.

The procedure accompanying collective redundancies is intended to avoid or reduce the number of dismissals. If that proves impossible, social partners are to

¹⁷ See more Z. Hajn, (in:) Z. Hajn, L. Mitrus, *Poland*, (in:) R. Blanpain (ed.), *International...*, p. 303.

¹⁸ Compare C. Barnard, *EC Employment Law*, Oxford 2006, p. 682: "the reference to 'consultation' with a view to reaching an 'agreement' blurs the distinction between consultation and collective bargaining".

¹⁹ The Act of 13 March 2003 on Special Rules for Terminating Employment Relationships with Employees for Reasons not Related to the Employees (Polish Official Journal of Laws of 2016, item 1474, as amended, English translation abridged from Lex, www.sip.lex.pl, accessed 26 May 2017).

mitigate the consequences of redundancies. In the collective redundancies procedure employees are represented either by trade unions or by representatives elected *ad hoc* (according to rules adopted by a given employer). The elected representatives are only informed and consulted. They do not negotiate the ultimate agreement.

An obligation to commence the procedure arises where the employer is contemplating collective redundancies²⁰. First, the employer shall provide employee representatives with key information relating to envisaged dismissals²¹. They should be informed in advance to be able to prepare themselves for the next stages of the procedure. Further information should be delivered upon request of an employee representative as far as the information is important to conduct the negotiations. Where employees are represented by trade unions, it is social partners that negotiate collective agreements. If an agreement has not been concluded, the employer unilaterally issues rules governing the projected redundancies. If no trade unions come into play, regulations are issued after a consultation with employee representatives elected according to the rules adopted by a given employer. The procedure itself reflects the standards arising from the Directive. Problematic is, however, the differentiation based on the type of employee representation. Lack of negotiations aimed at the conclusion of a collective agreement (even if the conclusion is not obligatory) weakens the protection of workers. As a result, the objectives of Directive 98/59 cannot be entirely achieved. There are no reasons to exclude elected representatives who are entitled to conclude agreements leading, in effect, to a deterioration of working conditions, from negotiations concerning an agreement protecting workers in case of collective redundancies.

Finally, there are some problems as regards the application scope of the procedure of collective redundancies. The Polish definition of collective redundancy follows one of the options provided for by Directive 98/59²². However, some of the detailed solutions adopted are debatable from the perspective of EU standards. First, thresholds are related to the employer and not to the establishment. Where the employer owns a number of establishments it can be easier to avoid the appli-

²⁰ Compare the judgments of the Court of 27 January 2005 in Case C-188/03 *Irmtraud Junk*, and of 10 September 2009 in Case C-44/08 *Akavan Erityisalojen Keskusliitto AEK and Others*.

²¹ The information covers at least the reasons for the proposed collective redundancy; the number of employees and professional groups to which they belong; the professional groups affected; the period over which the redundancy is to take place; the criteria proposed for the selection of employees to be made redundant; the order in which employees are to be made redundant; employees' issues connected with the intended collective dismissals and also (where these include any employee benefits to be paid in cash) the method for calculating such payments.

²² Redundancy is treated as collective if over a period of 30 days it affects at least: 1) 10 employees, where the employer employs less than 100 employees, 2) 10 per cent of employees, where the employer employs at least 100 but less than 300 employees, 3) 30 employees, where the employer employs 300 employees or more.

cation of the procedure²³. Second, according to Polish law, mutual agreements terminating employment contracts are included into collective redundancies provided that there are at least 5 such agreements. Directive 98/59 includes mutual agreements if there are at least 5 redundancies. As a result, some situations covered by EU law will not be treated as collective redundancies under Polish law. Third, it is not clear how to treat a unilateral change of working conditions by the employer which may lead, in case of an employee refusal, to a termination of employment contracts²⁴. The Supreme Court has held that it is not necessary to follow the collective redundancies procedure where an employer worsens the conditions of work and pay because a container collective agreement has been changed or terminated²⁵. It may lead to a contradiction with the position of the CJEU which has declared that the fact that an employer, unilaterally and to the detriment of an employee, makes significant changes to the essential elements of their employment contract for reasons not related to the individual employee concerned, falls within the definition of “redundancy” for the purpose of Directive 98/59²⁶.

In case of a transfer of undertaking or its part, the information and consultation procedure involves trade unions only. The transferor and the transferee are obliged to inform trade unions about the transfer date, its reasons and consequences for affected employees. The information must be delivered at least 30 days before the transfer is supposed to occur. Both employers have to inform only those unions that are active in their companies. As a result, trade unions active in a transferred entity may be deprived of the information that is available for the transferee. Moreover, when there are no trade unions in play employers shall inform individually all the employees. The individual mode of providing information may weaken the protective dimension of the regulation. When the employers engaged in a transfer envisage measures in relation to their employees, they shall consult trade unions on such measures with a view to reaching an agreement. An agreement should be concluded within 30 days since the information has been passed. Once again, the transferor and the transferee are obliged to consult those trade unions which exist in their establishments before the transfer date. As a result, there is no requirement for the transferee to consult trade unions existing in the transferred entity, which significantly limits the protection afforded to workers. The adopted solution does not entirely reflect the assump-

²³ However, the concept of establishment is treated as a European one. See the judgments of the CJEU of 7 December 1995 in Case C-449/93 *Rockfon A/S*; of 15 February 2007 in Case C-270/05 *Athinaiki Chartopoiia AE*; of 13 May 2015 in Case C-392/13 *Lyttle and Others*.

²⁴ See more in: Z. Góral, (in:) K.W. Baran (ed.), *Outline of Polish Labour Law System*, Warszawa 2016, p. 152 *et seq.*

²⁵ To modify individual conditions of work and pay the employer must issue individual declarations of will towards employees. See judgment of the Supreme Court of 30 September 2011, III PK 14/11, Lex No. 1106746.

²⁶ Judgment of the CJEU of 11 November 2015 in Case C-422/14 *Pujante Rivera*.

tions of the Directive which stipulates that information must be provided and consultations take place in good time before an ownership change takes place (the most important relationship exists between the transferee and employee representatives in the transferred entity). The risk of a potential inconsistency is mitigated by case law which allows for negotiations between the transferee and trade unions representing the employees which are going to be taken over. The agreement that they can conclude is treated as a source of labour law²⁷.

Some information and consultation duties are also connected with the engagement of temporary workers. A user undertaking is to inform representative trade unions about employing temporary workers. If the period of temporary employment is longer than 6 months, the employer should attempt to agree any decision with the representative trade unions. Moreover, these trade unions must be informed of basic conditions of the employment of workers. There is no alternative way of informing employee representatives when there are no (representative) trade unions. As a result, the protective goal of Article 8 of Directive 2008/14 is achieved only partially.

Finally, engagement of employee representatives is provided for where introduction of telework is concerned. Conditions of telework are to be determined in an agreement with trade unions (if such an agreement has not been achieved unilaterally by the employer taking into account any arrangements with trade unions). If there are no trade unions in existence, the employer issues rules governing telework after consultations with employee representatives elected according to rules adopted in a given establishment. The abovementioned procedure may be considered sufficient to meet the requirement to inform and to consult employee representatives on the introduction of telework (Article 11 of the Framework Agreement on Telework). There are also other areas (e.g. health and safety) where various forms of involvement of employee representatives are provided for²⁸.

4. COLLECTIVE BARGAINING

Although freedom of association has been excluded from the legislative competence of the EU, some European standards may influence domestic regulations concerning collective negotiations and agreements.

An important example are negotiations concerning working time flexibilization. Since 2013, social partners have been empowered to introduce longer calculation periods of working time. According to Article 18 of Directive 2003/88, such

²⁷ See: judgment of the Supreme Court of 23 May 2006, III PZP 2/06, OSNP 2007, No. 3–4, item. 38.

²⁸ See: Z. Hajn, (in:) Z. Hajn, L. Mitrus, *Poland*, (in:) R. Blanpain (ed.), *International...*, p. 300.

an extension can be applied (subject to some special instances) by means of collective agreements. The Polish legislator has capitalized on this possibility. Social partners may extend the reference periods to up to 12 months. However, various procedures have been provided for. First, an extension may be introduced by typical collective agreements concluded with trade unions (at the establishment as well as the multi-establishment level). Second, the employer and company trade unions may conclude an atypical collective agreement. The negotiation procedure applicable is less complicated compared to the ordinary one. An agreement does not require any registration either²⁹. The employer negotiates with all trade union organizations. If they cannot reach a compromise, an agreement may be concluded merely with the biggest (most representative) organizations. Third, if there are no trade unions, an extension may be applied by means of an agreement concluded with employee representatives elected according to the rules adopted by a given employer (*ad hoc* representation). In the latter case it is disputable if the adopted mechanism ensures the level of protection guaranteed by Directive 2003/88.

Interesting problems appear when it comes to the consequences of a transfer of undertaking in the field of collective agreements. According to Article 3(3) of Directive 2001/23, following a transfer the transferee shall continue to observe the terms and conditions agreed in any collective agreement on the same terms applicable to the transferor under that agreement, until the date of termination or expiry of the collective agreement or the entry into force or application of another collective agreement. In fact, the Directive guarantees coverage by a collective agreement. The content of employee rights is not, however, safeguarded³⁰. If the transferee is bound by another collective agreement, a transfer may lead to an instant change in working conditions. In some respects Polish law provides for a higher level of protection of employee-acquired rights than the pertinent EU standard as, for instance, the transferee cannot, within 1 year from the transfer date, worsen the conditions of work and pay arising from the collective agreement binding on the transferor. As a result, the content of the employment relationship is maintained. After 1 year working conditions can be altered either by means of a mutual agreement of the parties to the employment relationship or unilaterally by the employer³¹. Such a solution could be challenged in the light of the Directive, which, according to the Court of Justice of the European Union, does

²⁹ As a result, atypical collective agreements are treated as a more flexible instrument of social dialogue (Z. Hajn, (in:) Z. Hajn, L. Mitrus, *Poland*, (in:) R. Blanpain (ed.), *International...*, pp. 273–274).

³⁰ This result has been, to an extent, mitigated by the Court. See: judgment of 6 September 2011 in Case C-108/10 *Scatollon*.

³¹ Polish law offers the employer the possibility to change the conditions of work and pay with a period of notice. The provisions concerning employment contract termination are applied accordingly. If the employee refuses an employer's proposal the employment contract expires with a period of notice.

not aim solely to safeguard the interests of employees, but seeks to ensure a fair balance between their interests, on the one hand, and those of the transferee, on the other (a balance between employee protection and economic freedoms). Consequently, the transferee must be in a position to make adjustments and changes necessary to carry on with its operations (to assert its interests effectively in a contractual process to which it is party and to negotiate the aspects determining changes in the working conditions of its employees with a view to securing the company's future economic activity)³². The foregoing protections afforded to employees, which stabilize collective agreements they are party to, deprive the employer (for a period of 1 year) of the power to adjust working conditions to the current situation of the company (a balance of objectives and values would have to be carried out).

5. CONCLUSIONS

Although the competences of the EU in the field of industrial relations are limited, European standards concerning collective labour law have significantly affected domestic legal systems, including Polish law. In countries of Central and Eastern Europe the impact is even more visible due to a lack of certain institutions in the past. First, EU legislation forced a reconstruction of a model of collective representation of employee interests. Polish law shifted from single- to double-channel representation with trade unions and employee councils (involved in information and consultation procedures). An unexpected phenomenon of recent years (partially connected with the implementation of European standards) is the increasing role of *ad-hoc* representatives. In the absence of trade unions they are involved in the process of negotiating some working conditions provided for by European directives. However, it is disputable whether their position guarantees an equilibrium which is necessary to work out balanced solutions acceptable for both management and workers. Second, under the influence of EU law the Polish legislator has established a number of collective procedures aimed at the protection of employee interests (e.g. collective redundancies, transfer of undertaking). As a rule, they reflect basic protective standards determined at the European level. There are, however, some lesser problems that weaken the effect intended by EU legislation. Nonetheless, implementation of European standards has contributed to the development of industrial relations and protection of workers.

³² Judgment of 18 July 2013, *Alemo-Herron and Others*, C-426/11, EU:C:2013:521, paras 25 and 33.

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Summary

Although the competences of the EU in the field of industrial relations are limited, European standards concerning collective labour law have significantly affected domestic legal systems, including Polish law. EU legislation forced a reconstruction of a model of collective representation of employee interests. Polish law shifted from single- to double-channel representation with trade unions and employee councils (involved in information and consultation procedures). Under the influence of EU law the Polish legislator has established a number of collective procedures aimed at the protection of employee interests (e.g. collective redundancies, transfer of undertaking). As a rule, they reflect basic protective standards determined at the European level. There are, however, some lesser problems that weaken the effect intended by EU legislation. Nonetheless, implementation of European standards has contributed to the development of industrial relations and protection of workers.

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SŁOWA KLUCZOWE

związki zawodowe, przedstawiciele pracowników, zbiorowe prawo pracy, układ zbiorowy pracy