



Background Study Poland

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version April 2004

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1. Introduction

1.1. Sources

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1.2. Economic Overview

(Source mainly CEEBIC)

Economic and political reforms in recent years have significantly transformed Poland. Since 1989 a market economy has been introduced, which produced some of the best rates of GDP growth in Europe in the middle of 1990. Despite the economic slowdown in 2001, Poland's economy seems ready to pick up. Poland's economic successes include the control of inflation, success in attracting foreign direct investment, a low current account deficit and a strong export performance. Serious economic problems include: high unemployment, large budget deficit and recent weak economic growth. Poland will join the EU in May 2004.

Polish growth has benefited from a continued strong rise in exports, despite the slowdown in the EU and a strong zloty. GDP per capita amounted to 4,566 USD in 2001, against 4,078 in 2000. In 2002 it was 39% of the EU average GDP per capita, compare: Bulgaria and Rumania 25%, Slavakia 46%, Hungary 57%, and Czech Rep. 60%. The average annual inflation in 2002 was 1.9% (against 5.5% in 2001).

Poland's unemployment rate increased to 18.1% in December 2002, much higher than the Czech Republic or Hungary. At the end of December 2002 there were 3.22 million registered unemployed people.

The unemployment rate continues to vary from region to region. The lowest unemployment rates can be found in Malopolskie (13.9%) and Mazowieckie (13.9%) and the highest - in Warminsko-Mazurskie (28.8%), Zachodniopomorskie (26.4%) and Lubuskie (25.9%)

The early 1990s brought essential changes in the geographical structure of Polish foreign trade. With the collapse of COMECON in 1989, Poland lost its traditional export markets in the Former Soviet Union and in Central and Eastern Europe. This forced Polish companies to target previously untapped markets. The majority of Poland's trade is now with the European Union. After the January-November period of 2002 EU countries' share in Polish exports and imports amounted to, respectively, 69.4% and 61.4%. For eleven years Germany has been Poland's largest trading partner.

2. The garment industry

2.1. General introduction

(source mainly Charkiewicz)

In Poland, Textiles and clothing constitutes a higher share in manufacturing employment (13%, 331,000 employees) and manufacturing production (4.4%) than in Hungary and Czech Republic, but lower than in the Baltic Republics and S-E Europe.

Already before the transition period, Poland had a large quantity of OPT (outward processing trade, also called Lohn) production for Western firms. In the early restructuring period this increased.

The restructuring and privatisation in the sector began in the early 90s. Restructuring implied that many companies have been closed down, and the employment fell from 400 000 in early 90s to 180 000 in 2000. In early years of transition, some foreign investors, brand managers or retailers relocated production e.g. from Marocco to Poland due to the proximity of the EU markets. Experience with standardized wear, such as men's shirts produced by Wolczanka in Ostrowiec or men's suits in produced by Bytom was another advantage of Polish producers. Cheaper, fashion-oriented women's wear production was shifted to Lithuania or Bulgaria where labour costs are lower than in Poland. Recently also some Polish producers have become active in lower wage countries like Ukraine.

In the mid 90s many new private sector companies went out of business. The EU driven tightening of access to Poland to citizens from the NIS countries led to the decline in demand for garment for informal export to these countries. In 1997 a big blow to the Polish garment industry was dealt with the collapse of the markets in NIS countries due to the economic crisis in Russia.

When the eastern borders closed, the eastern market collapsed and by that many small firms. This also meant much less opportunities for home work in garments.

In 2001 a strong zloty puts into question the economic viability of export oriented production. Companies that produce for domestic market face competition with black/informal producers and second-hand garment import. While the production for domestic markets generates higher profits than OPT production, producers are confronted with cash flow problems due to delays in payment from domestic clients (over 100 days in comparison to EU clients who pay the invoices within 2 weeks). Therefore a steady relationship with foreign clients is an asset for a company. Due to hyper competitive market the same counts the other way round, and it is important, in particular for smaller retailers, to nurture a steady relationship with a reliable subcontractor.

According to some there is no future in OPT production in Poland apart from some high quality niches. In so far OPT production is preferred to take place near the EU (instead of in Asia) it is moving to countries like Ukraine and Rumania. According to the 'Clothesource handbook of apparel sourcing 2003', Poland's prices are high except for men's suits. Indexed against the emerging market average price, Poland's prices are 75% higher, compared to 38% for Ukraine, 35% for Rumania, and Serbia that is growing very quickly 22%. The future for Poland's garment industry might be focused on own brands and producing for the (large) local market.

Also for products that need to be transported on hangers Poland has an advantage due to its proximity to Western European markets.

The garment industry is highly feminised and it is the lowest paid sector in Polish economy. In the 1st quarter of 2001 the average wage brute in apparel production was 1183,12 ZLP, while in textiles it was 1476,36 ZLP, in mining 3596,44, and in the chemical industry (pesti-

side production) it was 3737,28 ZLP. (GUS, 2001). Women prevail among the unemployed, in particular the long-term unemployed. 85 % of long term unemployed women in Lodz are not paid allowances (Janowska, 2001).

Many companies have gone bankrupt, they are 'in liquidation' and do not have to pay taxes but they still produce and thus compete at an 'unfair' level.

A significant feature of the garment sector in Poland is grey and black economy. Financial Times report of 1995 (quoted in Clean Clothes Campaign, 1998, "Made in Eastern Europe") estimates 140 000 people are employed in the informal sector in Lodz. Most probably the figures are higher. Recent newspaper reports suggest the employment of illegal migrant workers is on the increase. The owner of Malspol, one of the companies that employs illegal workers from Ukraine claims, should they be given permits to work he would employ 150 in place of 30 people because of the demand from Vietnamese traders. (Toranski, 2001)

2.2 Areas where garments are produced

(Source mainly Pike and Casale)

Lodz has traditionally been the centre of the textiles industry in Poland. (Piotrków Tryb lies 60 km south of Lodz and is part of the voivodship Lodz) These industries underwent a rapid collapse at the very beginning of transformation. Nobody defended the politically weak, mostly female workforce in textile and clothing factories. In comparison with other industrial branches, these industries were of minor importance for the national economy. Łódź was left to itself and this was one of the factors underlying the social mobilization of regional and local elites. Łódź managed to partially revitalize its economy, though this recovery is still rather weak and relies on the demand for rather simple and inexpensive textiles, which need unskilled labour. The recent collapse of the Soviet market appeared to be a serious drawback for the Łódź economy. Full utilization of diversified academic and scientific structure is still a matter of the future, as well as a shift to becoming a centre of high-quality garments. Spinning has completely disappeared from the scene in Lodz.

When the sectors of "*Textiles Manufacture*" and "*Manufacture of Wearing Apparel and Furs*" are combined, the continuing importance is highlighted, accounting as it does for 26.7 per cent of all regional sales (18.2 textiles, 8.5 garments) , compared to only 3.8 per cent for all Polish sales. Moreover, the figure of 26.7 per cent is likely to underestimate its regional importance – given that parts of other sectors will also be dependent on, or closely related to, the textiles and apparel industries.

In employment terms Textiles and Clothing is also the most important traditional sector, employing 46 per cent of the manufacturing workforce. Moreover, when related industries and activities are taken into account (chemicals, printing, engineering, clothing retail, and a range of services) the employment significance is even greater.

In 1999, 99.8 per cent of all enterprises were small or medium enterprises (SMEs), and around 73 per cent of employees were employed in SMEs, compared to 61 per cent for Poland as a whole.

On a number of indicators, the Lodz region shows a need for improvement. Unemployment is much higher (16.1 per cent in Lodz compared to 15 per cent for Poland (both figures for 2000 originate from labour force surveys).

The absolute number of unemployed persons registered at labour offices in the region was 230,631 at 31 December 2001. Only 21.2 per cent of registered jobseekers were eligible for unemployment benefits. The extremely difficult labour market situation is amply demonstrated by the number of unemployed persons per vacancy: 252 for the region as a whole. As for the unemployment structure by gender, women were over-represented in both cases but still slightly better off in Lodz than in the Poland overall. Younger workers were in a

slightly better situation in Lodz.

The Gross Domestic Product per capita for Lodz region in 1999, at PLN 14,497, was less than (91 per cent of) the Polish average of PLN 15,907. The average gross monthly wage in Lodz was 17 per cent lower than the national average in 1999. Average monthly gross wages/salaries for the Lodz region in 1999 were PLN 1,787, below the national average of PLN 2,026. Lodz, the second biggest town in Poland, ranks lowest in average wage amongst the big towns, but also by far the lowest in housing costs:

	Triple City *	Lódz	Wrocław	Kraków	Poznań	Warsaw
Average wage, zlotys	1319	1173	1272	1337	1413	1818
Price of 1 sq. m in apartment	2500	1350	2500	2950	2300	3700

*Gdansk, Gdynia, Sopot / Source: Gorzelak 2000

There are four main reasons for this difference. First, the economic situation of the region is not favourable and the lower profitability of local enterprises does not permit them to pay higher wages. Second, the legacy of past wage relations that disfavoured major regional industries, such as the food and textile industry, in comparison with primary industries located in some other regions of Poland, is still valid – a factor compounded by powerful trade unions in the latter sector. Third, the impact of higher unemployment on wage levels cannot be disregarded. Fourth, although investment in education has increased during the transition period, the increase is insufficient to balance out the regional and industrial effects on wage relations.

Anecdotal evidence indicates that technology and productivity is generally poor, and that there is a high reliance on low labour costs as a means of competing. Moreover, rates of innovation appear to be low.

Production is mainly for the local market.

No information is available on the size of the informal sector or the share of irregular labour contracts in Lodz and there are no grounds to assume their higher incidence compared to the national average.

One spokesperson for the employers FWF talked to in April 2004 estimated that there were some 5000-7000 garment companies in Lodz, employing about 50.000 persons.

2.3 Statistical data on garment production

Main source: CEEBICnet, Market Research Poland, Apparel

Poland's garment industries specialises in higher value products like overcoats and suits, with a long tradition in winter clothing because of the climate. It cannot compete in T-shirts and such. Over the past 3 years there have been a large reduction in the industry, now it seems to have stabilised. In comparison, Polish garment industry is doing better than the EU.

In 1999, Polish exports of apparel and accessories were reported to be worth USD 1.8 billion. About 95% of these exports went to European Union countries (EU), mainly Germany, the Netherlands, Denmark, France, and Belgium. The other 5% was broken down into non-EU western countries, mainly the US and Switzerland with 2.6%, and Central and East European countries, mainly the Czech Republic, Russia and Slovakia with 2.4%. The breakdown of Polish exports by category was as follows:

- suits, jackets, blazers, dresses and skirts for women and girls, 37%;
- suits, jackets, blazers and trousers for men and boys, 26%;
- blouses and shirts for women and girls, 13%;
- shirts for men and boys, 7%; and,
- overcoats, 16% (8% for women and 8% for men).

Other Polish exports also included assorted garment articles and tailored patterns (USD 60 million); sportswear (USD 60 million); garments made of felt, needled cloth, and impregnated rubber-coat fabrics (USD 15 million); professional clothing (USD 12 million); and, brasseries (USD 32 million).

Imports into Poland of apparel and accessories were worth USD 305 million in 1999. EU countries represented about 32.5% of Polish imports, mainly from Germany, Italy, and Denmark. China, India, Turkey, Thailand, and Indonesia supplied 36.5% of the total apparel imports. CEE countries (mainly Romania and Lithuania) supplied the other 30% of total apparel imports.

Imported products included assorted garment components and patterns (USD 100 million in 1999).

Apparel imports to Poland were valued at USD 380 million in 2002, a 30% increase from 2001. The largest suppliers were China 50%, Italy 12.3%, Turkey 10.6%, Germany 4.6%, France 4.0%, Hungary 3%, Denmark and India 2.6% each. Exports of apparel were worth USD 1,695 million. The top importers from Poland were Germany, the Netherlands, France, Belgium, Denmark, Italy, and the Great Britain. The total value of local production of apparel was USD 1,695 million, a decrease 1% over 2001.

Current consumption of apparel is 4-5 times lower in Poland than in the European Union.

In 2002, local production of apparel and accessories in Poland reached USD 1,695 million. Sales for the sector as a whole is likely to be much higher because small to medium sized companies (less than 50 employees) continue to account for strong share of the market. The Polish apparel sector is very fragmented and represented by about 44,000 manufacturers of whom 95% are very small.

Only 1,000 of the Polish apparel manufacturers employ more than 50 persons. Thousands of small enterprises operate successfully alongside giants employing hundreds or even thousands of workers such as: Vistula SA, Wolczanka SA, Zaklady Odzieżowe Bytom SA, Prochnik SA, Modena SA, and Intermoda SA. The Polish clothing industry is currently following the EU strategy by restructuring, reducing its production capacity, and reductions of employment. The majority of Polish apparel companies depend on inward processing, sewing garments for foreign firms, which sell them under their own trademark. It is estimated that about 70%-80% of the apparel industry's production capacity is used for this purpose. Therefore, inward processing dominated the structure of sales of domestic manufacturers and determines the condition of the domestic apparel industry currently. Many large apparel manufacturers produce for foreign clients. For example: about 60% of Warmia's exports are produced for Hugo Boss and Brinkmann. Also Prochnik sews apparel for Hugo Boss. Modena is manufacturing for Pierre Cardin. Masters is producing trousers for Pierre Cardin, Pioneer and Diesel as well as for German and British departments stores. Eurotex sews apparel for clothing firms located in the U.S., Canada and the EU.

Over the last few years many new apparel manufacturers have established their facilities in Poland. Also young Polish designers have successfully exploited market niches and supply clothing in short series as well as tailor-made garments. They open their retail outlets in Poland and abroad.

LPP SA located in Gdansk is considered the leading private clothing company in Poland. LPP designs and distributes clothing manufactured in China. The company has created Reserved brand, the most famous brand name targeted at final customers through an extended chain of stores. LPP opened over 40 stores in Poland and 11 stores outside Poland (Baltic region countries, the Czech Republic, Hungary, and Russia).

According to GUS, 2002 Polish exports of apparel and accessories were reported to be worth USD 1,356 million, a slight decrease from 2001. About 89.3% (USD 1,211 million) of

these exports went to European Union countries (EU) and 5.8% (USD 78 million) to Central & Eastern European markets (CEE). The main importers were Germany (48.8%; USD 656 million), the Netherlands (9%; USD 122 million), France (7.3%; 99 million), Belgium (7.2%; 97 million), Denmark (5.5%; USD 75 million), and Italy (97.2%; USD 65 million), Great Britain (3.8%; 52 million) followed by Russia (2.5%; USD 35 million), the U.S. (2.2%; USD 29 million), and the Czech Republic (1.6%; USD 22 million).

Inward processing accounted for over 95% of the Polish exports of apparel in 2002 and was dominated by HS 6204 suits, jackets, blazers, dresses and skirts for women and girls (37%; USD 507 million), HS 6203 suits, jackets, blazers and trousers for men and boys (26%; USD 356 million), HS 6206 blouses and shirts for women and girls (12%; USD 169 million), HS 6201 overcoats for men (7%; USD 92 million), HS 6202 overcoats for women (6%; USD 81 million), and HS 6205 shirts for men and boys (5.8%; USD 79 million). Other Polish exports also included sportswear, accessories, and professional clothing.

The breakdown of Polish imports by category was: HS 6204 suits, jackets, blazers, dresses and skirts for women and girls, 31.7% (USD 109.5 million) HS 6203 suits, jackets, blazers and trousers for men and boys, 20%, USD 70 million HS 6201 overcoats for men, 9.7%, USD 33.8 million HS 6202 overcoats for women, 9.7%, USD 33.6 million HS 6206 blouses and shirts for women and girls, 8%, USD 27.7 million HS 6205 shirts for men and boys, 7.5%, USD 26 million. Other imported products included second-hand clothes (USD 35 million), sportswear (USD 12 million), and accessories. HS 6203 suits, jackets, blazers and trousers for men and boys (26%; USD 356 million).

In 2002, U.S. exports of apparel to Poland were estimated at USD 1.5 million. American brand products are very often imported from Asian factories owned or used by U.S. companies. The real share of American apparel on the Polish market is higher than reported, because when a U.S. company in China manufactures a product, their imports of this product to Poland are considered to be imports from China, not from the U.S.

Due to Poland's 1992 Association agreement with the European Union (EU) and the Central European Free Trade Agreement (CEFTA), apparel from EU and CEFTA countries are not subject to customs duties. American apparel are assessed a duty rate of 18% which considerably limits apparel imports from the U.S.

2.4 Raw material

Poland has no cotton and only little wool production, but produces artificial fibers. As most production is for OPT, the source of raw material is of minor importance.

2.5 Upgrading of the industry

According to some sources, Asian suppliers are pushing hard on EU's trouser market, including denim jeans producers. Exporters from Northern Africa and Eastern Europe should worry.

For example India's trade with the candidate countries is already increasing, particularly with Poland, Hungary, the Czech Republic and Slovenia which import gems and jewellery, leather goods, coffee and other commodities, textiles, chemicals and electronic goods. But this also constitutes export possibilities for these countries. For example the major imports by India from the accession countries also includes leather and garments.

The industry is under competitive pressure. Eastern European markets have been lost, possibly exacerbated by cross-border restrictions on incoming buyers.

Moreover, where, on the one hand, competitive strategies have focused primarily on

low labour costs and low prices, the sector's ability to compete has been threatened by low labour-cost manufacturers elsewhere, such as China and Turkey, as well as by importers of

second-hand clothes. On the other hand, the sector's ability to compete with high-wage manufacturers in the European Union and elsewhere is threatened by competitors' superior technologies, products and organizational capabilities. The challenge for the Textiles and Clothing industry, as for much of the rest of the Region's industry, is to upgrade gradually and develop the capacity to compete on a rising-wage basis.

Traditional industries in high-wage countries compete in a variety of ways. Accentuating the aspects which differentiate their products from mass markets is one method.

For example, enterprises might concentrate on speciality textiles or other niche products; or develop a reputation for high quality, or high design and fashion content; or differentiate themselves by advertising their adherence (or their suppliers' adherence) to labour or environmental standards; or make use of European or other regulations to gain exclusive rights to use product names made in certain ways (for example, certain cheeses or wines); or offer reliable delivery, or quick and flexible response, or some type of value-adding function in the value chain.

In the Lodz region the network of labour offices consists of the Regional Labour Office (RLO) in Lodz with affiliates in three other main cities of the region – Piotrkow Trybunalski, Sieradz and Skierniewice – and 22 District Labour Offices. The Lodz RLO has special programmes like training programmes for small entrepreneurs and support programmes for small, family-run firms.

In Lodz there is a 'new employment strategy' project in co-operation with the ILO, local government and local social partners. This aims at, amongst others, to recreate the textiles and garment production. This will also include attempts to attract foreign investment that has to be balanced against the interests of the local producers.

3 General description of the industrial relations and labour conditions in the garment industry

3.1 General background

(Towalski:) After twelve years of political and economic reform in Poland, at least two distinct systems of labour relations have taken shape, one in the private sector and the other in the public sector.

In the private sector there are no unions whatsoever in many companies, and such as do operate there tend to prefer survival and accommodation over confrontation. Second, the economic standing of the private sector is better than that of the public sector, leaving employees with less grounds for discontent. Also, employment relations in the private sector tend to be based on individual contracts rather than on collective bargains, leaving the employer in a stronger position and discouraging the fielding of claims by employees. Third, strikes simply make for bad business. Also, a strike in the private sector tends to have a local dimension only, it is hardly the stuff of national headlines; it does not make ripples in larger segments of society, and it is ignored by politicians.

'According to employers, the rigidities of labour market regulation are increasing labour costs and contributing to a lower demand for labour. In fact, comparisons with other EU accession countries reveal Poland as already among those countries with the least restrictive employment protection legislation. Nevertheless, employers point to certain regulations, which indeed increase overall labour costs considerably. These include the obligation of employers to cover the first 35 days of sickness leave (in many countries sickness leave is fully, or to a much larger extent, covered by public insurance funds). Employers also cite the high costs of overtime work and the considerable costs they are required to bear for employees' medical examinations.

Also, social contributions equaling 46.6 per cent of wages and divided between employers (20.9 per cent) and workers (25.7 per cent) are considered a heavy burden, in particular for small firms. However, it should be emphasized here that prior to the 1999 reform of the social and health insurance schemes, the total level of social contributions was the same rate but born exclusively by employers.' (Casale 2001).

Labour legislation is in a state of changes; unions fear it too become minimalist.

One of the most controversial of the employers' proposals for reforming the Labour Code concerns enterprises facing a situation of financial loss lasting for a period of at least 6 consecutive months, with the threat of bankruptcy or liquidation of the employer. The proposal would allow the employer, in consultation with the trade unions, to suspend some of the most restrictive provisions of the Labour Code for a period of up to 6 months. This suspension would not apply to provisions related to health and safety, protection of work of juveniles and women, the minimum wage, the number of work-free days, and the maximum daily and weekly length of working time.

On 23 December 2003 an agreement was signed in Warsaw by the All-Poland Alliance of Trade Unions (OPZZ) and four representative employers' organisations. NSZZ Solidarnosc was not present in the final stage of negotiations, although they contributed to working out the contents of the agreement in the sub-committee. On the employers sided the agreement was signed by the Presidents of the Polish Confederation of Private Employers, of the Business Centre Club, the Confederation of Polish Employers and of the Polish Craft Association.

The agreement covers draft texts of eight laws in the field of labour law, wages, termination of collective agreements, shaping salaries in enterprises.

3.2 Role and position of the union in this region/industry

The operation of Polish trade unions is governed by trade union legislation dating from May,

1991, the Trade Unions Act. Arising from the events of the 1980s, the Polish trade union movement has been dominated by two major groups: the Independent and Self-Governing Trade Union "Solidarity" (Niezależny Samorządny Związek Zawodowy "Solidarnosc" - NSZZ Solidarnosc) and the All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych-OPZZ).

A distinctive feature of Polish trade unions is their political activity and the significant role they play in the political system. Since its establishment in 1980, Solidarity was in fact a huge social movement that also fulfilled the function of a trade union organization.

The political position of Solidarity is mainly determined by its participation in the Governments of the 1991-93 and post-1997 periods. The political role of both major trade unions is also evidenced by the fact that numerous union leaders sit in Parliament.

Solidarity has a membership of 1 million (6.7 % of the labour force, *source EC: Industrial relations in Europe 2002*), organized in 16 sectoral organisations and 17,000 factory committees. Solidarnosc has secretariats for different industries, but is not a federation of different unions. Its regional secretariats have an important role in organising the units on factory level. The secretariat for light industries covers all textile, clothing and leather industries. It is involved in a sectoral social dialogue (they had a training by Danes on this) but there is no CBA on sector level. Sector level discussions are difficult because individual companies tend to withdraw from their associations if these associations make deals with unions.

The OPZZ was established in 1984 by the Meeting of Branch Union Representatives (Zgromadzenie Przedstawicieli Branżowych Związków Zawodowych). According to the EC-report OPZZ has 1.6 million members (10.7 % of the labour force), 300,000 of whom are retired. Its main body is the Council whose members are elected in 12 branches - associating 110 national trade union organizations - and in 16 regions (voivodship). The OPZZ is structured along administrative regional lines and also comprises some 265 municipal structures. OPZZ can be seen as the successor to a communist-era union and has also played an important political role within the ruling SLD, largely contributing to its electoral victory in 2001.

In addition to Solidarity and the OPZZ, there are numerous other federations (about 300), as well as 273 trade union organizations which operate nationally and 23,955 local trade unions, of which 17,000 belong to the OPZZ. There are thus approximately 7,000 separate trade unions which are exclusively local and not affiliated to any of the main trade union organizations.

In 2000 an overview of Social democratic and left oriented parties

(<http://www.europeanforum.bot-consult.se/cup/poland>) noted: 'Solidarity and the OPZZ are diametrically opposed to each other. In the past few years trade union membership has declined in Poland. It is said that the Polish trade unions are strong in the political arena and rather weak in the work place.'

But things are changing (source <http://www.eubusiness.com/imported/2003/05/110919> 25 May 2003, Michel Mrozinski AFP): Poland is seeing its unions abandon politics: "We are certainly not going to reopen the chapter where we backed, with our logo and our men, a political formation," Solidarity President Janusz Sniadek told AFP. "This experience went wrong and we will not repeat errors of the past. We exclude from now on the combination of the functions of union and politics." Today the union is a shadow of its former self, reduced to just 900,000 members. As unions abandon politics they are also agreeing more and more on issues despite their different political origins. There are currently more and more problems on which the unions, which have very different political origins, have to agree on the basics.

Also at a discussion panel about the situation of trade unions before accession to the EU (organised by Head Economic School and Ebert Foundation) both "Solidarnosc" and OPZZ representatives declared their will to co-operate more closely.

There are no reliable statistics in Poland regarding trade union membership and the level of unionisation in enterprises. The most recent research indicates that trade unions currently operate in about 45 per cent of enterprises. It should be remembered that this is much higher in the public sector than in the private sector. The average level of unionisation in enterprises where trade unions operate is 50 per cent, though this figure is declining.

A further issue for the Polish trade union movement is the question of how representative trade unions really are, especially at the enterprise level. For the time being, the representativeness of trade unions is regulated by law, yet the issue remains unresolved.

In the case of the private sector, the decline in the importance of the Tripartite Commission has led to the spontaneous decentralization of industrial relations, and wage bargaining is now determined more by the balance of forces at local level. The centralized bargaining mechanism operates in a rather chaotic way and influences only a few key sectors in the economy still dominated by state enterprises, such as mining.

In a conference Frank Hanker from the Ebert Foundation mentioned lack of strong branch policy as a problem of Polish trade unions. Replying to this statement, representatives of both "Solidarnosc" and OPZZ said that branch collective agreements are not concluded due to employers' reluctance and lack of strong organisation on their side.

In recent years, due to wide-scale industrial restructuring, privatisation and re-organization of work in several industries, the Ministry of Labour and Social Policy have created a number of tripartite problem-solving committees. Each of these committees is composed of representatives of the social partners on an equal basis.

One of the first committees established was the Tripartite Group for the Light Industry. These sectoral committees provided for consultations on the social consequences of industrial restructuring. They worked in a very formal manner according to rules and procedures agreed on by the parties themselves. Some consultations resulted in real negotiations and the conclusion of industry agreements including the strategic agreement for the textile industry (1999-2002).

Kloc: 'In 1999, the Tripartite Team for Light Industry was set up, composed of representatives of six ministries. Trade unions were represented by the two main trade union organisations, Solidarity and the All-Poland Trade Union Alliance, and the employers by the Confederation of Polish Employers and sectoral chambers of commerce. The situation in Poland's light industry differs considerably from that in other sectors where teams have been established. In that sector, no restructuring scheme was implemented in the 1990s. At the same time, almost all former state-owned enterprises have been privatised. Nevertheless, the situation throughout light industry has been very bad. Most of the already privatised enterprises report economic and financial difficulties.

Some of them have already collapsed or are on the verge of bankruptcy. In this situation, numerous meetings of trade union representatives with employers and state organisations were held in the late 1990s. These meetings were then converted into a tripartite team monitoring the implementation of the 'Strategy for light industry in 2000-2005'. Within this framework, the team concentrates on evaluation of the socio-economic situation in light industry, companies' debts to the Social Insurance Institution (ZUS), activities aimed at protection of this sector and safety nets for the dismissed workers. Given that almost the whole sector has been privatised, the tripartite team should be transformed into a bipartite team, conducting autonomous dialogue without the state's involvement.'

'The lack of supra-enterprise collective agreements in sectors dominated by private employers – such as commerce, construction and textiles – is worthy of note. As a rule, when private employers are party to supra-enterprise collective agreements, they are always in a minority compared with companies in which the Treasury has a majority stake when the agreement is concluded.'

3.3 Employers' organizations

There has been a proliferation of employers' organisations. These organisations are often private initiatives from individual employers. They compete with each other and this creates an un-transparent situation.

There are two main employers' confederations in Poland. One is the Confederation of Polish Employers (KPP) which was created in 1989. It has been active in its present form since September 1991 and based on the Employers' Organization Act 1991. The Confederation is composed of both state-owned enterprises as well as private employers. For historical reasons, the KPP represents the employers' side in the Tripartite Commission for Social and Economic Affairs. International Labour Conference. The KPP has observer status at the Union of Industrial and Employers' Confederation of Europe (UNICE) and is a member of the International Organization of Employers (IOE) and of the Business and Industry Advisory Committee (BIAC) of the OECD.

The second organization is the Polish Confederation of Private Employers (PKPP) which was registered in January 1999. This Confederation is an organization of private employers and is also registered in accordance with the Employers' Organizations Act of 1991. The Confederation's fundamental objective is the protection of employers' rights and the representation of the interests of member organizations vis-à-vis trade unions, the Government and public administration as well as local government.

The Confederation was not a member of the Tripartite Commission for Social and Economic Affairs until the tripartite agreement reached by the social partners in May 2001 provided that the PKPP would be a member of the newly reformed Tripartite Commission. The Confederation cooperates with the International Labour Organization (ILO), the International Organization of Employers (IOE), and has observer status at the Union of Industrial and Employers' Confederation of Europe (UNICE).

This Confederation represents a wide range of companies including small and medium sized enterprises. According to PKPP data (April 2001), it has 22 branches and 12 regional associations covering 2,150 enterprises employing 450,000 employees.

On the basis of the agreement signed in May 2001, the social partners have agreed that the Union of Handicrafts will become the third confederation of employers to sit in the new Tripartite Commission on Social and Economic Affairs.

The low level of activity of trade unions in enterprises meant that there was little incentive for private entrepreneurs to organize, especially at the beginning of the transition period. Many preferred to operate in the grey economy (in this way inducing unfair competition) and it was only public sector employers who initially felt the need to organize. Today, with the substantial changes brought about through economic reforms, more and more private employers and entrepreneurs feel the pressure to organize themselves and to be represented at national level.

It is difficult to predict which association will form the future key entrepreneurs organization in Poland. The major existing associations are: Business Centre Club (which represents only leading businessmen), Convention of Polish Entrepreneurs, Tradesmen and Food Producers, Polish Federation of Independent Entrepreneurs and Confederation of Polish Employers. The cooperation between institutions at the national level has not been effective. At the local

level cooperation between different support institutions is much closer and is still growing.

There is also social dialogue at the local level. The main institutions and associations are the following:

- Polish Chamber of Commerce;
- Regional and Sectoral Chambers;
- Union of Polish Crafts (representing 26 regional chambers of crafts);
- Confederation of Polish Employers;
- Polish Federation of Independent Entrepreneurs (association - lobbying);
- Business Centre Club (union of leading businessmen);
- Convention of Entrepreneurs, Tradesmen and Food Producers (association - SME lobbying);
- Local entrepreneurs unions and associations.

Most of the Chambers in Poland are strengthening their structures, although they have limited human and financial resources. In the future their development and strengthening could be achieved as a consequence of legal changes. The issue of mandatory/voluntary membership and registers as of December 1995 remains undecided and controversial. The Polish Chamber of Commerce is the biggest and the broadest-ranging institution of corporate self-governance in Poland. Through the intermediary of its members - regional, sectoral and bilateral chambers of commerce and industry, business associations and economic organizations, the Polish Chamber of Commerce brings together more than 500,000 companies active in Poland. It promotes new legal regulations for economic activity and represents the interests of Polish entrepreneurs *vis-à-vis* the Government.

Polish Foundation for SME Promotion and Development Acting at the national level.

Casale: 'Unfortunately, the current social dialogue between the Lodz regional public authorities and the social partners is far from satisfactorily addressing the daunting challenges that confront the region in restructuring the regional economy and fighting high unemployment. Until now there has been no permanent and stable institution for social dialogue at the regional level. Another problem is the narrow approach to social dialogue taken by the employment councils, who tend not to involve some important local players in the fight against unemployment, namely youth or women's organizations.

On the trade union's side, the two national workers' organizations, Solidarnosc "NSZZ" and the All-Polish Alliance of Trade Unions "OPZZ" are both represented in the region. On the employers' side, seven employers' organizations are present, namely:

- the Association of Employers in the Knitting Industry,
- the Association of Agrarian Employers in Lodz,
- the Regional Association of Employers,
- the Association of Employers of Health Services,
- the Association of Employers of the Textile Industry,
- the Christian Association of Entrepreneurs and Employers,
- the Chamber of Crafts.

There is strength within numbers, but the large number of organizations representing employers' interests may hinder the design of their joint positioning in negotiations with regional authorities and trade unions. And the poor cooperation between the two trade unions has similarly weakened the influence of workers and the emergence of an effective social dialogue, including on a bipartite basis.'

In addition to Casale's report we may mention:

- Lodz Chamber of Industry and Commerce (Polish Chamber of Foreign Trade Lodz), that is involved with the ILO project on a new employment strategy for Lodz.
- The Association of Employers in Light Industry, the most important organisation from employers' side in the sectoral social dialogue.

3.4 Other groups to defend the interests of workers

Women's groups

Poland has an active and vivid women's movement. Because of cultural and historic reasons, the position of women in society is an even more controversial topic than in many other countries. Until 1989, women played an active and firm role in the workplace. Since Poland's political and economic transformation in 1989, the status of women has changed drastically. A large amount of evidence shows that economic adjustments have influenced women and men differently. Women earn, on average, less than men and are the first to be fired and the last to be hired. In the 1990s, the number of unemployed women has risen very quickly. The decreased access to childcare facilities and increased prices for services have seriously affected women's possibilities in the labour market, especially for those poorly paid.

Women groups tend to focus on other issues than the position of factory workers.

Labour Inspectorate

There are two forms of labour inspection. The state body is called National Labour Inspectorate (Panstwowa Inspekcja Pracy – PIP). This agency consists of the Central Labour Inspectorate and district inspectorates, which work jointly with regional labour inspectors. The PIP work is monitored by the Labour Protection Council. If the labour law is infringed, competent PIP bodies have the right to order the head of the offending company or plant to eradicate existing violations. While in the past the National Labour Inspectorate dealt with work conditions, now it takes up the issues of pay and work contracts as well. The 2000 Annual Report of the State Labour Inspectorate points out that violations of the labour law and occupational health norms have been noted in 93 % of companies. In particular, the violation of work time limits, excessive overtime, work contracts that violate or do not conform to labour and contractual law have been noted. It has also been noted that very few enterprises properly register the accidents at work, and do not pay legally provided benefits for victims of work related accidents. Women have complained about employers demanding non-pregnancy certificates, about being fired during pregnancy or childcare leave and about being employed in jobs prohibited to pregnant women. Until now, there have been no complaints about discrimination in the workplace. In 2000, the procedures started by the Labour Inspection have led to the payment of 75 million zlotys of wage arrears and other work related payments due to the employees by the companies.

The other form is the labour inspector at the plant elected by the employees. In Poland, in accordance with the Law of 24 June 1983 on Social Labour Inspection...the social labour inspection bodies function in enterprises. These are social services composed of workers, entrusted with the task of ensuring that safe and hygienic working conditions are provided by the employer and that employee rights, laid down in the labour law, are observed. The inspection represents the interests of all workers in the enterprise and is managed by the trade union organisations at the enterprise level.

This inspector is allowed to enter any production unit. Any work conditions (in particular health and safety) problems she/he observes are recorded in the book of complaints. The plant manager has two weeks to reply to the registered complaints. The state labour inspector checks the book each time he/she visits the factory. The improvements are occasionally made in result of bargaining by the plant inspector who talks with the company manager prior to the formal registration of complaints, and using the formal registration as his/her bargaining chip.

Social labour inspectors have been entrusted among others with the following powers:

- to control the condition of buildings, machines, technical and sanitary devices, as well as technological processes from the standpoint of occupational safety and health;
- to control labour law observance, including the provisions of collective agreements and working regulations in particular in the field of occupational safety and health;

- to participate in analyses of causes of occupational accidents and diseases as well as other illnesses being an effect of the conditions of working environment, and control the application by the employer of appropriate preventive measures;
- initiate activities aimed at active participation of workers in developing appropriate occupational safety and health conditions and encourage workers to observe occupational safety and health provisions and principles.

The social labour inspector has the right to demand information and documents - in matters within the range of his/her activities - from the employer and head of a division (section) and from the workers. In addition, in accordance with article 20 of the Law of 24 June 1983, the social labour inspector has the right to participate in inspections conducted in the enterprise by the labour inspector of the National Labour Inspectorate and to take part in recapitulation of the inspection.

Conciliation

A person whose labour rights have been violated may, before bringing a case to court, submit a written request to be heard before a Conciliation Committee (Art. 242 of the Labour Code). The employer, trade union, or employee can appoint a committee in any company or plant, regardless of the number of employees it hires, as long as the employer and union agree on who serves on the committee. If no agreement is reached, the committee will bring the case to labour court, if the employee requests to do so within two weeks after the conciliation procedure is terminated (Art. 254). If the employer does not implement the agreement, it will be enforced by the court. Unfortunately this procedure of ascertaining labour rights, including the cases of gender-based discrimination and sexual harassment, is not applied in practice. It is often perceived as a remnant of the communist past.

4 The labour standards

Introduction

The Sources of Polish Labour Law. Due to the Constitution of 2 April 1997, the sources of Polish law are: the Constitution itself, the act (“*ustawa*”), ratified international agreement (i. e. directly implemented conventions) and regulation (“*rozporządzenie*”). These acts are published in the Official Journal of the Republic of Poland (“*Dziennik Ustaw*”).

Constitution¹. The Constitution introduces constitutional rules of: protection of work, freedom of choice, performance of profession and freedom of choice of the workplace. It lays down also the rule that the amount of minimum remuneration and the way of its establishing shall be put into the act. Polish Constitution determines also the right to safe and hygienic wage conditions.

International agreements. Ratified international agreements are also sources of labour law in Poland. It concerns especially ILO Conventions². *Poland* ratified 85 Convention(s), whereof 7 of the 11 core labour standards of FWF’s code. Poland has never ratified ILO Conventions No 1, 26, 131, 155. ILO standards are included in the Labour Code and other acts. Due to the accession to the European Union, Poland is harmonizing national law with *acquis communautaire*.

Convention	Ratification date	Status
Not ratified: 1 (overtime), 26, 131 (living wage), 155 (H&S)		
<u>C29 Forced Labour Convention, 1930</u>	30:07:1958	ratified
<u>C100 Equal Remuneration Convention, 1951</u>	25:10:1954	ratified
<u>C105 Abolition of Forced Labour Convention, 1957</u>	30:07:1958	ratified
<u>C111 Discrimination (Employment and Occupation) Convention, 1958</u>	30:05:1961	ratified
<u>C135 Workers' Representatives Convention, 1971</u>	09:06:1977	ratified
<u>C138 Minimum Age Convention, 1973</u>	22:03:1978	ratified
<u>C182 Worst Forms of Child Labour Convention, 1999</u>	09:08:2002	ratified

Source: ILOLEX - 11. 2. 2004

Acts (Laws). Acts are issued by the Sejm.

The basic act concerning labour law is the Act of 26 June 1974 – **Labour Code** (with subsequent amendments). It entered into force on 1 January 1975. Moreover, there are over 70 specific acts regulating directly some issues of labour law or they are indirectly related to labour law provisions.

¹ An English version of the Constitution may be found at:

<http://www.sejm.gov.pl/english/konstytucja/kon1.htm>

² Poland has ratified following ILO Conventions: 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 27, **29**, 35, 36, 37, 38, 39, 40, 42, 45, 62, 68, 69, 70, 73, 74, 77, 78, 79, 80, 81, **87**, 90, 91, 92, 95, 96, **98**, 99, **100**, 101, 102, 103, **105**, 108, **111**, 112, 113, 115, 116, 119, 120, 122, 123, 124, 127, 129, 133, 134, 135, 137, **138**, 140, 141, 142, 144, 145, 147, 149, 151, 160, 176, 178 and **182**.

The Labour Code is one of most dynamically changing legislation (about forty times during last 10 years). The latest amendments have entered into force on 1 January 2004 and concerned issues related to EU enlargement and approximation of Polish law to EU labour law standards, i. e. working time, anti-discrimination provision, fixed-term employment agreements, posting of the employees and health and safety provisions³.

Regulations. Only those bodies that are expressly stated in the Constitution issue regulations. Moreover, regulations have to be issued on the basis of specific authorization put in the acts and in the purpose to implement the act. The competent bodies to issue the regulations are the President of Republic of Poland, the Council of Ministers, the National Broadcasting Council, the Chairman of the Committee who is a member of the Council of Ministers, and the minister that manages the relevant area of public administration. Currently, there are over 100 more significant documents of this type concerning labour law in force.

Autonomous sources of labour law. There are: collective agreements (at enterprise and over-enterprise level) and other such as – based on the act – agreements, staff regulations, remuneration regulations and statutes determining rights and obligations of the parties of the employment relation.

The Court system. The Polish legal system is civil law system. The common courts in Poland are the courts of appeal, provincial courts (*“okręg”*) and district courts (*“rejon”*). In the scope of the labour law, the latter are competent to hear only labour law cases. The first are competent to hear also social insurance cases.

Central institutions. There are several central institutions and agencies which constitute a part governmental administration. The web sites of these organs may be found at the following addresses:

- Central Statistical Office⁹
- Insurance and Pension Funds Supervisory Commission¹⁰
- National Labour Inspectorate¹¹
- Social Insurance Institution¹²

4.1 Employment is freely chosen

Laws and regulations

Article 65 (3) of the Polish Constitution lays down:

1. Everyone shall have the freedom to choose and to pursue his occupation and to choose

³ Directives Nos 2003/88, 91/533, 94/33, 97/81, 2000/78, 2000/43, 76/207, 96/71, 99/70, 89/391, 90/394, 2000/54, 78/610.

⁴ More information available at: <http://www.sn.pl/english/index.html>.

⁵ More information available at: <http://www.trybunal.gov.pl/eng/index.htm>.

⁶ More information available at: <http://www.sejm.gov.pl/english.html> and <http://www.senat.gov.pl/indexe.htm>.

⁷ More information available at: <http://www.kprm.gov.pl/english/index.html>.

⁸ More information available at: <http://www.mpips.gov.pl/>

⁹ More information available at: <http://www.stat.gov.pl/english/index.htm>

¹⁰ More information available at: <http://www.knuife.gov.pl/english/index.html>

¹¹ More information available at: <http://www.pip.gov.pl/>

¹² More information available at: <http://www.zus.gov.pl/default.htm>

his place of work. Exceptions shall be specified by statute.
2. An obligation to work may be imposed only by statute.

Freedom of choice of the profession (except for cases provided in the other act), right to perform of freely chosen profession and freedom of choice of the workplace are provided in Article 10 of the Labour Code. Article 11 provides that regardless to legal ground for employment relation, the establishment of this relation and the establishment of the remuneration and labour conditions require free consent of the parties.

Starting and ending of the employment contract is regulated by the Labour Code in the Articles 22 to 67. Employment contract means also that employee is granted obligatory social security protection, which in Poland means pension insurance (retirement pension and others), sickness (and maternity) insurance, accident insurance and health insurance. Retirement pension insurance constitutes 19,52% of the basis for calculation¹³, pension insurance – 13%, sickness insurance – 2,45% and accident insurance – from 0,97% to 3,86% of the basis for calculation¹⁴. Beside of that, employer pays also Labour Fund contribution (2,45% of the basis for calculation of pension and retirement pension insurance), Guaranteed Employees Benefits Fund (0,15% of the basis for calculation). Health insurance is 8,25% of the basis for calculation.

Employees in any case (except for criminal cases) do not pay for the possibility of being hired.

Employees in any case (except for criminal cases) do not give any documents, except for information and copies of the documents required for the sufficient process of hiring such as personal questionnaire, copies of the previous employment evidences (for the purposes of determining employee status) the scope of information which may be accessed by the employer is determined in Minister of Labour and Social Policy Regulation of 28 May 1996 concerning the scope of filing by employers the documentation in the cases related to employment relation and the way of filing personal employee's data records.

Compliance Situation

Two years ago, there was one case of bonded labour discovered. The case was related to the agriculture and the police found some migrant persons from NIS countries living and working in there. Some migrant workers might be also used to perform bonded work in the garment industry, but rather in the small and craftsmen's enterprises.

However, bounded labour is not reported to be a problem in this country.

In some sectors (agriculture, construction) there is an inflow of illegal migrant workers from i.e. Ukraine, this might also become a trend in other sectors.

4.2 Discrimination in employment

Laws and regulations

ILO Conventions: Poland has ratified both Conventions 100 and 111 of the International La-

¹³ Usually gross remuneration.

¹⁴ The amount of this insurance depends on the number of employees, kind of performing activities due to Polish Economic Activity Classification and also, in some case, on the enterprise's hygiene and safety status. It depends also on number of accident victims in previous years, general, severe and death cases, recognized cases of professional diseases and persons employed in the dangerous conditions. The accident insurance contribution is paid by the employer.

bour Organization on the elimination of discrimination in respect of employment and occupation. The only Convention, which was not ratified as far as equal opportunity of women is concerned, is the Convention No 156 on workers with family responsibility.

EU legislation: In the field of equal treatment of women and men, Poland has transposed most of the legislation. Further legal adjustments are necessary in the area of equal treatment of women and men in employment and in social security, such as the removal of provisions aiming at protection of women in employment, yet leading to their discrimination. Implementing structures are largely in places, but administrative capacity needs further strengthening, particularly at regional and local level.

The EU directives on equal treatment for women and men including directives on equal treatment, burden of proof, and equal pay have been transposed into Polish legislation through the amendment to the Labour Code. Equal treatment in the employment is provided in the Section I (General Provisions), Chapter II (Fundamental rules of Labour Law) and Chapter IIa (Equal treatment in the employment) of the Labour Code (Articles 18^{3a}-18^{3e}). In its current form, the Chapter IIa was adopted on 14 November 2003 by the amendment act and has entered into force on 1 January 2004. Provisions of the Chapter was changed¹⁵ due to Directives No 2000/78, 2000/43, 76/207 (as subsequently amended), as well as the way of the implementation may be inadequate.

Article 11:

“Any discrimination in the employment, direct or indirect, in particular based on sex, age, disability, race, religion, nationality, political beliefs, trade unions’ membership, ethnic origin, religious belief, sexual orientation, and also based on the fact whether person is employed on the basis of fixed-term contract or undetermined-term contract or if the person is full-time or part-time employee shall be inadmissible.”

Article 11.2 states: All employees equally performing the same duties have equal rights; it concerns especially equal treatment of women and men. Article 11.3 prohibits discrimination: Any discrimination in employment, direct or indirect, especially based on sex, age, disability, race, religion, nationality, political beliefs, trade unions’ membership, ethnic origin, religious beliefs, and sexual orientation and based on the fixed or undetermined-period employment is inadmissible”.

There are three directives transposed in this chapter.

Equal pay is defined in the Article 18^{3c} § 1 of the Labour Code. It also adds that the mentioned pay includes all elements of the remuneration, received by the employee, including cash as well as benefits in kind. The work of equal value was also defined

Equal treatment including sexual harassment, direct and indirect discrimination are laid down in

Article 18^{3a} § 1-5. They are focusing on preventing discrimination due to gender, nationality, race and ethnic origin, religion, age, disability and sexual orientation. The new amended Labour Code provides a clear definition of direct and indirect discrimination and a clear definition of sexual harassment.

Burden of proof. Article 18^{3b} § 1 of the Labour Code addresses the issue of burden of proof. This means that it is the employer who has to prove that no discrimination was present rather than the employee having to prove that the discrimination took place.

Article 18^{3a} “§1. Employees should be treated equally as regards to conclusion and termina-

¹⁵ Previous version of the Chapter was put into the Labour Code in 2002.

tion of the employment relation, employment conditions, promotion and access to training to increase their professional qualifications, in particular irrespective to sex, age, disability, race, religion, nationality, political beliefs, trade unions' membership, ethnic origin, religious belief, sexual orientation, and also irrespective whether person is employed on the basis of fixed-term contract or undetermined-term contract or if the person is full-time or part-time employee.

2. Equal treatment in the employment shall mean non-discrimination in any way, directly or indirectly, on the basis of reasons as determined in paragraph 1.

3. Direct discrimination shall be taken to occur where **employee**, on grounds as determined in paragraph 1, **was, is or would be treated less favourably in the comparable situation** than other employees.

4. Indirect discrimination shall be taken to occur where as a result of an apparently neutral provision, applied criterion or taken action there are disproportions in the scope of working conditions at a disadvantage all or significant number of employees belonging to the group favoured because of one or several grounds as determined in the paragraph 1, if these disproportions may not be justified any other objective reasons.

5. The symptoms of discrimination within the meaning of paragraph 2 are as well:

1) activities of encouraging other persons to breach the rule of equal treatment in the employment,

2) behaviour, which aims or results with violation of dignity or degradation or humiliation of the employee (harassment).

6. Harassment based on sex shall be as well any unaccepted behaviour of the sexual nature or related to the sex of the employee, which aims or results with violation of dignity or degradation or humiliation of the employee; this behaviour may include physical, verbal or extra-verbal elements (sexual harassment).

Art. 18{3b}. § 1. Subject to § 2-4, a breach of the rule of equal treatment in employment is considered as differentiation by employer of the situation of the employee on the basis of reason or reasons as described in the Article 18^{3a} § 1, which results with:

1) Refusal of conclusion or termination of the employment relation,

2) Unfavourable set up of remuneration for work or other employment conditions or omission while awarding or granting other benefits related to work,

3) Omission while designating for training improving professional qualifications – unless employer proves that employer reasons were objective

§ 2. Following activities is not subject to the rule of equal treatment in the employment:

1) Non-employing of the worker on the basis of one or many reasons as described in the Article 18^{3a} § 1, unless it is justified because of the type of work, conditions to perform it or professional requirements of the employees

2) Termination of employment condition to the employee in the field of working time unless it is justified by the reasons not concerning employees.

3) Usage of measures, which differentiates employee's legal situation because of parenthood protection, age, or employee's disability,

The law goes on to describe some more situations (§18 3b:2.4,2.5, 3, & 4 §, that will not be of direct relevance to the social audits.

Art. 18^{3c}. § 1. Employees have the right to equal remuneration for equal work or for work of the same value.

§ 2. Remuneration, as referred to in § 1, shall cover all elements of the remuneration, irrespective to their name and nature, as well as other benefits related to employment, granted to employees in cash or in other form.

§ 3. Works of the same value are works, which performance requires from employees comparable professional qualifications, confirmed by documents as provided in separate provisions or in practice and professional experience, and also comparable responsibility and efforts.

In Article 94, Labour Code specifies employer's obligations. In point 2b), it states that employer is obliged to counteract any discrimination in employment based on the reasons mentioned in Article 11³.

Another way to seek redress for sexual harassment in the workplace is to refer to the Labour Code provisions that obligate the employer to create safe and healthy working conditions (Art. 94 point 4) and Article 15. Safe and healthy working conditions include a workplace free of sexual harassment; the employer is obliged to assure a safe environment for his employees in this context. On 19 December 1980, the Supreme Court ruled "the obligation to provide employees with safe and harmless working conditions covers not only the respect for general standards in this field, but also individual constraints related to the health or inclinations of an employee."

In Article 94 point 9), Labour Code states that employer is obliged to use objective and just criteria of employees' and effects of their work assessments.

With the last amendment, question of mobbing was put into Polish Labour Code.

Issues related to parenthood are included in the Section 8 (Rights of the employees related to parenthood).

Two directives have been included in a chapter VIII "Rights of the workers related to parenthood". This includes: *Maternity leave*. It is important to highlight that the laws addressing maternity leave have changed several times during the last few years due to political changes. Since 1 January 2002, Labour Code provides 16 weeks maternity leave, which remains mandatory for women for 14 weeks after pregnancy and voluntarily for fathers for 2 remaining weeks. However, if the father does not take up this opportunity the law prohibits the mother to return to work earlier.

Article 176 contains a section on protecting women at work and prohibits the employment of women in jobs particularly strenuous to their health. Standards for pregnant women and women who are breast-feeding are still lower than those which apply to all women; such women cannot work in areas of micro-climate changes, in jobs where they will be exposed to even low levels of electromagnetic fields, any kinds of radiation, extreme high or low air pressure, dangerous biological factors, dangerous chemical substances, or in jobs which may result in heavy physical or psychological traumas.

Article 177 guarantees stability of the employment of pregnant women or person on maternity leave unless there are reasons for termination of employment because of reasons of worker or in the case of bankruptcy of the employer. Those rules are not applied to workers during trial period.

According to Article 177 § 3, fixed-term employment contracts, work contracts or trial-period contracts exceeding one month, which would be terminated after the third month of pregnancy, shall be prolonged until the day of delivery.

In this Article, The Labour Code gives pregnant women and those bringing up young children a right against unfair dismissal. Under the Code, an employer is not allowed to dismiss a woman who is pregnant or **persons** on maternity leave, unless this person has not complied with the terms of her/his contract and the trade union representing her/his agrees to the dismissal.

Article 178: § 1 Overtime work, night work, posting (without women's permission) and work involving periods of time are banned for pregnant women. It concerns also employee bringing up children of under the age of four (§ 2).

Article 178¹ states that employer must change system of work of pregnant women while they are night working. If it is impossible employer must move worker to another workplace. If also

this possibility is not obtainable, employer must give worker a leave.

Article 179. 1 obligates employers to transfer a pregnant woman to another position if she performs work that the law prohibits her performing in her condition, or if she submits a medical certificate that states she cannot continue her current work due to her pregnancy. If the transfer results in lower pay, she is entitled to a compensatory allowance. When the reasons for the transfer are no longer valid, employers must return the employee to the work defined in her contract.

Articles 180-183 determine period of maternity leave depending on the number of children delivered and whether a delivery is first or not as well as other conditions to be granted a maternity leave. Maternity leave is also granted for persons who adopt children or take a child to bring it up. Father is granted maternity leave voluntarily on his written request.

I understood that an issue was that some women do not want to take the full length because it might hamper their career but the law obliges them? Is that true?

Article 184 guarantees the right of an employee to maternity benefit whilst on maternity leave. The specific provisions are given in the act of 25 June 1999 on benefits in cash of social insurance in the case of sickness and maternity.

Article 185 regulates legal requirement for recognizing pregnancy.

Article 186 regulates the length of childcare leave

All workers employed for at least six months, in any company or plant, have the right to take childcare leave to take personal care of a child for a period of three years, up to the fourth year of the child's life. The leave can be granted for the three years, irrespective of above-mentioned period, if the child so requires on account of its health up to the eighteenth year of the child's life

Article 186¹ determines termination of the employment contract while childcare leave.

Article 186² to 186⁷ regulate other rights of worker who is entitled to childcare leave. . Persons returning from leave are entitled to occupy a position equivalent to that held previously or another post that meets his or her qualifications. Salary cannot be lower than what it was prior to the leave.

Article n187: A breast-feeding mother on a full-time contract has the right to two breaks to breast-feed her baby during working hours (the length of these break periods depends on number of children to be breast-fed). Workers forfeit this right if they work less than four hours a day.

The Code (art. 188 and 189.) entitles only one of employed parents with children under the age of fourteen to two days of childcare leave per year while preserving their right to remuneration. Although both parents are entitled to take leave, they cannot exercise this right at the same time.

Childcare benefits are financed by the Social Insurance Institution and paid on the request of the employee. In practice, protective guarantees of women's work are often illusory. Frequently, employers denounce employment contracts within a short time after an employee returns from childcare leave.

Labour legislation allows for 'substitute' employees.

Compliance Situation

The weak point of the Labour Code is the lack of sanctions for indirect discrimination, and lack of monitoring mechanisms for enforcing the rules aimed at implementation of equal

treatment of women and men and equal pay. Although in Poland, there were Office of Government Plenipotentiary for Equal Status of Women and Men established, it has not enough power to monitor policies concerning counteracting discriminations based on race, ethnic origin, religion or belief, age and sexual orientation¹⁶

Due to the high unemployment rate and increasing fears of dismissal, more and more women do not make use of their entitlement to care for their children personally. In practice, many pregnant women are on a sick leave during pregnancy. Interviewed management and trade unions representatives explained, "The young women have poor health".

In practice, breast-feeding mothers rarely make use of the right to two breaks, to breast-feed her baby during working hours, as they live far from their workplaces and very few companies provide childcare facilities.

Big issues are:

- Harassment, women are often in too weak positions to go to court and, moreover, there is no adequate practice for harassment cases developed. It is also the problem of education and awareness of the judges¹⁷.
- Discrimination in hiring (starting at the level of advertisements – Polish is a gendered language – even if it is forbidden; women that may become pregnant, elderly women.

Another problem in the industry is forced holiday. (The production team has to take the holiday at the same time; the management off production peaks defines holiday period. These periods do not correspond with the women workers obligations to care for children, in particular in the summer when schools and day care centres are closed for holiday).

Poland adopted all EU directives concerning labour law. The question is only inadequate adoption and non-understanding for EU law's spirit.

4.3 No exploitation of Child Labour

Laws and regulations

Poland has ratified the Convention on the Rights of Children. Article 65 (3) of the Polish Constitution lays down:

The permanent employment of children under 16 years of age shall be forbidden. The types and nature of admissible employments shall be specified by statute.

Article 72 of the Polish Constitution lays down:

1. The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense.
2. A child deprived of parental care shall have the right to care and assistance provided by public authorities.
3. Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child.
4. The competence and procedure for appointment of the Commissioner for Children's

¹⁶ As it is described in the Council of Ministers Regulation of 25 June 2002 on Government Plenipotentiary for Equal Status of Women and Men.

¹⁷ Last time there was a case of woman employed in self-government office. She was sexually harassed by her boss. She was touched her internal parts of legs, she was kissed in the neck and more. Regional court has not recognized it as a sexual act and said there is no breach of dignity.

Rights shall be specified by statute.

Chapter 9 of the Labour Code determines conditions for young people employment.

Ordinance of the Council of Ministers of 1 December 1990 on the list of jobs prohibited to juveniles (Dziennik Ustaw No. 85, Text 500 with amendments). Under article 190 of the Labour Code – a juvenile is a person who has attained the age of 15 years and has not yet attained the age of 18 years. Employment of a person of less than 15 years of age is prohibited. Under the mentioned Ordinance it is prohibited to employ juveniles in jobs enumerated in the list of jobs prohibited to juveniles, annexed to this Ordinance. The Ordinance allows for employment of juveniles above 16 years of age in certain kinds of prohibited jobs, under principles laid down in the annex to the Ordinance, if it is necessary for their vocational preparation and if these jobs are covered by curricula of practical occupational training.

Employment of juveniles in such jobs should not have the character of permanent work; it should be limited only to getting them acquainted with basic activities, necessary for work performance;

Compliance Situation

As regards exploitation of children, then usually work at family farm is taken into consideration. Because of the fact that agriculture is very extensive, children labour is very important as regards its economic value – it benefits for the family income. It is said in the report on implementation in the Republic of Poland of the Convention on the Rights of Children 1993-1998¹⁸ that “children from the rural area are overworked and, in spite of some benefits, in general, it (over-work) affects their development, including physical development and health status”.

Young people’s under-paid work is used by craftsmen to make profits of it. There were some attempts to change the situation, but at the Parliament it turned out that craftsmen lobby is very strong and actually whole craftsmen sector is based on the exploitation of the young people work which is called “professional training”.

4.4 Freedom of Association and Right to Collective Bargaining

Laws and regulations

Poland has ratified ILO Conventions 87, 98, 135 and 143. Provisions related to the matters included into these conventions are included in the Labour Code (ban on discrimination because of trade unions’ membership – Section I, Chapter IIa), act of 23 May 1991 (as subsequently amended) on trade unions, the Act of 23 May 1991 (as subsequently amended) on governing the resolution of collective bargaining disputes. The only amendment which is quite significant is the amendment of the Article 5 of the Act which shall be read as follows: “The employer within the meaning of the act shall be the operator as described in the Article 3 of the Labour Code”.

As regards act of 23 May 1991 (as subsequently amended) on trade unions, it has been uniformed in 2001, and to that moment Articles 34 and 35 was amended, as well as Article 34¹ was added. They concern over-enterprise level trade unions’ units. Article 35 lays down sanctions for breach of trade unions’ freedoms.

Article 21 § 2 of the Act on trade unions states:

In the labour sectors not covered by collective bargaining agreements, consulting the trade

¹⁸ “Sprawozdanie dotyczące realizacji w Rzeczypospolitej Polskiej Konwencji o Prawach Dziecka w latach 1993-1998” at http://www.brpd.gov.pl/sprawozdania_fr_html.html.

unions is a pre- requisite for regulating working conditions and wages.

Article 26 and Article 27 of this act state:

The scope of activities of the plant trade union organization includes in particular:

- 1) Taking a position on individual employee affairs to the extent regulated in the provisions of the Labour Law.
- 2) Taking a position vis-à-vis the employer and the worker self government body at the workplace on matters concerning the collective interests and rights of employees.
- 3) Monitoring the adherence to labour law provisions at the workplace, and in particular the adherence to the provisions and principles of hygiene and safety of labour.
- 4) Directing the activities of the social inspectorate of labour and cooperating with the state inspectorate of labour.
- 5) Attending to the living conditions of pensioners and annuitants.

Article 27 § states:

The plants remuneration system (principles) and the associated rules for granting awards and bonuses are determined and revised in cooperation with the plant trade union organization.

Kloc: 'The regulations defining the principles of representativeness do not impose an obligatory criterion concerning the minimum level of unionisation, at either supra-enterprise or company level. At supra-enterprise level, this criterion (500,000 employees overall, or 10 per cent of the total number of employees covered by the statute, but not less than 10,000 employees) is applicable only when there is just one active trade union at a given level of employee organisation. If there are many trade unions, a representative trade union organisation at the supra-enterprise level is the one which has the largest number of members.

At company level, a representative trade union organisation is also the organisation associating the largest number of employees, unless it is part of a representative supra-enterprise trade union organisation with at least 7 per cent of employees hired by a given employer. If it is not a member organisation or an organizational unit of a supra-enterprise trade union organisation, it must have a membership of at least 10 per cent of the employees.'

The representativeness criteria favour trade union pluralism: where many trade unions are involved, the rule of ordinary majority is applicable. They also facilitate the operation of company-level trade union organisations which belong to supra-enterprise structures.

In 2002, there was Article 26¹ added concerning the rights of trade unions in the case of change of employer. In the same year there was a change concerning representativity of the trade unions in view of participation in the Tripartite Commission

In 2003, there was Article 25¹ added concerning rights of the enterprise level trade unions organization. Moreover, Article 32 was change due to the judgment of the Supreme Court on the protection against termination of employment contract with the members of trade unions organization's Revision Commission.

Tripartite Commission is basic instrument of social dialogue in Poland. From the employee's side only representative trade unions are allowed to participate in the works of the Commission. Works of the Commission is regulated by act of 6 July 2001 on Tripartite Commission for Economic and Social Issues and voivodship commissions of social dialogue. Commission is competent to negotiate in the questions of remunerations and social benefits. It is also authorized to participate in works on draft budget and to be involved in other important social and economical issues. On the basis of certain acts, it is authorized to fix maximum annual benchmark of average monthly remuneration increase, to assess quarterly that increase, to request from employers to take into account their assessment, to fix average annual amount of remuneration increase benchmarks within the State budgetary sphere. It is also negotiate

on the amount of minimum remuneration for work.

Article 17 of the act regulates that the voivodship commission of the social dialogue gives an opinion on issues falling within the scope of activities of trade unions and employers' organizations and which at the same time fall within the scope of activities of duties of self-government and government administration. It may decide on cases causing conflicts between two sides of industry. Voivodship commissions are engaged into protection of employees' rights, establishing profitable life and work conditions as well as protection of rights of employers towards trade unions and public administration, labour market issues and economic policy.

There is also branch tripartite unit for light industry. It has been working from 1999 on the basis of contract between two sides of industry. It has 12 members. They are involved in monitoring of "Strategy for Light Industry for 2000-2005".

Compliance Situation

Employers are often hostile towards the unions. Solidarnosc mentions in its newsletter many cases of intimidation and harassment of workers due to trade union activities. One example: The Labour Court in Elblag issued a sentence positive for the seamstresses from HETMAN Company. The court decided that the manager violated the law with his decision of "disciplinary" mass lay-off due to organising a trade union in the company. The workers are to be paid three-month wages as reparation of damages. After almost a year of court trials, the sentence ordered the employer to restore them to their work and to pay due remuneration.

The company was prospering, but wages were paid with delays. The workers did not protest being afraid of losing jobs, the unemployment in the region is high. Employer seemed to be untouchable. Establishing of trade union consolidated the workers.

In Poland, one of the problems is also weakness of trade unions and its tendency to confront rather than to concertate. The weakness of employers' organisation is based on their not sufficient representativity on the regional and local level as well as still present approach on the power of capital.

4.5 Payment of a Living Wage

Laws and regulations

Poland did not ratify ILO conventions 26 and 131.

Article 65 (3) of the Polish Constitution lays down: A minimum level of remuneration for work, or the manner of setting its levels shall be specified by statute.

A change of wage legislation which came into force in late 1994: Act of 16 December 1994 on the Negotiation-based System for Setting Average Wage Increases in Enterprises, Act of 23 December 1999 on the Determining Remuneration for Budget Sector Wages. The basic is, however, the act of 10 October 2002 on minimum wage for employment. It states it is annually set up by Tripartite Commission, which take into consideration some economic and social factors to set up this wage. In some way, it depends on the level of increase of prices factors. If it is presumed to go beyond 105 % of the basic amount, then the amount of minimum wage is revised twice a year, if it is presumed not to exceed 105 %, then only once. From 1 January 2004, this minimum wage is 824 PLN. Till the end of 2005 remuneration of employee during first two years of employment cannot be less than 80% in the first year of employment and less than 90% in the second. In the case of payment of less than minimum wage in certain month due to patterns of work and dates of payment of certain elements of remuneration, employee is entitled to compensation. If worker is part-time employee, he/she

is entitled remuneration calculated proportionally.

Category of minimum wage is widely used in legal system of Poland.

Article 77¹ of the Labour Code states that remuneration conditions and granting of other benefits related to work are determined by collective agreements due to Section XI. Article 77² states in § 1 that employer employing at least 20 employees not covered by a collective agreement nor by over-enterprise collective agreement falling within the scope of § 3 sets up wage conditions in the wage regulation. There might be other benefits laid down. This regulation is in force until employees are covered by collective agreements or over-enterprise collective agreement. Employer lays down this regulation, however, if he has any trade union organization, employer must achieve agreement with trade union. Collective agreements must be posted on the notice board in the factory.

The Council of Ministers has proposed the minimum salary increase since 1 January 2004 from PLN 800 to PLN 817.60. It means 2.2% growth, which corresponds to the growth rate of consumer goods and services forecasted for the next year. In a situation of proposed wages' growth in industry by 3.2% and in the budgetary sphere by 3%, the stagnation of the minimum salary growth will result in increasing material gap between various groups of the population. This concerns in particular 58% of families, which live below the minimum of existence as well as graduates who start their first job and receive 80% and 90% of minimum salary. The OPZZ argues for an increase in the dynamics of minimum salary growth in Poland ('the amount is now too low').

Compliance Situation

In September 2003 average gross monthly wages in the corporate sector amounted to PLN 2662,21 /EUR 557 . In September 2003, the average gross monthly salary wage was EUR 447. The average household shopping budget in Poland is: food 40%, home maintenance 26%, clothing, shoes and toys 7%, health 6%, cosmetics 5%, and education and insurance 2.5%.

The average gross wage for plant and machine operators and assemblers in October 2001 was 2044 PLN for men and 1660 for women (KARAT 2003). For elementary professions it was 1443 and 1221 respectively.

The salary package for highly qualified senior professionals does not differ much from West European level, a reflection of the limited recruitment pool of experienced managers. However, blue-collar workers and the teaching and medical professions are particularly poorly paid, although wages in general are gradually rising.

The issues of adequate income are very pertinent due to the rise of persistent poverty and structural unemployment in Poland. In 2001, 57 % of households lived below social minimum. In the first quarter of 2004 unemployment reached 20,6 %.

Poverty was experienced already by some social groups (eg. pensioners, single mothers, households with more than 2 children, rural small holders) in the socialist state. The economic collapse of early years of transition to market economy led to deep dive into poverty for larger social groups. Since 1993 economic growth restarted, and in a few years surpassed the level of 1989. For the last 8 years Polish economy, as measured with GDP has been continuously growing, and for instance industrial production is now at 160 % of 1993. However, this has not been translated into substantial reductions of poverty. Since 1997 poverty as well as unemployment are again on the increase. In the same period income inequalities have further increased. (Kabaj, 2000, Borkowska, 1999, World Bank, 2000, 2001, Cichomski et al 2001

In addition to minimum wage, there are several ways of calculating poverty. Poverty lines used in Poland are (1) absolute poverty (biological survival, more or less an equivalent of the World Bank's 2 \$ PPP per day), (2) legislated poverty whereby the calculations include the biological minimum as well as the minimum costs of participating in society, such as transport to be able to go to work or to health care centres, (3) relative poverty (50 % of monthly expenditures of an average household), (4) subjective poverty as defined by households.(5). In addition to these calculations the Institute of Labour and Social Problems (IPISS) is calculating social minimum – an income required to participate in society and to meet basic needs (minimum living costs basket).

Wage agreements are concluded at the level of the factory. Important issues for garment workers are:

1. Norms of work

Very high production quotas and a very intense pace of work. Every time the management of a company changes, the new management sets higher norms. In the past there were norming department in every company, but now managers just set them. The Labour Inspectorate does not play a role in this respect. This results in forced OT because people cannot reach these norms in normal working time. It undermines the legal system of min. wages. In case of severe violations the union might intervene. This happens mostly in companies without unions, like most small companies. In most (company level) CBA's both the norms and the pay will be set.

2. Late payment of work.

This problem is increasing and it now also happens in companies that have the money to pay, and the government fails to do anything against it.

In 2002 almost 70% of companies inspected by the National Labour Inspection had delays in wage payments. Despite of many institutions guarding the procedures, e.g. the National Labour Inspection or Council of Labour Protection, they are unable to control more than one percent of companies annually. In many cases the employers put payment of wages in the end of their payment lists. Employers often use wages funds for investments or even private funds, and workers must involuntarily credit the company. Even the fines put on dishonest employers are ridiculously low according to Solidarity.

4.6 No Excessive Working Hours

Laws and regulations

Poland did not ratify ILO Convention no 1.

Poland's Labour Code is almost partially aligned with the *acquis* on labour law.

November 2003's amendment has entered to Polish legislation some definitions corresponding to the Directive 2003/88 (codifying Directives 93/104 and 2000/34) on certain aspect of organization of working time. There is new Section VI of the Labour Code added extremely changing working time provisions, leaves, breaks, overtime, night work an more. These provisions are adjusted to Working Time Directive.

The Labour Code defines working time as the time during which the worker is at the disposal of employer at establishment or in other place specified for this reason. Hence, working time not only means the actual time during which work was performed, but also the time of readiness for work and breaks in work (art. 128).

Setting up of other overtime is admissible in the collective agreements or in the employment contract (Article 151 § 4).

Working hours are 8 hours a day and average 40 per average 5-days week with 4 months reference period. Overtime may not exceed 150 hours per calendar year. Holidays vary but on average range from 20 to 26 working days a year.

Additional payment required for overtime work is 100 per cent for night work, Sundays and holidays not constituting working days for worker and for the day given for work on Sunday or holidays not constituting working days for worker, and 50 for any other period.

Evidence for working time should be provided by employer for adequate calculation of employee's remuneration and granted benefits. This evidence must be presented to employee for his/her request.

Labour Code determines also night work.

Compliance Situation

It is wide-spread opinion that almost none of employers do respect provisions on overtime. Or does not provide right evidence of working time. In majority enterprises this regulations are surely breached, even in public sector.

In garment companies workers may sometime work 12-14 hours because of bad coordination between orders and production.

4.7 Health and Safety

Laws and regulations

Poland did not ratify ILO convention no 155.

Part of provisions concerning safety and hygiene at work will enter into force on 1 May 2004. However, from 1 January 2004, employer must not only inform on professional risk, but also assess and evidence professional risk related to performed work, as well as apply necessary prophylactic measures (Article 226 point 1 of the Labour Code). Also provisions on the services of safety and hygiene at work has been specified (Article 237¹¹ of the Labour Code). Moreover, consultation and employees' participation were improved as concerns safety and health protection during work (Section X, Chapter XI)

In the area of health and safety at work, legislative shortcomings persist with regard to the Framework Directive as well as to a number of specific directives: carcinogens, biological and chemical agents at work, asbestos and noise, and others for which transposition is only partial. As well as these provisions are now adopted into Polish Labour Code, as well as they will be in force after 1 May 2004. Poland has obtained a transitional period relating to the use of work equipment by workers until the end of 2005.

However, there are over 100 laws on H&S, there is no specific legislation concerning garment industry.

Also the CBA may contain rules on H&S.

See annex 3 for more details.

Compliance Situation

According to some there is still a strong tradition of protecting safety for workers. Fines for

working accidents to be paid by employers may be very high. Others point out that H&S is threatened by cut savings and high norms. The bad condition of machines, the lack of spare parts (even needles) and repair tools and basic things like soap at toilets is mentioned. Workers have to bring their own spares, like needles. So a 'broken needle policy' is not possible under such circumstances.

According to Solidarnosc, indirectly, change of the definition of an accident at work or flexibilisation of working time and possibility of unilateral termination of a collective agreement influence safety at work. The National Labour Inspectorate is in place, but further strengthening, in terms of both staffing and technical facilities, is needed. There is also a need for enhanced cooperation between the Labour Inspectorate and the authorities responsible for health and safety at work issues in order to assure that risk assessments are done in a comprehensive way. Furthermore, tripartite consultations on health and safety at work issues should be reinforced.

Solidarnosc newsletter no 4, April 2003: More and more often employers attempt to hide the reasons of accidents and accidents themselves, often trying to convince or threaten workers not to reveal accidents. Employers of small companies often do not conduct risk evaluation in the workplace.

A problem often noticed is in the ironing and collar section: exposure to emissions from glues and other stiffening substances. According to trade unions reps, these are contained within the occupation health and safety norms; workers crave for jobs at these units because it entitles them to earlier retirement (5 years earlier for work in hazardous conditions).

4.8 Legally Binding Employment Relationship

Laws and regulations

Starting and ending of the employment relation is regulated in Section II of the Labour Code. It determines the nature and conditions of work,

It also determines that inadmissible is if contract fulfills requirements of employment contract and is called in different way. Labour Code provides for those cases that then in fact it is an employment contract.

Employer may ask certain information from the employee, which are described in details in the Labour Code. In addition, there was a regulation issued in 1996 concerning detailed information needed by employer to fulfil requirements for employment of some persons.

Contract must be concluded in writing and should determine nature of work, workplace, and remuneration with its elements included, working time and date of commencement.

Other conditions must be delivered within 7 days from contract being concluded. Change of working nature requires written form.

The termination of employment relation is regulated in the same section and describes all kinds of this act, including termination with notice and without notice and many more.

In companies with over 20 employees where there is no CBA, they must have a staff and remuneration regulation.

Provisions on social security are in the annex 2.

Some ways of termination of the employment relation are also regulated in the act of 13 March 2003 on the Termination of labour relationship for reasons not concerning employees.

If workers are sent home because the employer does not have (enough) work, workers are entitled to 60% of their regular wage. They can also be forced to take up their paid leave.

National Labour Inspectorate and Social Security Institution control implementation of those rules.

Legislation on the protection of personal data, may make a full document inspection for FWF difficult. To check personal files a letter of consent might be required.

Compliance situation

A formal employment relationship should be widespread form of employment, at the same time employment in this way increases costs, what is not profitable for employers.

Because of the high tax burden, many companies especially the small ones are said to be pushed into the 'grey' or 'black' economy.

Several methods are used by employers in the garment industry to avoid hiring persons on the basis of a legal labour contract:

- a. Workers may be hired officially on a half-time contract, but work full time regularly. The other half of the wages are then paid by black wages. All social insurance coverage for workers are then only for this 'half' wage. This also implies pension benefits.
- b. Workers may be hired on the basis of civil contracts. Although they may be working structurally for one employer and inside the factory, they are treated as 'self-employed' thus many obligations concerning OT, holidays, minimum wage, etc. do not apply.
- c. Workers may be employed during a 'test' period and dismissed afterwards.

In the 'grey' and 'black' economy, employers may sometimes not pay wages but pay contribution to social insurance funds, or pay contribution to social insurance funds but not the (full) wages.

5 Partner Network

5.1. National level

Unions:

NSZZ Solidarnosc, Krajowy Sekretariat, Przemysłu Lekkiego (Secretariat of the Light industry). Mieczysław Ślasko, President. Pl. Solidarności 1/3/5
53-661 Wrocław

Federation of Independent Self-Governing Trade Unions of Textile and Clothing Industry, Pl. Zwycięstwa 13 90-047 Łódź, tel. 0-42 674-46-227, fax 0-42 674-45-44

Employers:

The Association of Employers in Light Industry. Chairman Mr. Wiesław Pacholski; E-mail: watina@watina.com.pl

The official and most representative employers organisation in the social dialogue; Mr Wiesław Pacholski, ceo of Watina in Leczyca near Łódź.

Polish Federation of Apparel & Textiles (Polska Izba Odzieżowo-Tekstylna)
ul. Kielecka 7, 81-303 Gdynia, Poland, Mr. Jerzy Garczynski secretary.
tel/phone: +48 58 6209501, fax. +48 58 6216923, e-mail: piot.gdynia@textiles.pl
www.textiles.pl.

Polish Federation of Apparel & Textiles - is a non-profit, independent, and self-governed organisation uniting many dozens of companies which are major manufacturers of apparel and textiles; among members there are also trade enterprises, scientific and research organisations, universities and associations of more specific character, like for instance the Polish Association of Underwear and Lingerie.

The organization sees itself as 'the most recognizable representation of the interests of our members before governmental and parliamentary authorities which is our fundamental objective.'

'The Federation actively participates in the economic life of our country by submitting to the state authorities and parliamentary commissions problems reported by apparel and textile industry and suggestions how to solve them; by pronouncing opinions on the draft acts, by pleading with the government of the Polish Republic and central authorities for the industry with regard to all reported issues and specially economic policies affecting our members.'

The Federation represents Polish textile and clothing industry in the European Apparel and Textile Organisation - Euratex, as well as in INTERLAINE and IAF.

The predecessor of this federation was the Gdynia Wool Federation, an organization of international character for testing of wool and textile products. In the 1980ties the trade system of greasy wool was changed. Raw wool started to be delivered with test certificates done at producers, therefore the lab testing activities were limited and the organization has developed into a Federation of apparel and textile companies keeping its historical name Gdynia Wool Federation up till 2001

It was one of the few in the world to perform core-test services for many years, so it has always had strong international links. That is also the reason the Federation represents Polish industry in international organisations. Other employers and business associations in Poland lack the people with language skills. They may be member of this Polish Federation of Apparel & Textiles, like the underwear and the knitting associations. The presidents of these associations are VP in the Federation, just like Mr. Pacholski of the newly created Association of Employers in Light Industry. Mr. Garczynski confirms that this is the official and most representative association although the knitting association might be more interested in our work.

It is also participating in the national social dialogue tri-partite body for light industry, as a kind of expert.

Gdynia Cotton Association
Izba Bawelny w Gdyni
ul. Derdowskiego 7, 81-369 Gdynia
tel.: 00 48 58 6207598
fax: 00 48 58 6207597

2.2. Lodz region

Polish Chamber of Fashion

Krajowa Izba Mody
ul. Piotrkowska 282a, Lodz
tel.: 00 48 42 6832140, 6832141
fax: 00 48 42 6832144
e-mail: kim@moda.com.pl

Textile Polish Chamber of Textile Industry

Polska Izba Przemysłu Tekstylnego
ul. R. Traugutta 25, pok. 110, 90-950 Lodz
tel.: 00 48 42 6323615, 6323652
fax: 00 48 42 6361638

Textile Institute Lodz: prof. (mrs.) Latkowska, mainly active in the past with product testing and ISO standards, no activities reported since one year.

Association of Employers in Light Industry:

NGO

Womens Right Center branch office Lodz
Agata Zakrewska, director (48 42 6333411)

The WRC has no relation with companies but wants to establish these. No work with factory workers: main items: sexual violence, rights of women at the labour market (they have produced a useful small booklet on this)

5.1 Associations in Poznań and Wielkopolska Region

Chambers and Employers Organisations

Wielkopolska Izba Przemysłowo-Handlowa
(Chamber of Commerce and Industry of Wielkopolska Region)
Ul. Głogowska 26, Poznań
Tel. 061 8661728

www.wip-h.poznan.pl

Director Mr. Piotr Wroński (tel. 061 8664154)

Aims and activities: Chamber gathers enterprises from different branches of trade and industry in the Region. Performs certain functions of an employers' organisation. It has several (big) members in apparel production and trade and can be considered as a more of a "classical" employers' organisation and even enjoys such a status officially. It seems to be the most established as far as office/staff is concerned. It is always staffed with several people.

Wielkopolska Izba Krawców

(Chamber of Tailors of Wielkopolska Region)
Ul. Śniadeckich 23, Poznań
Tel. 865 80 59

The Chamber has among its members both individual tailors AND employers in apparel production industry of the Region.
This one is more of a 'guild'.

Polska Izba Gospodarcza Importerów, Eksporterów i Kooperacji
(Polish Chamber of Importers, Exporters and Cooperation)
Ul. Św. Marcin 80/82
61-809 Poznań
Tel. 061 8517848, 49
piגיעik@optimus.poznan.pl
www.pcc.org.pl

It has some 30 member enterprises in clothing industry. Mainly focused on export support.

Business Centre Club
Wielkopolska branch
Tel. 0501 785683
www.bbc.org.pl/struktura_loze_regionalne_poznan.htm
lisewska@bcc.org.pl
Employers organisation

Women Organisations and Self-support groups

Kobiety Kobietom
(Women for Women)
ul. Mickiewicza 3/5
60-833 Poznań
tel. 8484993
cdz@cdz.org.pl

Contact person: Małgorzata Pater
Activities and aims: self-support for women, equality for women in social and political life of the city and of the Region. Support for women who lost their jobs and/or are interested in involvement in public life.

Fundacja Pomocy Wzajemnej "Barka"
Foundation for Mutual Help „Barka”
Ul. Św. Wincentego 6/9, 60-123 Poznań
Tel. 061 877 22 65

Activities and aims: support and self-support for homeless women, men and families. Provision of shelter and vocational training for homeless. The Foundation runs its own shelters.

Hotel-Schronisko "Pro-Vita" (Fundacja Pomocy Samotnej Matce "Pro Vita")
Hotel-Shelter "Pro-Vita" (Foundation for Support to Single Mothers "Pro Vita")
Ul. Botaniczna 2
60-584 Poznań
Tel. 061 8475937
Email: hotschron@kki.net.pl

Contact person: Mrs Bożena Kielbasinska
Aims and activities: Shelter for homeless women with children. Information and advisory activities for women in situations of domestic violence, divorce, loss of employment.



Victoria Stowarzyszenie Obrony przed Przemocą
Victoria Association for Defence against Violence
<http://free.ngo.pl/victoria>
Tel. 061 8797328

Contact person: Mrs Urszula Wolas

Aims and activities: Self-support and support for victims of violence (both men and women); creating networks of help; free time and leisure activities.

Stowarzyszenie Pomocy w Problemach Życiowych, Rodzinny Klub Środowiskowy i Świetlica
"Nasza Chata"

Association of Help in Life Problems, Family Club "Our Cottage"

Ul. Żupańskiego 14/10

Tel. 061 8353726, 8329477

Email: problemy@free.ngo.pl

Trade Unions

Zarząd Regionu Wielkopolska NSZZ "Solidarność"

(Board of the Wielkopolska Region of NSZZ "Solidarność")

ul. Zamkowa 1/2

60-768 Poznań

Tel. Centrala: 061 85-30-860, Sekretariat: 061 85-30-963

E-mail: sekretariat@solidarnosc.com.pl ; region@solidarnosc.com.pl

www.solidarnosc.com.pl

Regionalna Sekcja Kobiet NSZZ "Solidarność"

Regional Section of Women NSZZ "Solidarność"

Chair: Mrs Krystyna Stachowiak

Wielkopolska Komisja Koordynacyjna Zakładów Pracy Chronionej i Osób Niepełnosprawnych NSZZ "Solidarność"

Coordinating Committee of Protected Labour Enterprises and Disabled Persons of NSZZ
"Solidarność" in Wielkopolska

61-769 Poznań, ul. Kramarska 17, tel. 061 85-324-27

Chair: Mrs Regina Krawczyk

Other

Wielkopolskie Centrum Informacji i Wspomagania Organizacji Pozarządowych (WCIWOP)
(Center of Information and Support for Nongovernmental Organisations in Wielkopolska)

Ul. Skryta 14/1, 60-779 Poznań

Te. 061 6611071, 6611078

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www.wciwop.org.pl

6 Annexes

6.1 Annex 1. Poland: Statistical and Other Data

1 PLN = 4,90 EUR (per 23 February, 2004, National Bank of Poland)

Administrative structure in Poland:

Voivodship (województwo) – province, (regional self-government, but also governmental authorities)

Powiat (powiat) – (multi-county/municipality unit)

County/City (gmina/miasto) – municipality (local government)

Unemployment rate in Poland, January, 2004: 20,6 %, including 41 % of youth in the age group 15 – 24 years

Total number of registered unemployed: 3 073 000 (3rd quarter of 2003)

Registered unemployed without entitlement to unemployment benefits, 3rd quarter of 2003: 85,5 %

Average gross remuneration as for 4th quarter of 2003: 2276,84 PLN

Average gross remuneration in the industry sector as for 4th quarter of 2003: 2662,21 PLN

Minimum wage in 2004 - 824 PLN (gross), about 527 PLN (net)

Unemployment allowance in 2004 – 503,20 PLN (gross)

Net wage is 64 % gross wage.

Amount of social minimum in workers' households (September 2003): 789,1

Population below social minimum 2001 – 57%

Population below absolute poverty line – 9,5 %

The amount of social minimum in workers' households in September 2003 in PLN.

Type of household	Number of persons	Symbol	Social minimum	Social minimum per capita
Workers'	1-person'	M+F/2	789,1	789,1
Workers'	2- persons'	M+ F	1 287,7	643,8
Workers'	3- persons'	M+ F +YC	1 805,0	601,7
Workers'	3- persons'	M+ F +OC	1 863,1	621,0
Workers'	4- persons'	M+ F + YC + OC	2 319,0	579,7
Workers'	5- persons'	M+ F + YC +2x OC	2 850,8	570,2
Pensioners'	1- person'	M+ F /2	729,4	729,4

Pensioners'	2- persons'	M+ F	1 169,2	584,6
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Source: IPISS on the basis of CSO data.

Note: M – male at age 25-60, F – female at age 25-60, M+F/2 – spendings at average arithmetic level for household of male and female, YC – younger child at age 4-6, OC – older child at age 13-15.

6.2 Annex 2: System of Family allowances and Social security system

Currently, family allowance is:

- 42,50 PLN – for first and second child and for a spouse,
- 52,60 PLN – for third child,
- 65,70 PLN – for fourth and each next child.

Childcare allowance is vested in persons (mother or father of a child), who are entitled to parental leave, so have an employee status, if they fulfil criteria, given in the act, concerning an amount of the family income (25% of average salary, and during period from June 2002 till December 2003; periodically, the income criterion is 548 PLN per person). Allowance may be granted during 24- or 36-months period (in the case of plural delivery and in the case of bringing up child alone) or during 72-months period (in the case of disabled child).

Amount of childcare allowance is:

318,10 PLN – for married person, 505,80 PLN – for person, who is bringing up child alone or for person who is bringing third and each next child.

Irrespective of childcare allowance, for each person benefiting child rearing leave, contribution for pension insurance is paid.

Benefit of the Alimony Fund – is granted for persons, who have entitlement to alimony, decided by court, but its execution from the person obliged is completely or partially ineffective; simultaneous requirement is that family income do not exceed amount laid down in the act (equal to 60% of average salary, and in period from 1 June 2002 till 31 December 2003 – if family income per person do not exceed the amount of 612 PLN).

Benefits from the Alimony Fund are paid mostly for children until 18, and if there is no possibility of independent maintenance – after they come of full age until completion of education.

Bodies responsible for execution of family benefits in Poland for workers and self-employed persons except for farmers,

- (i) *Employers obliged to pay benefits (employing at least five employees)*
- (ii) *Local organizational units of the Social Insurance Institution, appropriate to the nature of registered office of the employer of the insured person/self-employed person.*

New provisions accepted by the parliament

New system provides two categories of family benefits: family allowance and attendance allowance.

Family allowance and supplements to family allowance will be vested in average net family income monthly (after tax and social security and health insurance contributions deduction) per person do not exceed the amount of 504 PLN or – in the case of family with disabled child – 583 PLN.

Family benefit will be vested in parents, one of parents or guardian of the child, real guardian, person of full age, studying, not dependent on parents because of their deaths or court decision on alimony for this person until:

- child is 18 or,
- completion of education at school, however, not longer than until 21, or
- until 24, where child continues education at school or university and presents a decision on severe or moderate invalidity.

The amount of the family allowance will be monthly:

- 44 PLN for child under 5;
- 56 PLN for a child over 5 and until 18;
- 65 PLN for a child over 18 until 24.

There are seven types of proposed supplements to family allowance (receiving of the supplements payable on the several grounds):

1. **Child delivery** - one-off supplement in the amount of 500 PLN per child.
2. **Childcare during child rearing leave** – it is provided that staying in the employment will be required directly before the leave at least for 6 months. Supplement will be vested in for 24 calendar months, 36 calendar months – if mother or father of a child, guardian or real guardian is taking care for more than one child born during one delivery, 72 calendar months, if such person is taking care for child presenting decision on invalidity or on severe invalidity. Planned amount of this supplement is 400 PLN monthly.
3. **Bringing up child alone and loss of eligibility to unemployment benefit as a result of expiry of the statutory time limit for its reception** – will be vested in, during the period of 3 years, however, not longer than until child is 7, mother or father of a child, guardian or real guardian, if child stays under her/his real custody. Supplement will be granted in the amount of 400 PLN monthly.
4. **Bringing up child alone** – it is provided that this supplement is vested in mother or father of a child, guardian or real guardian of child, person at full age, studying, not dependent on parents because of their deaths or court decision on alimony, in the amount of 170 PLN per child, however, not more than 510 PLN monthly per family, and in the case of bringing up a disabled child – 250 PLN, however, not more than 750 PLN per family.
5. **Training and rehabilitation of disabled child** – vested in mother or father of a child, guardian or real guardian of child, person at full age, studying, for covering increased spending on rehabilitation and education of a child until 16, if child presents decision on invalidity or between 16 and 24, if child presents a decision on severe or moderate invalidity. Supplement will be granted in the amount of 50 PLN per child until child is 5 or 70 PLN per child between 5 and 24.
6. **Commencement of a school year** – will be vested in mother or father of a child, guardian or real guardian of child, person studying, for partial covering of the costs related to commencement of a new school year. Supplement will be paid one-off yearly,

in September, in the amount of 90 PLN per child.

7. **Child education out of the place of residence** - vested in mother or father of a child, guardian or real guardian of child, person at full age, studying for partial covering of the costs related to provide possibility of accommodation of a child in the place where school is established. Supplement will be granted for 10 months during a school year, from September until June of the next calendar year. The amount of this supplement will be equal to 80 PLN per child.

Attendance allowance in the new system will not be changed.

The conditions governing allocation of any unemployment benefits

Tasks of the State concerning alleviation of the results of unemployment, employment and professional activation of unemployed persons and other job-seekers are provided for in Act of 14 December 1994 on employment and counteracting unemployment (OJ 2003, No 58, item 514 as amended subsequently).

In accordance to Article 23 of abovementioned act, entitlement to unemployment benefit is vested in unemployed person after 7 days from the date of registration in poviat employment office, if:

- 1) there is no proposal of sufficient employment, delegation to intervention works, public works or established additional place of employment, and
- 2) during 18 months preceding the date of the registration, during the period of total 365 days unemployed person:
 - a) was employed,
 - b) pursued employment on the basis of homework contract,
 - c) pursued employment on the basis of agency contract or mandate contract or person was cooperating in completing this type of contract,

Moreover, the person was paid a remuneration of the amount of at least minimum salary,

- d) was subject to social insurance or old-age provisions for non-farmer activity,
- e) fulfilled other criteria, indicated in this provision.

The amount of benefit is 503,20 PLN (as on 1 October 2003). Benefits are paid monthly at the end of the period.

If employment periods (other activity), called 'period entitling to benefit', as described in point 1.2, are less than 5 years, an unemployment benefit of 80% is granted.

If 'period entitling to benefit' is at least 20 years, an unemployment benefit of 120% is granted.

Retirement pension and pension insurance. Those insurances may be obligatory or voluntary.

Obligatory retirement pension and pension insurances include:

- **Employees**, excluding prosecutors, from the date of conclusion of employment relation till termination of this relation, and persons, which during this period pursues activity on the basis of agency contract, mandate contract or other contract to pursue services, which are covered by provisions of Civil Code concerning mandate, or contract to perform a specified task or work, if they conclude such a contract with their employer, or if in the framework of such contract they perform work for their. Persons fulfilling criteria described for cooperating persons are not subject to obligation to be insured as employees.

Social insurance contributions

Interest rates of the contributions are equal for all insured persons and are equal to:

- 19,52% of the basis of calculation – for retirement pension insurance,
- 13,00% of the basis of calculation – for pension insurance,
- 2,45% of the basis of calculation – for sickness insurance,
- 0,97% to 3,86% of the basis of calculation for 2003 year – for accident insurance,
- 8% of the basis of calculation – for health insurance.

7,3% of the basis of calculation of the insured person's contribution, paid for retirement pension insurance, is directed to open pension fund.

Obligation to direct contribution to the open pension fund concerns those born after 31 December 1968. Those persons are obliged to join opted open pension fund during 7 days following the date of formation of the social security obligation. Non-conclusion of the contract with open pension fund during 7 days following the date of formation of the social security obligation, cause that ZUS urges insured person to conclude a contract with open pension fund until 10 January. Where information was received less than 30 days before that date, this time limit is postponed for 10 January of the next calendar year. Non-conclusion of the contract within this time limit will cause ZUS indicates open pension fund by way of drawing.

Right to join open pension fund had also persons born after 31 December 1948 and before 1 January 1969. Those persons, on their own request, until 31 December 1999 join to opted open pension fund. This time limit was considered as maintained when, in 1999, person was not subject to social security obligation, and joined open pension fund during 6 months from formation of the insurance obligation after 31 December 1999 and on the date of formation of the obligation was less than 50. Joining the open pension fund was of irrevocable nature.

Obligation and right to join open pension fund do not concern persons born before 1 January 1949. Total amount of retirement pension contribution of those persons and persons who did not join open pension fund voluntary is directed to Social Insurance Fund.

Social insurance contributions payers

Social insurance contributions payers are:

- employer – for employees, and from 2001 also for employees during child rearing leave

or are granted maternal allowance, except for persons who are paid child rearing or maternal allowance by ZUS,

- organizational unit or natural person binded by legal relation with natural person adjusting covering of this person by social insurance (mandator to mandatory), and from June 2001 also for persons on child rearing leave or granted with maternal allowance, except for persons who are paid child rearing or maternal allowance by ZUS,
- unit paying social benefits and social allowances for persons granted social benefits, paid during leave or social allowance recipients paid during professional retraining and seeking for a new job,
- insured is obliged to pay contributions for own social insurance (person pursuing non-farmer activity),
- ZUS for persons subject to social insurance by virtue of staying on a child rearing leave or maternal allowance or allowance paid in the amount of maternity allowance, if those are paid by ZUS,

Financing of the contributions

Retirement pension and pension insurance contribution:

- employees,
- persons pursuing homework,
- co-operatives members,
- mandatories,

financed from own resources of insured persons and contribution payers, in equal parts, an amount of 9,76% for retirement pension insurance and 6,50% for pension insurance.

Sickness insurance contributions:

- employees,
- persons pursuing homework,
- cooperatives' members,
- mandatories,
- persons cooperating with mandatories,
- persons pursuing gainful activity on the basis of direction to work, during serving of a sentence of deprivation of freedom or temporary arrest, insured persons pay total, 2,45%, from own resources.

Accident insurance contribution:

- employees,

- cooperatives' members,
- mandatories and persons cooperating with mandatories,
- persons pursuing non-farmer activity and cooperating persons.

Payers pay total contribution (0,97% - 3,86%) from own resources.

Social insurance contributions for other insured persons:

- persons pursuing non-farmer activity pay their total of social insurance contributions from own resources,
- social insurance contributions cooperating persons are paid from own resources by persons pursuing non-farmer activity,
- pension insurance is paid in equal parts by insured and payer,
- sickness insurance is paid by insured,
- accident insurance is paid by payer,
- for disabled persons employed in sheltered workshop or professional activation company contributions:
- for retirement pension insurance is paid in equal part (in part due to payer) and PFRON (in part due to insured person),
- pension insurance is paid in equal parts by insured and State budget (in part due to payer),
- sickness insurance is paid by PFRON,
- accident insurance is paid by PFRON.

Limitations related to the basis of contribution calculation

Annual basis of retirement pension and retirement insurance contribution calculation in certain calendar year may not exceed the amount equal to thirty times increased prognosed average monthly salary in national economy for certain calendar year, as specified in the budgetary act, budget provisory act or their drafts, if relevant acts were not adopted. Failing that, average monthly salary for third quarter of the previous year is applied to establish average prognosed monthly salary in the national economy.

In 2003 amount of annual limitation of basis of retirement pension and retirement insurance contribution calculation is equal to **65 850,00 PLN**.

Until achievement of the upper ceiling of basis of retirement pension and retirement insurance contribution calculation, payer is obliged to account and transfer contributions to Social Insurance Institution. Therefore, retirement pension and retirement insurance contribution are not due, if surpluses over the amount of limitation occurs. Payer is obliged to terminate calculation and transfer of the retirement pension and retirement insurance contribution after insured person achieves amount of annual limitation of basis of calculation of those contributions. If retirement pension and retirement insurance contribution for insured person should be paid by more than one payer, insured person is obliged to inform all payers on achieving

ceiling of annual limitation of basis. Payer informs ZUS about it. Insured person is responsible for results of false declaration. Contributions over-paid – after achieving the amount of annual limitation of basis of calculation of contribution for retirement pension and retirement insurance – on request of payer are paid back, after ZUS concludes over-payment on the basis of monthly adjusting report and adjusting accounting declaration. Period of not paying of the retirement pension and retirement insurance contribution because of achieving the ceiling during a calendar year of the annual basis of calculation of these contributions is treated as a insurance period within the meaning of the provisions of Act of 17 December 1998 on retirement pension and retirement of social Insurance Fund (OJ No 162, item 1118 as amended subsequently).

Dates of payment and accounting of contributions

Contributions for social insurance, health insurance and for extra insurance funds for appropriate calendar month should be calculated and paid:

- **Until fifth day** of next month – budgetary units, budgetary entities and auxiliary holding within the meaning of Article 18 paragraph 1, Article 19 paragraph 1 and Article 20 paragraph 1 of Act of 26 November 1998 on public finances (OJ No 155, item 1014 and 1999 No 38, item 360, No 49, item 485, No 70, item 778 and No 110, item 1256),
- **Until tenth day** of next month – natural persons paying contribution only for themselves,
- **Until fifteenth day** of next month – other payers.

In abovementioned dates, payer sends also an accounting declaration and namely monthly reports. Payer paying contributions only for him/herself send only his/her accounting declaration.

Insurance declaration

Each person covered obligatory by retirement pension and pension insurance is subject to declare to social insurance within 7 days from the date of beginning of the insurance obligation or in the case of authors and artists within 7 days from receiving the decision of Commission for Retirement Pension Provision of Authors, proving the date of beginning of artistic or author's activity.

Obligation to declare to social security rests on payer.

Based on first declaration, insured person's account is established. Register number given for insured person by Governmental Informatics' Centre for Common Electronic Population Register System (Rządowe Centrum Informatyczne Powszechnego Elektronicznego Systemu Ewidencji Ludności) signs this account. Information on valorised amount of retirement pension contribution for each calendar month is registered on the account of insured person, except for open pension fund contributions. For insured persons, who are not payers of those contributions, amount due is indicated, and for insured persons, who are payers of those contributions, amount paid is indicated.

Insurance declaration consist of, in particular, following data concerning person to be covered: numbers PESEL (human identification number) and NIP (tax identification number), and in the case when insured does not have those numbers or one of them – number and series of the identification document or passport, surname, forename, middle name, date of birth, family name, nationality and sex, insurance entitlement, disability type, pursuing em-

ployment in specific conditions or employment of special nature (if this box is crossed, then code of the profession must be given), entitlement to retirement pension or pension, registration address of permanent staying, address of residence, if other than registration address of permanent staying, mailing address if other than registration address of permanent staying or address of residence.

Payer is obliged to inform ZUS on each change of data of insured person, included in existing declaration, within 7 days from the date when change become effective, conclusion of irregularities by payer or ZUS. Save as otherwise provided, that change of data, indicated in insurance declaration concerning matter of insurance and types of insurances and time limits for their effect, follows by the way of submitting deregistration declaration by payer and redeclaration to social insurance including relevant data.

Payer does not correct data included in the declaration documents, and he is not obliged to transfer those data from 1 January 2003, in accordance with Act on social insurance scheme.

6.3 Annex 3: Overview of Occupational Health & Safety legislation

(source:

http://www.ilo.org/public/english/protection/safework/integratp/docs/english/replies/pol_e.pdf, summarised by FWF)

Survey response of Arrival: 27.09.2002

Completed by Ministry of Labour and Social Policy, European Union and International Organizations Department

OPZZ All-Poland Alliance of Trade Unions

Legislation on Occupational Hazards

OSH issues are mainly governed by the provisions of section 10 “Occupational safety and health” of the Law of 26 June 1974 – the Labour Code (Dziennik Ustaw of 1998 No. 21, Text 94 with amendments) and by executive regulations to this Law, in particular by the Ordinance of the Minister of Labour and Social Policy of 26 September 1997 on general occupational safety and health provisions (Dziennik Ustaw No. 129, Text 844) – issued on a basis of article 237 para. 1 of the Labour Code. Under authorisation given in article 237 (2) of the Labour Code, competent Ministers for specific branches of economic activity or kinds of jobs, in consultation with the Minister of Labour and Social Policy and the Minister of Health, shall establish, by ordinance, generally applicable provisions on occupational safety and health for respective branches of work. Under these powers, legal acts have been issued.¹

It should be added, that these are only some examples of legal acts issued on the basis of the Labour Code, which govern occupational safety and health issues. In Poland, other branches of economic activity have also been regulated in this area.

Air pollution, Noise & Vibration

Highest admissible densities and intensities of harmful agents in the working environment have been determined by the Ordinance of the Minister of Labour and Social Policy of 17.06.1998.

Chemicals

Issues connected with chemicals are governed by the Law of 11.01.2001 (Dziennik Ustaw No. 11, Text 84 with amendments) on chemical substances and preparations and executive regulations to this Law. The list of highest admissible densities and intensities of harmful agents in the working environment has been determined by the Ordinance of the Minister of Labour and Social Policy of 17 June 1998 governing this issue (Dziennik Ustaw No. 79, Text 513 with amendments). The list is being updated and complemented on a permanent basis.

Carcinogenic substances and agents

Ordinance of the Minister of Health Social Welfare of 11.09.1996 on carcinogenic agents in the working environment as well as supervision of the state of health of workers exposed to these agents are issued on the basis of article 222 para. 2 of the Labour Code.

Benzene and products of benzene, Lead
Highest admissible densities and intensities of harmful agents in the working environment have been determined by the Ordinance of the Minister of Labour and Social Policy of 17.06.1998.

Machinery

Under article 215 para. 1 of the Labour Code, machines and other technical devices shall be designed and constructed in such a manner that they:

1. ensure safe and hygienic conditions of work, and in particular protect worker from injuries, the effects of dangerous chemical substances, electric shocks, excessive noise, detrimental impacts, the effects of vibration and radiation, as well as harmful and hazardous effects of other factors in the working environment;
2. comply with ergonomic principles. (they should be adjusted to physical and mental capacities of a human being).

These general requirements are developed in appropriate Polish Standards, and legal provisions as for example the Ordinance of the Minister of Labour and Social Policy of 26 September 1997 on general occupational safety and health provisions (Dziennik Ustaw No. 129, Text 844). Under article 217 of the Labour Code, the employer may not equip workplaces with machines and other technical devices, which do not comply with the requirements concerning conformity assessment, laid down in the Law of 28 April 2000 on conformity assessment systems, accreditation and amendment of some laws (Dziennik Ustaw No. 43, Text 489 with amendments). Under article 52 of this Law – until executive regulations issued on a basis of its article 6 paragraph 2 and 3 and article 7 come into force, in any case not longer than by 31 December 2002, conformity assessment shall be carried out under appropriate Polish Standards and legal regulations – in accordance with procedure and under principles laid down in the Law of 3 April 1993 on tests and certification (Dziennik Ustaw No. 55, Text 250 with amendments).

Manual lifting

As concerns manual lifting, an Ordinance has been issued by the Minister of Labour and Social Policy on 14 March 2000 concerning occupational safety and health in manual transport (Dziennik Ustaw No. 26, Text 313 with amendments).

Preventive and protective measures

Identification and determination

Under article 227 para. 1 item 2 of the Labour Code – an employer is obliged to apply measures preventing occupational diseases and other diseases connected with work, and in particular to conduct, at his/her cost, tests and measurement of agents harmful to health, record and keep the results of such tests and measurements and make them accessible to workers. Tests and measurements of harmful agents in the working environment are carried in accordance with the Ordinance of the Minister of Health Social Welfare of 9 July 1996 governing this issue (Dziennik Ustaw No. 86, Text 394).

Assessment Under article 226 of the Labour Code – an employer is obliged to inform workers of any occupational risk connected with the work and of the rules for protection against hazards. Under para. 39 paragraph 1 of the Ordinance of the Minister of Labour and Social Policy of 26 September 1997...the employer is obliged to assess and document occupational hazards on specific jobs and to apply necessary preventive measures to diminish the risk. General guidelines for the assessment of occupational risk at workplaces are contained in the Polish Standard PN-N-18002:2000 *Systems of occupational safety and health management. General guidelines for the assessment of occupational risk.*

Surveillance and monitoring

The surveillance and monitoring of the working environment are governed by the Ordinance of the Minister of Health Social Welfare of 9 July 1996 on tests and measurements of harmful agents in working environment (Dziennik Ustaw No. 86, Text 394).

Personal protective equipment

Under article 2376 para. 1 of the Labour Code - an employer is obliged to provide workers with free personal protective equipment to protect them against agents in the working environment, which are hazardous and harmful to health, and to instruct the worker in use of such equipment. The workers are obliged to apply the means of collective protection and to use the means of personal protection provided in accordance with the purposes thereof (article 211 item 4 of the Labour Code).

Adaptation of work installations, machinery, equipment and processes

Under article 215 para. 1 of the Labour Code – machines and other technical devices shall be designed and constructed in such a manner that they:

1) Ensure safe and hygienic conditions of work, in particular protect worker from injures, the effects of dangerous chemical substances, electric shocks, excessive noise, detrimental impacts, the effects of vibration and radiation, as well as harmful and hazardous effects of other factors in the working environment;

2) Comply with ergonomic principles.

And under para. 51 of the Ordinance of the Minister of Labour and Social Policy of 26 September 1997 on general occupational safety and health provisions...machines and other technical devices should comply with occupational safety and health and ergonomic requirements defined in the Polish Standards and in appropriate regulations, for the whole period of their use. Assembly, exploitation and operation of machines should be done in accordance with technical documentation.

Design, construction and layout of workplaces

Issues related to workplaces have been regulated in the Ordinance of the Minister of Labour and Social Policy of 26 September 1997 on general occupational safety and health provisions...For example under para. 45 of this Ordinance, workplaces should be arranged in

a way corresponding to the kind of activities to be performed as well as physical and mental capacities of appropriate workers. The dimension of clear area of workplaces (not occupied by equipment) should allow for free movement sufficient to perform work in a safe way, taking into consideration the requirements of ergonomics. Workplaces with a risk of fire, explosion, falls or throwing out of objects or emissions of harmful or dangerous substances, should be equipped with appropriate safety guards protecting workers against such risks.

Design, construction, layout, use of machinery etc.

Under article 215 para. 1 of the Labour Code - machines and other technical devices shall be designed and constructed in such a manner that they:

1) Ensure safe and hygienic conditions of work, in particular protect workers from injuries, the effects of dangerous chemical substances, electric shocks, excessive noise, detrimental impacts, the effects of vibration and radiation, as well as harmful and hazardous effects of other agents in the working environment;

2) Comply with ergonomic principles.

This provision also applies to work tools.

Machines and other technical devices, which do not fulfil the above-mentioned requirements, should be equipped with appropriate safety guards. In cases where the construction of safety guards depends on local conditions, it shall be the duty of the employer to provide the machine or another technical device with appropriate safety guards (article 216 of the Labour Code).

It is not permissible to equip workplaces in machines and other technical devices which do not fulfil the requirements of conformity assessment laid down in the Law of 28 April 2000 on conformity assessment system, accreditation and amendment of some laws... This provision also applies respectively to work tools. In addition the employer is obliged to ensure systematic control of the occupational safety and health situation, in particular taking into consideration the organisation of work processes, technical state of machines and other technical devices, and to determine the methods of registration of irregularities and their elimination, under para. 40 paragraph 1 of the Ordinance of the Minister of Labour and Social Policy of 26 September 1997 on general occupational safety and health provisions.

Health surveillance/ Medical examinations

Issues concerning workers' health protection are governed by article 229 of the Labour Code and by the Ordinance of the Minister of Health Social Welfare of 30 May 1996 on medical examinations of workers, scope of preventive health care of workers as well as medical decisions given for the purposes provided for in the Labour Code (Dziennik Ustaw No. 69, Text 332 with amendments).

Adequate welfare facilities

The Labour Code imposes upon the employer an obligation to provide suitable hygiene and sanitary facilities for workers and to provide them with the means necessary for personal hygiene

(article 233 of the Labour Code). These provisions have been developed in more detail in the Ordinance of the Minister of Labour and Social Policy of 26 September 1997 on general occupational safety and health provisions...Under the provisions of this Ordinance (para. 111) the employer is obliged to provide workers with hygiene and sanitary facilities, in types, quantities and sizes adjusted to the number of workers, applied technologies and types of work, as well as conditions of work performance. The requirements for hygiene and sanitary facilities (for example cloak rooms, wash rooms and premises with showers, lavatories, dining rooms) have been determined in the annex to this Ordinance. The employer, under para. 112 of the above mentioned Ordinance of the Minister of Labour and Social Policy, is obliged to provide all his workers with drinking water or other beverages, and workers employed permanently or periodically in particularly arduous conditions with drinking water and other beverages. Quantity, kind and temperature of these beverages should be adjusted to conditions of work performance and workers' physiological needs. The detailed principles of providing beverages to workers employed in particularly arduous conditions have been laid down in the Ordinance of the Council of Ministers of 28 May 1996 on preventive meals and beverages (Dziennik Ustaw No. 60, Text 279).

First aid and emergency treatment

In the event of an accident at work, under article 234 para. 1 of the Labour Code, the employer is obliged...to provide first aid to injured persons. On a basis of para. 44 of the Ordinance of the Minister of Labour and Social Policy of 26 September 1997 on general occupational safety and health provisions...the employer is obliged to provide workers with an efficient first aid system in the case of an accident and appropriate measures for providing first aid. In particular s/he should ensure:

- 1) First aid points in divisions (sections) where the work creates serious accident risk or where harmful vapours, gases or dusts are emitted – equipped with necessary devices and other first aid measures;
- 2) Medicine-chests in individual divisions (sections) of the enterprise.

The number and arrangement of and equipment in first aid points and medicine-chests should be decided upon in consultation with a physician who deals with preventive health care of workers, taking into consideration types and intensity of existing hazards.

Servicing of first aid points and medicine-chests at each working shift should be entrusted to designated workers, who have undergone first-aid training. In first aid points and near the medicine-chests there should be - in a visible place - first aid instructions in the event of accidents and lists of workers designated to service these points and chests. First aid points and places with medicine-chests should be appropriately marked in accordance with the Polish Standards, and should be easily available.

Keeping of records / Notification of occupational accidents and diseases

Under article 234 of the Labour Code, in the event of an accident at work the employer is obliged...to establish the circumstances and reasons for the accident, following the compulsory procedure, and to immediately notify a competent labour inspector and a prosecutor for each fatal, serious or group accident at work and of any other accident connected with work, which brought about such effects, whenever such accident may be considered an accident at work. In addition s/he is obliged to keep a record of accidents at work. The Labour Code provisions on procedure in the case of accidents at work and on keeping records in this regard have been regulated in more detail in:

- Ordinance of the Council of Ministers of 28 July 1998 on establishing the circumstances and causes of accidents at work and methods for their documentation, as well as a scope of information included in records of accidents at work (Dziennik Ustaw No. 115, Text 744),
- Ordinance of the Minister of Labour and Social Policy of 2 October 1998 on model protocol of circumstances and causes of accidents at work (Dziennik Ustaw No. 128, Text 849),
- Ordinance of the Minister of Labour and Social Policy of 5 June 2000 on model statistical card of accident at work and connected procedure (Dziennik Ustaw No. 51, Text 612).

Also in accordance with the provisions of the Labour Code (article 235) - an employer is obliged to immediately report each case of occupational disease or suspicion of such disease to the State Sanitary Inspectorate and the labour inspector.

When an occupational disease is diagnosed in a worker, the employer is obliged to:

- 1) State the reasons for the occupational disease and the nature and scale of the risk of this disease, acting in co-operation with the competent authority of the State Sanitary Inspectorate;
- 2) Immediately take steps to remove the factors responsible for the occupational disease and apply other necessary preventive measures;
- 3) Ensure fulfilment of medical recommendations.

In addition, an employer is obliged to keep a record of occupational diseases or any suspicions thereof.

The detailed regulations on occupational diseases are contained in the Ordinance of the Council of Ministers of 18 November 1983 on occupational diseases (Dziennik Ustaw No. 65, Text 294 with amendments).

Statistics on occupational accidents and diseases are published, on an annual basis, by the Central Statistical Office in its statistical yearbooks. Information on occupational accidents is also published by the Central Statistical Office on a quarterly basis in "Labour Market Monitoring", and on an annual basis in statistical information and papers.

CBA's

The provisions of collective labour agreements and working regulations cannot be less favourable to the workers than the provisions of the Labour Code and other Laws and executive regulations (article 9 para. 2 of the Labour Code).

Employer responsibilities

Establishment of OSH policies and procedures

Under article 207 – an employer is responsible for occupational safety and health in the enterprise. An employer is obliged to protect the health and life of workers, by ensuring safe and hygienic conditions of work for workers by appropriate use and application of the achievements of science and technology. An employer is obliged in particular to:

- 1) organise work in a manner that ensures safe and hygienic conditions of work;
- 2) ensure observance in the [enterprise] of the provisions and principles of occupational safety and health, by giving instructions to remove any breaches thereof and by supervising the implementation of such instructions;
- 3) ensure execution of orders, requests, decisions and regulations of bodies supervising working conditions;
- 4) ensure implementation of the recommendations of the social labour inspector.

Monitoring and inspection

The employer is obliged, under para. 40 of the Ordinance of the Minister of Labour and Social Policy of 26 September 1997 on general occupational safety and health provisions...to ensure systematic control of the occupational safety and health situation, in particular taking into consideration the organisation of work processes, the technical state of machines and other technical devices, and to determine the methods of recording the irregularities and the elimination of these irregularities.

In the case of the discovery of a direct threat for workers' life or health, a person who manages workers is obliged to immediately stop the work and undertake activities aimed at removal of such threat.

Emergency response plans and procedures

As concerns emergency response plans and procedures, the Ministry of Economy is competent to provide information.

Provision of information to workers and their representatives

Under article 226, an employer is obliged to inform his/her workers of any occupational risk connected with work and of the rules for protection against hazards. Other legal acts, issued under authorisations contained in the Labour Code, also formulate the employer's obligation to inform his/her workers and their representatives of any occupational hazards. For example:

- Ordinance of the Minister of Health Social Welfare of 9 July 1996 on tests and measurements of harmful agents in the working environment (Dziennik Ustaw No. 86, Text 394),
- Ordinance of the Minister of Health Social Welfare of 11 September 1996 on carcinogenic agents in the working environment as well as on supervision of the state of health of workers exposed to these agents (Dziennik Ustaw No. 121, Text 571).

Education and training

Employer's obligations concerning workers' training are formulated in article 237 and article 237 of the Labour Code as

well as in the Ordinance of the Minister of Labour and Social Policy of 28 May 1996 on detailed principles of training in the field of occupational safety and health (Dziennik Ustaw No. 62, Text 285).

Remedial action

Under article 234 para. 1 of the Labour Code, in the event of an accident at work the employer is obliged to undertake measures necessary to eliminate or limit the hazard and to adopt appropriate measures for prevention of similar accidents.

Establishment of joint safety and health committees

Responsibility results from the national law. Under article 23712 para. 1 of the Labour Code, an employer with more than 50 workers is obliged to set up an occupational safety and health commission, as their advisory and opinion-giving body. The Commission shall consist of the employees of the occupational safety and health service, the physician providing medical care to the workers, the social labour inspector and the representatives of the workers elected by the trade union body at the enterprise level and, where there is no such body operating in relation to the employer, by the workers, according to the procedures adopted in this enterprise.

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Under article 2377 para. 2 of the Labour Code, the employer, having consulted the trade union body at the enterprise level, may indicate posts at which workers may use, by their own consent, their own working clothes and shoes that satisfy the requirements of occupational safety and health. Where there is no trade union body at the enterprise level operating in relation to a given employer, the latter shall make such arrangements with the workers elected for this purpose by the staff, according to procedures adopted in this enterprise.

In addition, in accordance with article 2378 para. 1 of the Labour Code, the kinds of personal protective equipment and working clothes and shoes, which are to be used at certain posts, and the anticipated periods of usage of working clothes and shoes, shall be determined by the employer after consultation with the trade union body at the enterprise level. Where there is no trade union body at the enterprise level operating in relation to a given employer, the latter shall make such arrangements with the workers elected for

this purpose by the staff, according to the procedures adopted in the enterprise.

Worker rights and responsibilities

Selection of worker safety representatives

The occupational safety and health commission, under article 23712 para. 1 of the Labour Code, consists of the employees of the occupational safety and health service, the physician providing medical care to the workers, the social labour inspector and the representatives of the workers elected by the trade union body at the enterprise level and where there is no such body operating in relation to the employer, by the workers, according to the procedures adopted in this enterprise.

Incurring no personal cost for personal protective equipment

Both costs of training in the field of occupational safety and health, and costs of individual protection measures are not to be incurred by a worker. Under article 2373 para. 3 of the Labour Code, the training in the field of occupational safety and health shall be at the cost of the employer.

Under article 2376 para. 1, an employer is obliged to provide workers with free personal equipment to protect them against agents in the working environment, which are hazardous and harmful to health.

Taking reasonable care

Worker's obligations have been determined in article 211 of the Labour Code. Observance of the provisions and rules of occupational safety and health is a basic duty of workers. In particular, workers are obliged to:

1. become familiar with the provisions and rules of occupational safety and health, attend training and teaching in this field and take any required examinations;
2. perform work in a manner compatible with the provisions and rules of occupational safety and health and comply with their superiors' orders and instructions in relation to them;
3. ensure proper conditions of machines, facilities, tools, equipment and order at the working place;
4. apply the means of collective protection and use the means of personal protection provided, e.g. clothing and work shoes, in accordance with the purposes thereof;
5. undergo initial, periodical tests and other required medical examinations and observe medical instructions;
6. immediately notify a superior of any accident or hazard to human life or health identified at the enterprise and warn other persons within the hazardous area of the existing danger;
7. co-operate with the employer and superiors in fulfilment of the duties concerning occupational safety and health.

Consultation on OSH matters

In accordance with article 237 para. 1 of the Labour Code the task of the occupational safety and health commission is to survey the conditions of work, to periodically evaluate the level of occupational safety and health, to give opinions on measures for

prevention of accidents at work and occupational diseases, taken by the employer, to offer suggestions concerning the improvement of the conditions of work and to co-operate with the employer in the fulfilment of the latter's duties as regards occupational safety and health.

In addition, under para. 3 of this article, in connection with carrying out the tasks, the commission is to take advantage of analyses and opinions of external specialists, in cases agreed with the employer at their cost.

Under article 26 of the Law of 23 May 1991 on trade unions...the scope of activities of the trade union organisation at the enterprise level covers in particular:

- supervision of observance in the establishment of the labour law provisions, and particularly occupational safety and health provisions and principles,
- management of activity of the social labour inspection and cooperation with the National Labour Inspectorate.

The employer is obliged to render - at the demand of the trade union - information necessary for carrying out of the trade union activity, in particular information concerning conditions of work and pay principles (article 28).

Additionally, under article 29, in cases of a justified suspicion that in the enterprise, workers' life or health is endangered, the trade union organisation at the enterprise level may apply to the employer to conduct appropriate examinations, at the same time notifying this fact to the competent district labour inspector. The employer is obliged, within a period of 14 days after the day of receiving such an application, to inform the trade union organisation at the enterprise level of his position. If such examinations have been carried out, the employer should make their results available to the trade union organisation at the enterprise level together with information on the way and date of elimination of the danger.

If the employer informs the trade union organisation at the enterprise level of rejection of the application or if he takes no position with regard to this application in the period of 14 days from the day of its lodging, the trade union organisation at the enterprise level is authorised to carry out the necessary examinations at the expense of the employer. The trade union organisation at the enterprise level is obliged to inform the employer in writing, at least 14 days earlier, of its intention to carry out examinations, their scope and forecasted costs.