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Influence of the European Labour Law Regulations on Polish regulations on worker's participation

Karolina Stegemann, Dipl.-Kffr.
Bochum, July, 12th 2007

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- **Introduction**
- Labour relations background
- Implementation of the Directive 94/45/EU on European Works Councils (EWC)
- Experiences of Polish EWC-Members
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- Establishing of Works Councils in Poland
- Conclusions and perspectives

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Labour relations background

- „double transformation“ (Deppe/Tatur (2002)):
 - Establishing a functioning market economy (privatisation)
 - Introducing democratic reforms
 - Preparation for the EU-access
 - Implementation of “acquis communautaire”
 - Complete EU-framework implementation
 - Deep changes of Polish Law system
- Consequences for the social partners and the Polish Labour Law



Labour relations background

■ General situation

- State as former and solely employee
- Collective agreement coverage rate: 30% only (mostly on the company level)
- Trade unions organized on a company level

→ central negotiation 's level: company level



Consequences for social partners

■ Trade Unions

- 60-70% of members lost in the recent 15 years (Voss (2006), The experience of European Works Councils in new EU member states, p. 23)
- union density was 16% in 2006 (EuComm (2006), Ind. Relations in Europe 2006, p. 25)
- almost no trade unions in SMEs (up to 50 employees)
→ “legitimacy gap”, atomization, instable membership and organizational situation, often tensions due to the political background

■ Employers Associations

- density rate with 20% the lowest in the EU (EuComm (2006), Ind. Relations in Europe 2006, p. 37)
- “No dialogue culture” – direct negotiations with employees preferred
→ awareness of social responsibility and need of strengthening social dialogue often doubtful, even a negative attitude against TU

■ Role of state authorities

- Definition problems between state’s role as a former and still important employer, the reformer and the legal regulator
→ a rather passive role at the development of the social dialogue

Consequences for the Polish Labour Law

- weakness of the Polish social dialogue
 - legal framework established as recently as 2001
 - main social dialogue body, the Tripartite Commission, not able to coordinate the social dialogue on the national level
- obligation of implementation of EU legal framework
 - future development of the social dialogue regarded together with the worker's participation as indispensable conditions for the establishing of the fundamentals of European social rights

→ „top-down“ approach rather than an organic development

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Implementation of the Directive 94/45/EU on EWC

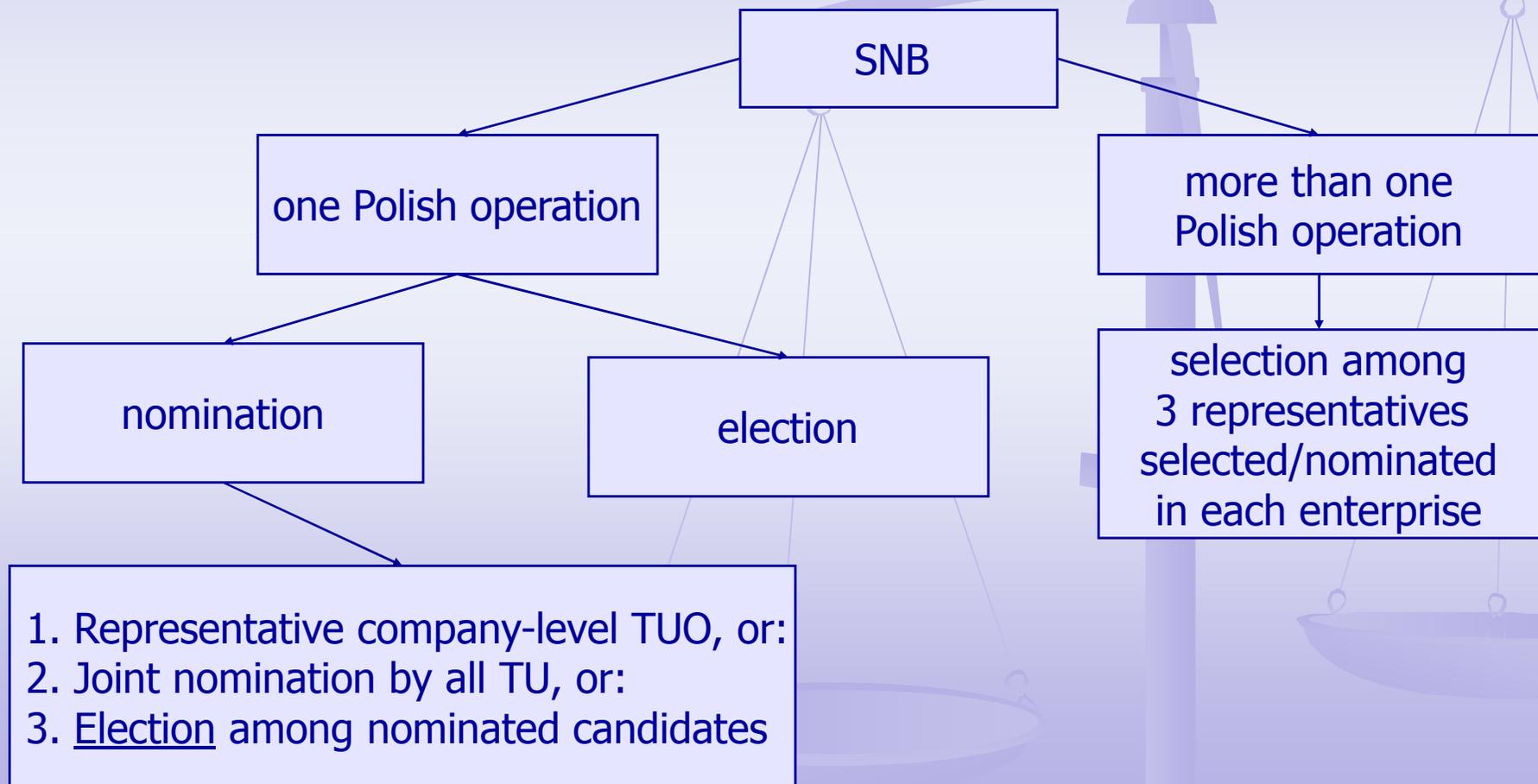
- Incorporated into Polish law by way of the legislative Act of 5 April 2002 and came into force on 1 May 2004
 - At that time:
 - Works councils in state owned companies only
 - in private companies: single channel workers representation → (if) existing trade unions
- EWC as a new legal institution of „employee’s participation“

Implementation of the Directive 94/45/EU on EWC

- The Polish legislation largely follows the terms of the Directive
- national-level 'customization' within the scope required by the Directive:
 - method for the election or appointment of the members of the special negotiating body (SNB)
→ distinction between two cases:
 - multinational companies with only one Polish operation
 - multinational companies with more than one Polish operation

Implementation of the Directive 94/45/EU on EWC

■ Election/appointment of Special Negotiating Body



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Experiences of Polish EWC-Members

- First Polish workers' representatives on the EWCs
 - 1994: French-based Thomson Multimedia electronics manufacturer
 - 1997: Several more foreign-based multinationals
 - observer status
 - Full membership with Polish EU access on May, 1st 2004
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Experiences of Polish EWC -Members

- Meanwhile 780 multinational companies affected by the EWC directive in Poland
- 400 established EWC
- 140 have Polish representatives

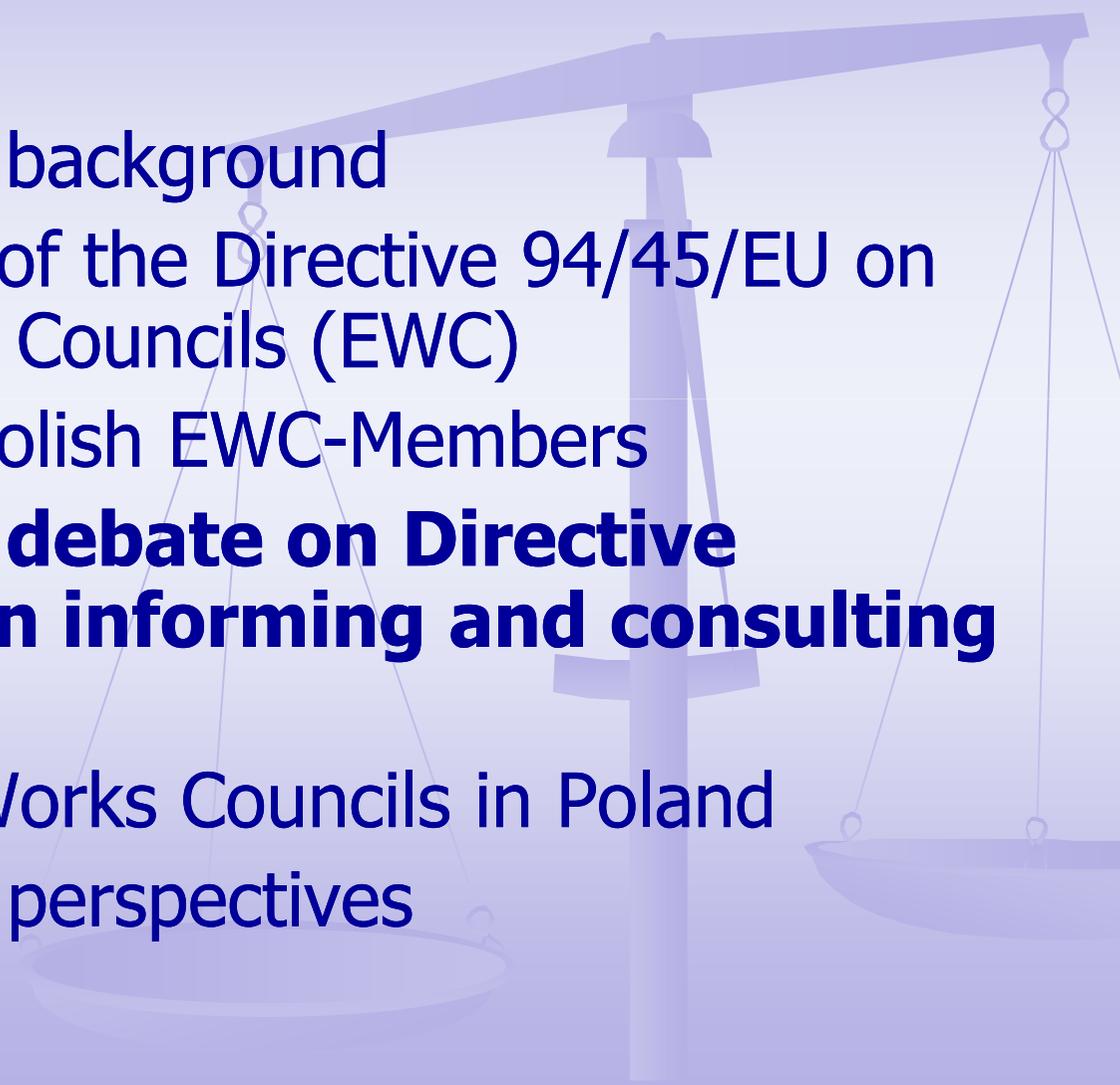
source: EWS database, ETUI-REHS, June 2005

Experiences of Polish EWC -Members

- Negative experiences regarding
 - nearly no influence on restructuring
 - Quality of information and timing disappointing
- In general positive experiences
 - stronger negotiating position on a national level
 - Creation of trust at the company level as a result of an active cooperation on EWC-level
 - practical experience with dialogue and with shared decision-making - fortifying the culture of dialogue in the arena of Polish industrial relations

Source: Voss (2006), The experience of European Works Councils in new EU member states

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Implementing debate on Directive 2002/14/EU on informing and consulting employees

- Long lasting debate initiated by social scientists
 - need of creating national works councils
 - “Destructive role of Polish social partners” (Rudolf (2007), Development perspectives for worker’s participation in Poland, p. 7)
 - Strong opposition of employer’s associations
 - Additional costs
 - Uncontrolled spreading of confidential data
 - Strong opposition of trade unions
 - Dual channel workers representation as a danger
 - Higher competition among the trade union organizations
 - Further loss of members
 - Conflict of competences
- „ danger of destabilization of a whole system”
- „ helpful experiences with EWC”

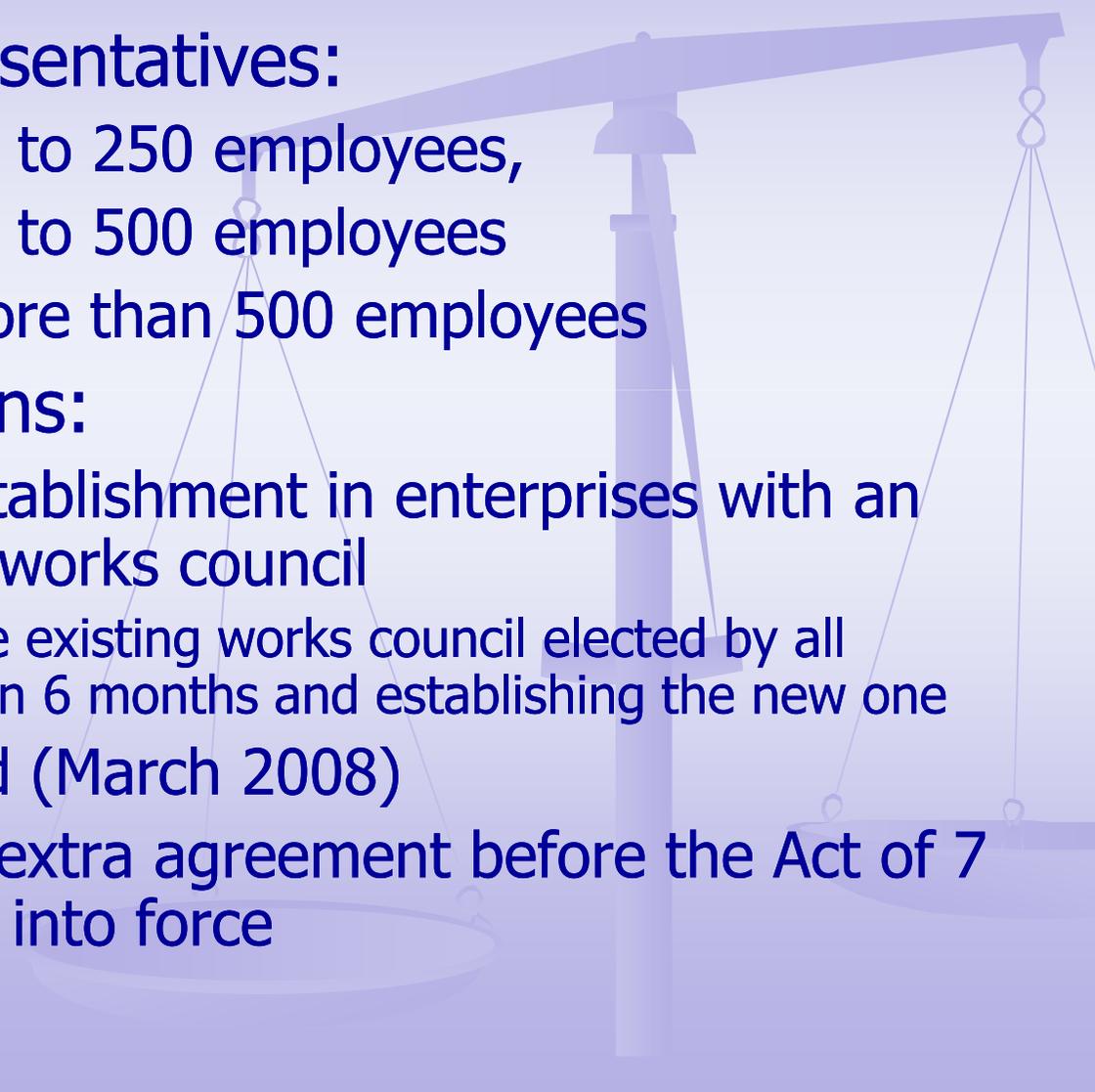
Implementing debate on Directive 2002/14/EU on informing and consulting employees

- Result of “Finding a compromise” after a hot consultation period with social partners (3 + 3)
 - legislative Act of 7 April 2006 pushed finally through by the government
- Establishment of works councils (“employee councils”) in companies with more than 100 employees (50 after March 2008)
- Favouring the “czech model” (forced eventually by TU)
 - Priority given to nomination by trade unions
 - Mutual consensus in case of multiunionism
 - Election only if there are no unions, or the unions do not agree on nominations
 - financing: TU in case of nomination, otherwise employer

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Establishing of Works Councils in Poland

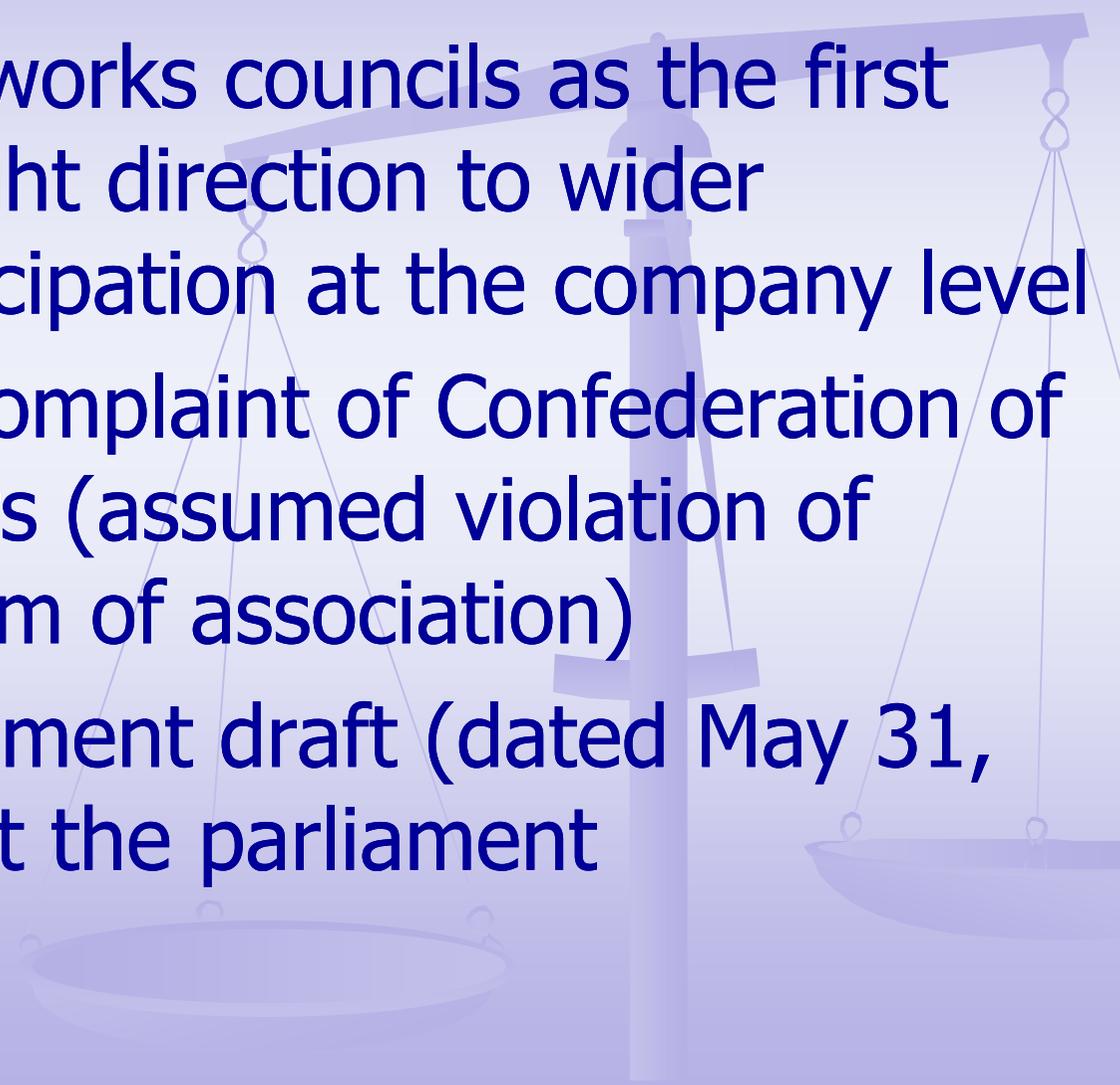
- **Number of representatives:**
 - 3 members – up to 250 employees,
 - 5 members – up to 500 employees
 - 7 members – more than 500 employees
 - **Special regulations:**
 - Trade unions establishment in enterprises with an already existing works council
 - Dissolving of the existing works council elected by all employees within 6 months and establishing the new one
 - Transition period (March 2008)
 - Possibility of an extra agreement before the Act of 7 April 2006 came into force
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Conclusions

- Establishing of works councils as the first step into the right direction
 - 1,019 works councils had been set up in Polish companies by 5 October 2006
- problem of lack of employees representation in SMEs up to 50 employed not solved
- Strong opposition of social partners and their lack of cooperation have led to the “minimal consensus”
- Wide usage of the possibility of an extra agreement to avoid establishing the works councils forced by the employers (3,965 agreements were signed in the period between 15 and 24 May 2006 with the decision not to set up a works council)

Source: Gazeta Prawna, 5.10.2006

Perspectives

- Establishing of works councils as the first step into the right direction to wider indirective participation at the company level
 - Constitutional complaint of Confederation of Polish Employers (assumed violation of negative freedom of association)
 - The first amendment draft (dated May 31, 2007) already at the parliament
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Thank you for your attention and....

.... Let's discuss it!

