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## IMPACT OF EUROPEAN LAW ON OCCUPATIONAL HEALTH AND SAFETY PROVISIONS

**Abstract.** The subject of considerations is the importance of EU regulations, especially Directive 89/391 EEC as for Polish regulations in the area of occupational health and safety. In the article, the author concentrates on the regulations governing the legal consultation with workers, or their representatives, on OHS matters. According to the Polish Labor Code, the consultations both on the workers' and employers' part are universal. This is because they include all workers and all employers. The subject of the legal consultations are all activities related to occupational health and safety. The Polish Labor Code provides guarantees that workers and their representatives will not suffer any negative consequences for performing consultative functions. In the author's opinion, Polish regulations in the area of occupational health and safety fully implement the provisions of Directive 89/391/EEC.

**Keywords:** workers and their representatives, safe and healthy working conditions

## WPLYW PRAWA EUROPEJSKIEGO NA REGULACJE W OBSZARZE BEZPIECZEŃSTWA I HIGIENY PRACY

**Streszczenie.** Przedmiotem rozważań jest problematyka znaczenia przepisów unijnych, w szczególności dyrektywy 89/391/EWG, dla przepisów polskich w zakresie bezpieczeństwa i higieny pracy. W artykule autor koncentruje się na przepisach regulujących konsultacje prawne z pracownikami lub ich przedstawicielami w sprawach BHP. Zgodnie z polskim Kodeksem pracy konsultacje zarówno po stronie pracowników, jak i pracodawców mają charakter powszechny. Dzieje się tak dlatego, że obejmują one wszystkich pracowników i wszystkich pracodawców. Przedmiotem konsultacji prawnych są wszelkie działania związane z bezpieczeństwem i higieną pracy. Polski Kodeks pracy gwarantuje, że pracownicy i ich przedstawiciele nie poniosą żadnych negatywnych konsekwencji z tytułu pełnienia funkcji doradczych. Zdaniem autora, polskie przepisy z zakresu bezpieczeństwa i higieny pracy w pełni realizują postanowienia dyrektywy 89/391/EWG.

**Słowa kluczowe:** pracownicy i ich przedstawiciele, bezpieczne i higieniczne warunki pracy

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## 1. INTRODUCTION

The issue of occupational health and safety, which falls within the domain of labour protection in the broadest sense of the term, is regulated by a number of legal acts of both national, international,<sup>1</sup> and European scope. In the case of the latter, it is in particular Article 3 of the European Social Charter of 1961<sup>2</sup> that provides that all workers have the right to safe and healthy working conditions. To this end, the contracting parties undertake: to issue regulations on occupational health and safety; to provide measures aimed at controlling the application of these regulations; and to consult, where necessary, employers' and employees' organisations on measures for the purpose of improving occupational health and safety.

Similarly, the issue of safe and healthy working conditions is regulated in the Revised European Social Charter.<sup>3</sup> Article 3 of the Revised European Social Charter draws attention, among other things, to the need to define and implement national policies with the primary aim of improving occupational health and safety and preventing accidents and health hazards arising out of, connected with or occurring in the course of work, in particular by minimising the causes of risks related to the working environment.

The obligation of Member States to create appropriate working conditions is also provided for in the Charter of Fundamental Rights of the European Union<sup>4</sup> of 2000. According to Article 31(1) of this Charter, which, in turn, according to Article 6(1) of the Treaty on the Functioning of the European Union has the

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<sup>1</sup> In the area of international labour law, regulations related to OHS are contained in particular in the 1948 Universal Declaration of Human Rights, *Księga Jubileuszowa Rzecznika Praw Obywatelskich. Tom II (Volume II). Wybór dokumentów prawa międzynarodowego dotyczących praw człowieka*, ed. M. Zubik, Biuro Rzecznika Praw Obywatelskich, Warszawa 2008 (the Commissioner's for Civil Rights Protection Jubilee Book, A selection of international law documents on human rights, Office of the Commissioner for Civil Rights Protection); the International Covenant on Economic, Social and Cultural Rights of 1966, ratified by Poland in 1977, *Journal of Laws* No. 38, item 169, as well as numerous conventions and recommendations of the International Labour Organisation. The latter may be divided into three categories: 1) those setting general standards in the sphere of occupational health and safety; 2) those obliging the protection of life and health of specific categories of employees (e.g. miners, construction workers, commerce and industry employees); 3) those setting minimum OHS standards related to harmful factors. Among the ILO norms, Convention No. 155, which is considered to be an international code on OHS, ranks particularly prominently. Cf. Felderhoff, Kröner-Moosmann (2001, 315–322); Świątkowski (2008, 52); Wyka (2003, 73; 2019, 545 et seq.).

<sup>2</sup> European Social Charter of 1961, *Journal of Laws* 1999, No. 8, item 67. Europejska Karta Społeczna sporządzona w Turynie dnia 18 października 1961 r. t.j. Dz. U. z 1999 r. nr 8 poz. 67.

<sup>3</sup> [http://www.nzzk.nw.pl/pdf/eu\\_karta\\_spol.pdf](http://www.nzzk.nw.pl/pdf/eu_karta_spol.pdf)

<sup>4</sup> OJ. EU of 26.10.2012, C 326.

same legal value as treaties,<sup>5</sup> every employee has the right to working conditions which respect his/her health, safety, and dignity. The explanations of the Charter of Fundamental Rights<sup>6</sup> state that this provision is based, *inter alia*, on Directive 89/391/EEC of 12<sup>th</sup> June, 1989, on the introduction of measures to encourage improvements in the safety and health of employees at work.<sup>7</sup>

Issues related to the safety and health of employees in the workplace are also included in the European Pillar of Social Rights.<sup>8</sup> This Pillar represents the first set of social rights promulgated by the EU institutions since the adoption of the Charter of Fundamental Rights in the 2000 Charter of Fundamental Rights. The preamble emphasises that it “is intended to serve as a guide toward achieving positive results in the employment and social situation in response to current and future challenges, which results are directly aimed at meeting the basic needs of citizens, and toward ensuring better adoption and implementation of social rights.” The declaration lists among the rules and rights crucial to fair and well-functioning labour markets and social security systems in the 21<sup>st</sup>-century Europe the right of workers to a high level of health and safety protection at work (point 10 a).

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<sup>5</sup> Judgement of the Court of Justice of 30 June 2016, *Sobczyszyn*, C-178/15, EU:C:2016:502, para. 20 and the judicial decisions cited therein.

<sup>6</sup> OJ. EU of 14.12.2007, C 303/17.

<sup>7</sup> OJ of the European Communities of 29.06.1989, L 183/1. OHS issues are further addressed by Regulation (EU) 2016/425 of the European Parliament and of the Council of 9<sup>th</sup> March, 2016, on personal protective equipment and repealing Council Directive 89/686/EEC, OJ EU of 31.03.2016, L 81/51 and Directives: 89/656/EEC of 30.11.1989 on the minimum health and safety requirements for the use by employees of personal protective equipment at the workplace, OJ EC of 30.12.1989, L 393/18; 92/58/EEC of 24.06.1992 on the minimum requirements for the provision of health and safety signs at work, OJ EC of 26.08.1992, L 245/23; Council Directive 98/24/EC of 7<sup>th</sup> April, 1998, on the protection of the health and safety of employees from the risks related to chemical agents at work, Official Journal of the European Communities, 5.05.1998, L 131/11; European Parliament and Council Directive 2000/54/EC of 18<sup>th</sup> September, 2000, on the protection of employees from risks related to exposure to biological agents at work, OJ EC of 17.10.2000, L 262/21; of the European Parliament and of the Council 2002/44/EC of 25<sup>th</sup> June, 2002, on the minimum health and safety requirements regarding the exposure of employees to the risks arising from physical agents (vibration), OJ EC of 6.07.2002, L 177/13; of the European Parliament and of the Council 2003/10/EC of 6<sup>th</sup> February, 2003, on the minimum health and safety requirements regarding the exposure of employees to the risks arising from physical agents (noise), OJ EU of 15.02.2003, L 42/38; of the European Parliament and of the Council 2004/37/EC of 29<sup>th</sup> April, 2004, on the protection of employees from the risks related to exposure to carcinogens or mutagens at work, OJ EU of 5.02.2004, L 177/13, L 158/50; of the European Parliament and of the Council 2006/25/EC of 5<sup>th</sup> April, 2006, on the minimum health and safety requirements regarding the exposure of employees to risks arising from physical agents (artificial optical radiation), OJ EU of 27.04.2006, L 114/38.

<sup>8</sup> European Union document jointly signed by the European Parliament, the Council of the European Union and the European Commission on 17 November 2017; OJ EU of 13.12.2017, C 2017.428.10.

In European Union law, the Framework Directive 89/391/EEC, which governs the main rules on OHS, is of primary importance in the area of OHS. It is referred to as the Mother Directive. The Directive strictly divides responsibilities into those of employers and those of employees. In the case of the former, it mentions, in particular, taking appropriate measures to ensure that employees or their representatives participate in Safety and Health Protection undertakings, and establishing a dialogue between employers and employees to conceptualise the measures necessary to protect the latter from occupational accidents and diseases.<sup>9</sup> Against this background, two questions need to be considered: to what extent Directive 89/391/EEC requires consultation with employees or their representatives, and to what extent Polish norms are in line with European Union regulations.

## 2. THE SUBJECT MATTER SCOPE OF OHS CONSULTATION

According to Article 11 Section 1 of Directive 89/391/EEC, employers should consult with workers and their representatives, allowing them to take part in discussions where issues are considered that concern the occupational health and safety of workers in the performance of their professional duties. It is clear from the wording of the indicated provision that workers have the right to participate in OHS-related consultations either directly, by giving their opinions, advice on occupational health and safety issues directly to the employer, or indirectly – through their representatives. A worker within the meaning of Article 3 letter (a) of the Directive is any person employed by an employer, including trainees and apprentices but excluding domestic servants. In this regard, it does not refer to national regulations. In contrast, the term “employer” is used to refer to any legal entity or individual in an employment relationship with a worker and with responsibility for the enterprise and/or establishment. Entities without legal personality are, therefore, excluded from the Directive’s regulations. Bearing in mind Article 2 Section 1 of Directive 89/39, which states that it applies to all sectors of activity, both in the public and private sectors (industrial, agricultural, commercial, administrative, services, education, education and culture, entertainment activities, etc.), it should be stated that the right to consultation in the OHS field is enjoyed by all workers, regardless of the employer’s organisational structure, the type of activity it conducts, and its size.<sup>10</sup> An exception in this regard is provided for in Article 2

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<sup>9</sup> Para 39 of the CJEU judgement of 22<sup>nd</sup> May, 2003, in Case C441/01 Commission of the European Communities v. Kingdom of the Netherlands, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62001CJ0441&from=PL> (accessed: 27.07.2022).

<sup>10</sup> Cf. CJEU judgements: C303/98, Simap, EU:C:2000:528, para 34, 35; of 26<sup>th</sup> March, 2015, in relation to case C316/13 Gérard Fenoll v. Center d’aide par le travail ‘La

Section 2 of the Directive, according to which the Directive will not apply where there would be a conflict of interest – with regard to specific public and social activities, such as the armed forces or the police, or with regard to specific activities in the field of civil protection services. Exclusion of the police and civil service from the norms of the Directive is not absolute. It is stipulated that in the above cases, the occupational health and safety of workers should be ensured as much as possible, taking into account the rules and objectives of this Directive. In addition, the first indent of Article 2 Section 2 of Directive 89/391 excludes from the scope of application of that Directive not civil defence services as such, but only specific [activities] within those services, the specific characteristics of which prevent the application of the rules of the said Directive. The exemption contained in the first indent of Article 2 Section 2 of Directive 89/391 was adopted only to guarantee the proper functioning of the services necessary for the protection of safety, health, as well as public order in accidents of exceptional severity and magnitude – such as disasters – which are characterised by the fact that, due to their characteristics, the working time of intervention and rescue crews cannot be scheduled.<sup>11</sup> The jurisprudence of the Court of Justice emphasises that exemption from Directive 89/391 can only take place in cases of exceptional events, when the proper course of measures to ensure the protection of the public in a situation of grave collective danger requires that the personnel who are to face an event of this nature give absolute priority to the objective pursued by these measures, so that this objective can be achieved. This, therefore, applies to natural or technological disasters, assaults, major accidents or other incidents of this nature, the severity and magnitude of which require necessary measures to protect life, health, as well as the safety of the collective, and the proper implementation of which would be jeopardised if all the rules formulated in Directive 89/391 had to be followed.<sup>12</sup>

There are no objections in the Directive to workers' representatives authorised to act in the OHS field. As a result, they can be both on- and off-site workers of an employer. It is important that these persons are authorised to represent the crew in matters related to occupational health and safety (Lewandowski 2003, 418).

In Polish legislation, the implementation of the Directive was originally served by regulations on occupational health and safety committees. By the law

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Jouvene', Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon ECLI:EU:C:2015:200 para 20.

<sup>11</sup> CJEU judgement of 5<sup>th</sup> October, 2004, in the joined cases of Bernhard Pfeiffer (C-397/01), Wilhelm Roith (C-398/01), Albert Süß (C-399/01), Michael Winter (C-400/01), Klaus Nestvogel (C-401/01), Roswitha Zeller (C-402/01), Matthias Döbele (C-403/01) v. Deutsches Rotes Kreuz, Kreisverband Waldshut eV, ZOTSiS 2004/10A/I-8835, para 53, 55.

<sup>12</sup> Order of the CJEU of 14<sup>th</sup> July, 2005, C-52/04, Personalrat der Feuerwehr Hamburg v. Leiter der Feuerwehr Hamburg, Lex No. 2231119, para 53–54.

of 2<sup>nd</sup> February, 1996, amending the Labour Code and certain laws,<sup>13</sup> Article 237<sup>12</sup> of the Polish Labour Code was introduced, stipulating that an employer with more than 50 (now 250) employees shall appoint an occupational health and safety committee, hereinafter referred to as the “committee,” as its advisory and consultative body. The commission is in composition of OHS employees, a doctor providing health care to employees, a social labour inspector, as well as representatives of employees – elected by the company’s trade union organisation, and in case there is no company trade union organisation at the employer – by the employees, according to the procedure adopted at the workplace. Since it was assumed that the chairperson of the commission is the employer or a person authorised by him/her, it was pointed out in the doctrine that this normalisation does not sufficiently protect the interests of employees in the OHS area and thus contradicts the regulations of Directive 89/391/EEC. As a result, by the law of 14<sup>th</sup> November, 2003, amending the Labour Code and certain other laws,<sup>14</sup> Article 237<sup>11a</sup> of the Labour Code on OHS consultation was added.

According to Article 237<sup>11a</sup> § 1 of the Labour Code, the employer is obliged to consult with employees or their representatives on all activities related to occupational health and safety. In the absence of stipulations in the Labour Code regarding the employee and employer sides, it must be said that consultation on both the employee and employer sides is universal. This is because they include all employees regardless of the basis of their employment (Article 2 of the Labour Code), working hours, position occupied or type of work performed, as well as all employers within the meaning of Article 3 of the Labour Code, regardless of organisational form, type of business, size of employment.

As in Directive 89/391, employees or their representatives may participate in the consultations. Pursuant to Article 237<sup>13a</sup> of the Labour Code, the latter are selected by company trade union organisations, and if there are no such organisations at the employer – by employees, in accordance with the procedure adopted at the workplace. It follows from the wording of the indicated provision that the right to elect crew representatives in the first instance is vested in trade unions. Therefore, it can be assumed that representation will be primarily by unionised employees. A similar mechanism was provided for in Article 4 of the Law of 7<sup>th</sup> April, 2006, on Informing and Consulting Employees<sup>15</sup> concerning the election of employees’ council members. In its judgement of 1<sup>st</sup> July, 2008

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<sup>13</sup> Act of 26 June 1974, Polish Labour Code, Journal of Laws 1974 No. 24, item 110, Ustawa z 26 czerwca 1974. Kodeks pracy tj. Dz. U. z 1974 r. nr 24 poz. 110.

<sup>14</sup> Act of 14 November 2003 amending the Act – Labour Code and certain other acts, Journal of Laws 2003 No. 213, item 2081. Ustawa z dnia 14 listopada 2003 r. o zmianie ustawy – Kodeks pracy oraz o zmianie niektórych innych ustaw tj. Dz. U. z 2003 r. nr 213 poz. 2081.

<sup>15</sup> Act of 7 April 2006 on informing and consulting employees, Journal of Laws 2006, No. 79, item 550. Ustawa z dnia 7 kwietnia 2006 r. o informowaniu pracowników i przeprowadzaniu z nimi konsultacji tj. Dz. U. z 2006 r. nr 79 poz. 550.

(K 23/07),<sup>16</sup> the Constitutional Court stressed that under the law of 7<sup>th</sup> April, 2006, there are two separate categories of employees whose rights are differentiated. The first group is made up of employees affiliated with a representative trade union organisation, who, through their union, have a say in the election, dismissal, and operation of the employees' council. The second group is employees not affiliated with such an organisation, who have been deprived by the contested regulations of any influence, even indirectly, on the composition and functioning of this council. This clearly means unequal treatment of employees belonging to representative trade unions and those who do not. This is because only union organisations have the right to elect and dismiss members of the employees' council, which is indirectly influenced by their members. Other employees, who do not belong to such trade union organisations, have been deprived of even indirect influence over the composition of the employees' council at their workplace. If the employees' council is elected (indirectly) only by a part of the company's workforce (unless 100% of the workforce belongs to a trade union), it means that the provisions of the law unjustifiably differentiate the addressees of the same norms (employees), and such a situation is a violation of the rule of equality expressed in Article 32 of the Polish Constitution.<sup>17</sup> A non-unionised employee of a company, in terms of the right to obtain information and participate in consultations conducted by the employer, remains in a worse legal position than an employee belonging to a labour union. The employees' council may agree with the employer on a number of issues relating to the relationship between employees and the employer (rather than unions and the employer – cf. Article 5 of the law). Non-unionised employees will bear the consequences of consultations with the employer conducted by people over whose election to the council (and dismissal) they have no influence.

In connection with the Constitutional Court's verdict, there is doubt about the constitutionality of the Polish Labour Code's norms (similarly Sanetra 2011, 1181).

### 3. THE SUBJECT OF OHS CONSULTATION

The eleventh and twelfth recitals of the Directive contend that in order to ensure better protection, employees and/or their representatives should be informed of the risks relating to their safety and health and of the undertakings required to reduce or eliminate those risks; they should participate in the planned undertakings, through appropriately balanced measures and in accordance with national legislation and/or adopted procedures; it is necessary to exchange

<sup>16</sup> OTK-A 2008, No. 6, item 100.

<sup>17</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, No. 78, item 483 as amended. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. tj. Dz. U. z 1997 r. nr 78, poz. 483 z późn. zm.

information, establish dialogue and participate in Safety and Health Protection undertakings between employers and employees and/or their representatives through appropriate procedures and measures, in accordance with national legislation and/or adopted procedures.

With this in mind, Article 11 Section 1 of Directive 89/391 states that employers should allow workers and their representatives to participate in discussions, during which issues are considered, concerning the occupational health and safety of workers in the performance of their professional duties. This presupposes: consultation with workers, the right of workers and their representatives to develop proposals, balanced participation, in accordance with national legislation and/or established procedures.

Wider authority is given to workers and workers' representatives with specific responsibility for safety and health matters. According to Article 3(c) of the Directive, the latter are considered to be persons designated, elected or appointed, in accordance with national legislation and established procedures, to represent workers in solving problems arising from the protection of occupational health and safety of workers in the performance of their work activities. Workers and workers' representatives with specific responsibility for occupational safety and health matters shall be provided with the right of prior consultation and information in, among other things, undertakings that may significantly affect the level of occupational health and safety; designation of employees of protection and prevention services, first aid, specific information on, in particular: (a) occupational health and safety hazards and the type of protective and preventive measures and actions to be taken relating both to the enterprise or establishment in its entirety and to the workstation or job; (b) information to be provided by the employer to the employers of workers of external enterprises or establishments working at his/her enterprise or establishment; and (c) information to which workers or their representatives with a specific occupational health and safety function should have access in order to adequately perform their tasks, including, in particular, information required by the protective and preventive measures adopted by the control bodies and authorities responsible for matters of occupational health and safety (Świątkowski 1999, 293).

In the 2006 judgement of the Court of Justice of the European Union in Case C428/04, *Commission of the European Communities v. Republic of Austria*,<sup>18</sup> of 6<sup>th</sup> April, it was stated that Article 11(1) of the Directive provides for a general obligation on employers to consult workers or their representatives and to allow them to participate in all matters concerning safety and health protection at work. In contrast, Section 2 of this provision deals with participation and consultation with a special group of workers, i.e. workers with a special function in the field

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<sup>18</sup> Judgment of the Court (Third Chamber) of 6 April 2006. *Commission of the European Communities v Republic of Austria*. Case C-428/04, Lex No. 226487, para. 76.



of safety and health protection of workers. Thus, national regulations that do not provide for a separate position for these employees in information and consultation procedures do not comply with Article 11(2) of Directive 89/391/EEC.

The requirement in Article 11 of Directive 89/391 that workers be consulted and allowed to participate in occupational health and safety tasks changes the position of workers in the OHS field.<sup>19</sup> From being passive participants in the creation of safe and hygienic working conditions, they become co-creators of employment conditions (Krzyśków 1999, 20; Krzyśków, Drygała 1998, 25). According to Advocate General Damas Ruiz-Jarab Colomer, this regulation is one of the Directive's most significant values.<sup>20</sup>

According to Article 237<sup>11a</sup> § 1 of the Labour Code, all measures related to occupational health and safety are subject to consultation with workers or their representatives. This applies in particular to: 1) changes in the organisation of work and equipment of workplaces, the introduction of new technological processes and chemical substances and their mixtures, if they may pose a threat to the health or life of employees; 2) the assessment of occupational risks occurring in the performance of certain work and informing employees of these risks; 3) the creation of an OHS service or entrusting the performance of the tasks of this service to other persons as well as the appointment of workers to provide first aid and to perform firefighting and the evacuation of workers; 4) the allocation of personal protective equipment and work clothes and shoes to workers; 5) training workers in occupational health and safety. The caveat "in particular" clearly indicates that the indicated catalogue is not closed. In addition to the aforementioned issues, consultations may also address other occupational health and safety issues.

In the vernacular, consultation is understood as consulting with professionals and specialists, providing advice, guidance, and clarification by experts (Szymczak 1993, 996). Workers or their representatives are entitled not only to be informed about occupational health and safety matters, but also to speak out. However, the position of the employee side is not binding. Consequently, ignoring the opinion of the workforce, the employer, at his/her own discretion, can determine the OHS rules of the workplace. On the other hand, it cannot waive consultation. Such behaviour would constitute a violation of an OHS duty and thus give rise to misdemeanour liability (Article 283 § 1 of the Labour Code).

In addition, workers or their representatives may submit proposals to the employer on the elimination or reduction of occupational hazards. The employer is obliged to consider projects and proposals submitted by the employee side. At the same time, as in the case of consultations, he/she is not bound by them.

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<sup>19</sup> <http://curia.europa.eu/juris/show>

<sup>20</sup> <http://curia.europa.eu/juris/show>

#### 4. ENTITLEMENTS OF EMPLOYEES PARTICIPATING IN OHS CONSULTATIONS

According to Article 11 Section 4 of Directive 89/391, workers and their representatives with specific responsibility for matters of employees' safety and health must not be put at a disadvantage because of their activities. The same normalisation is contained in Article 237<sup>11a</sup> § 6 of the Labour Code, which provides that employees or their representatives may not suffer any adverse consequences for occupational health and safety activities. Activity in the OHS sphere must not be the basis for the employer or others to take adverse action against employees or their representatives who participate in consultations and make proposals related to occupational health and safety. This applies to both legal and factual consequences (e.g. in terms of the work assigned to the employee, removal from the performance of work by the labour inspector) (Sanetra 2011, 1176) and they are prohibited if they are motivated by the actions of employees or their representatives regarding their participation in consultations with the employer and submission of proposals to the employer and the labour inspectorate.

The employer is obliged to provide adequate conditions for consultation. It is not only a matter of preparing a place to hold discussions with employees or their representatives, but, above all, ensuring that consultations take place during working hours, with the right to be paid.

#### 5. CONSULTATION ON OCCUPATIONAL HEALTH AND SAFETY IN THE UNIFORMED SERVICES

The Labour Code regulations on consulting with employees or their representatives on occupational health and safety activities also cover those in non-employee administrative-type employment relationships. This includes, for example, the Police,<sup>21</sup> the Border Guard,<sup>22</sup> the Prison Service,<sup>23</sup> and the National Fire Service.<sup>24</sup> According to the service pragmatics, it is stipulated that in matters of occupational health and safety of the service, the provisions of Section Ten of the Labour Code, as well as the implementing regulations issued on its

<sup>21</sup> Law of 6<sup>th</sup> April, 1990 on the Police, Journal of Laws of 1990, No. 30 item 179 as amended. Ustawa z 6 kwietnia 1990 r. o Policji, tj. Dz. U. z 1990 r. nr 30 poz. 179 z późn. zm.

<sup>22</sup> Law of 12<sup>th</sup> October, 1990 on the Border Guard, Journal of Laws of 1990, No. 78, item 462, as amended. Ustawa z 12 października 1990 r. o Straży Granicznej tj. Dz. U. z 1990 r. nr 78 poz. 462.

<sup>23</sup> Law of 9<sup>th</sup> April, 2010, on the Prison Service, Journal of Laws of 2010, No. 79, item 523, as amended. Ustawa z 9 kwietnia 2010 r. o Służbie Więziennej, tj. Dz. U. z 2010 r. nr 79 poz. 523, z późn. zm.

<sup>24</sup> Law of 24<sup>th</sup> August, 1991 on the National Fire Service, Journal of Laws of 2024, item 127, as amended. Ustawa z 24 sierpnia 1991 r. o Państwowej Straży Pożarnej, tj. Dz. U. z 1991 r. nr 88 poz. 400 z późn. zm.

basis, shall apply accordingly, with the exception of certain norms. The latter include Article 23711a § 4 of the Labour Code.<sup>25</sup> The norms for fire-fighters go even further. According to Article 29a Section 3, for the NFS, the regulations of the Labour Code on the issues in question apply in full. This means that also in the uniformed services, OHS issues cannot be arbitrarily determined by the competent supervisor, who in this regard enters into the rights and duties of the employer, but requires consultation and guidance of representatives of the officers of the service in question.

## 6. CONCLUSION

European Union regulations, especially Directive 89/391 EEC, have played an important role in shaping Polish norms in the area of occupational health and safety. This is especially true of the regulations governing consultation with employees or their representatives on OHS matters. The need to implement the European Union's solutions has resulted in the provision of broad powers to employees or their representatives in this regard, and guarantees have been established not to suffer negative consequences for performing consultative functions. The right to consult on occupational health and safety matters was also provided to uniformed officers. As a result, Polish OHS standards fully implement the provisions of Directive 89/391/EEC (also Mitrus 2006, 244). The only objection is the primacy of unions in the selection of employee representatives. The adopted solution provides union members with a privileged position in OHS matters.

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<sup>25</sup> Cf. Article 71a of the Law on the Police; Article 75b on the Border Guard; Article 117 on the Prison Service.

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