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The Evolution of the Law of Social Participation in the EU and in Poland. Critical and Postulative Remarks

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ABSTRACT

This article addresses the socially significant issue of social participation. The author offers a systematic review of European Union and Community legislation on participatory institutions, identifying both the strengths and the weaknesses of the legal solutions currently in force. Particular attention is devoted to two relatively recent participatory institutions: energy cooperatives and school cooperatives. In conclusion, the author advances five postulates, focusing on the need to enhance effectiveness both in enacting legislation conducive to participation and at the stage of its practical application, including in the activity of public administration bodies.

KEYWORDS

social participation, energy cooperatives, school cooperatives, right to information, social dialogue

1. Introductory Remarks

The purpose of this article is to analyse the evolution of the law relating to social participation — an institution that is increasingly popular and historically well established.¹ The analysis begins by determining the very notion of social participation and its constituent elements, namely dialogue and information. I then attempt an original classification of the norms that lay the participatory foundations² in a general sense. The next stage consists in illuminating the evolution of this body of law by distinguishing several fundamental phases connected with EU law, which by its very nature supports and initiates participation in undertakings, broadly understood. For each phase, specific examples of forms of participation are presented.

Subsequently, following the review of EU law, I undertake an analysis of the law of participation in Poland, with particular regard to the most recent changes and trends in this area. Classic forms of participation taking a cooperative form³ have been excluded from the analysis, primarily because of the length constraints of the present study, and also because — to my knowledge — this subject matter is addressed by other authors in the present issue.

As is customary, the concluding section presents, on the basis of the above analyses, critical remarks and, ultimately, proposals for strengthening participation as an instrument of civil society. Positive influences that are already producing certain participatory effects are also indicated.

The principal research method consists in an analysis of the extensive literature and of several of the more important legal acts, supplemented by the author's own empirical observations drawn from foreign and local institutions engaged in social participation.⁴

2. The Notion of Participation and Its Constituent Elements

Before proceeding to further analysis, it is essential to establish several notions, in particular the term *social participation*,⁵ which may occur in several forms. Of particular note is **social participation in the civic**

¹John Elof Boodin, *The Law of Social Participation* [in:] *American Journal of Sociology*, Volume 27, Number 1, July 1921, pp. 22–53.

²The account is framed broadly, encompassing also institutions omitted from analyses of this kind, such as norms creating duties of informing, consultation or dialogue.

³See, among others, Marta Szperlich-Kosmala, *Participation and Cooperation as a Key Answer to Increase Global Responsibility. The Role of Local Changemakers* [in:] *INDIVISIBLE. Social Responsibility in the Age of Entropocene*, Marta Błaszowska-Nawrocka, Monika Różalska, Anna Treska-Siwoń (eds.), Kraków 2023, pp. 40–50. Cf. Daria Kowalska, *Odpowiedzialność społeczna spółdzielni a przedsiębiorczość... Realizacja misji społecznej przy jednoczesnym osiągnięciu celów biznesowych* [in:] *"Prawo i Wiedza"* No. 3/2024, p. 226 et seq.

⁴The author conducted research and archival enquiries on the processes of social participation in Germany, Israel and Belgium.

⁵From the Latin *participare* — to take part, to participate: *Podręczny słownik wyrazów obcych*, ed. Władysław Kopaliński, Warszawa 1996, p. 606.

context⁶ — in the briefest terms, engagement in social activity oriented towards the common good. That “engagement” likewise comprises several stages. First, it requires the proper communication of information by the administration to a variety of addressee groups; next, the creation of institutional platforms for dialogue within a social group; and further, the regular elaboration of common positions on a given subject. A distinction should be drawn here between **communal (horizontal) social participation** and **civic (vertical) participation**. Vertical participation concerns the relationship arising from dialogue between authority and citizens. Horizontal participation, by contrast, consists primarily — at the first stage — in dialogue between communities, and only subsequently in cooperation among various groups and individuals in the pursuit of a common goal. As follows from the above premises, all participation is a multi-stage undertaking. Several of these stages are discussed more extensively below, so that a subsequent comparison of the model with actual practice may provide a basis for corrective proposals.

The first stage of the process by which citizens join structures taking the form of social participation — and at the same time a *sine qua non* condition — is equipping them with a defined body of knowledge. Citizens acquire it through the diverse informational activities and duties of public authorities, addressed as a package to the needs of the given community. This is followed by support for the processes of integrating that community. Finally, it is necessary to oblige designated public authorities to engage in regular dialogue.

A characteristic feature of most forms of social participation is also that, at the next stage, their activity is based on various forms of dialogue, the fruit of which is ultimately to be the identification of an entity capable of resolving the problems specific to the given community. Such an entity will normally be adequate to that community’s current problems. The foundation of each form of participation consists in one or several legal regulations setting out the principles of public involvement in the implementation of a given undertaking. The process of creating entities of social participation should be preceded by an identification of social needs and deficits, as part of giving effect to the principle of subsidiarity.⁷

For that reason, public authorities should, on an ongoing basis, themselves identify areas of potential social needs and deficits, detecting and monitoring the sensitive ones. They should then organise consultations adequate to the solution sought and consistent with the legislation adopted in the given field, thereby providing a basis for integrative and socially inclu-

⁶Natasza Lubik-Reczek, Izabela Kapsa, Magdalena Musiał-Karg, *Elektroniczna partycypacja obywatelska w Polsce. Deklaracje i opinie Polaków na temat e-administracji i e-głosowania*, Poznań 2020, pp. 18–19.

⁷Jędrzej Jabłoński, *Krótką historia zasady pomocniczości jako zasady ustrojowej. Próba conceptualizacji*, “Prawo i Więzy” No. 3/2023, p. 76 et seq.

sive measures. In the absence of initiatives on the part of public authorities, the law should provide simple procedures enabling local communities to commence the process on their own, according to their needs, as a bottom-up activity. They should therefore have at their disposal provisions that are appropriately specialised and, ideally, dedicated directly to the given problem. Where such provisions are lacking, however, it should always remain possible to create a participatory community on the basis of norms of a general character. Participatory communities so formed should, as a matter of principle, always be oriented towards both internal and external dialogue, or at least be capable of effectively determining it.

Dialogue thus created takes the form of dialogue within a given milieu or dialogue with the public sphere. An analysis of the law indicates that a number of activities enshrined in legal norms are not so designated, even though they display the features typical of participation.⁸ This most often results from the late application and definition of the phenomenon of participation in Polish law.

In practice, dialogue is regarded as the material from which the foundations and the framework of participation are built. For that reason, it is important to establish the notion of dialogue, a term that appears both in legal acts and in the literature.⁹ The encyclopaedic¹⁰ notion of dialogue indicates its objectives. Dialogue in this sense consists above all in **creating the basis for communication with another person or entity. Such communication is possible thanks to ensuring equality in contacts with the other party at every stage of the dialogue and to observing the principles typical of dialogue.** Equality should encompass, above all, access to information, since only equal resources of knowledge permit two-way discussion and the mutual recognition of the parties to the dialogue as partners in it.¹¹ It is worth emphasising that dialogue places the accent

⁸Alongside the term “employee participation”, the literature frequently employs the notion of “employee involvement”, which refers to the forms and methods serving to improve the quality and efficiency of work and to increase employees’ identification with the company’s objectives. The idea of employee participation is also strongly emphasised in EU legislation, as attested, among others, by Council Directive 2001/86/EC *supplementing the Statute for a European company with regard to the involvement of employees* (OJ L 294, 10.11.2001, p. 22) and Directive 2002/14/EC *establishing a general framework for informing and consulting employees in the European Community* (OJ L 80, 23.3.2002, p. 29). More extensively: Katarzyna Skorupińska-Cieślak, *Employee Participation in the EU Countries — A Comparative Analysis* [in:] “*Studia Prawno-Ekonomiczne*” 2021, pp. 221–238; Katarzyna Jachimowicz, *Debata nad raportem o stanie jednostki samorządu terytorialnego jako forma partycypacji* [in:] *Partycypacja w samorządzie terytorialnym — stan obecny i perspektywy*, eds. Katarzyna Olszewska, Krzysztof Sidorkiewicz, Krzysztof Starańczak, Piotr Uziębło, Elbląg 2021, p. 119.

⁹Cf. the remarks in: Jan Olszewski, *Konstytucyjny obowiązek wykonywania dialogu w praktyce* [in:] *XXV lat Konstytucji Rzeczypospolitej Polskiej. Księga jubileuszowa dedykowana Profesor Halinie Zigiebie-Zaluckiej z okazji 70. rocznicy urodzin*, ed. Radosław Grabowski, Toruń 2023.

¹⁰*Słownik Języka Polskiego*, Dialog, at: <https://sjp.pwn.pl/szukaj/dialog> (accessed: 1 July 2026).

¹¹Aneta Załazińska, *Niewerbalna struktura dialogu*, Towarzystwo Autorów i Wydawców Prac Naukowych Universitas, Kraków 2006, pp. 5–9.

on the need to ensure full reciprocity in informing¹² and, simultaneously, on the capacity to sustain communication, since communication between persons engaged in dialogue most often arises by way of messages, that is, through some form of informing. Other definitions narrow dialogue by indicating that its realisation is limited to a dozen or so forms; the description itself, however, leaves broader scope for the creation of new dialogic forms. Such a position may be adopted because the encyclopaedic¹³ notion of dialogue points above all to its purpose, namely communication with another person. Such communication is possible only where it serves to treat the other party as an equal partner in the dialogue.¹⁴

A particular form of dialogue is discourse. It differs from classic dialogue in its heightened emphasis on the mutual interconnection of arguments. In dictionary terms, *discourse* is most often understood as an exposition conducted on the basis of strictly logical inference.¹⁵ Accordingly, **discourse comprises all statements made in a certain established form and invariably containing certain elements: a specific arrangement and structure of the statement, together with argumentative conceptions appropriate to the subject and mutually cohesive.** The aim here is therefore not merely mutual informing, but informing of a kind that creates an informational cascade capable of persuading the participants in the discourse to adopt particular positions, views and the like. In addition, it is accepted that at least two groups of activities may be distinguished within discourse: activities oriented, first, towards formulating rational statements, and, subsequently, towards conveying them in appropriately arranged bundles of argument in the act of communication.

The notion of information also arises in the context of participation. Before citing the most universal definition of **information**, I should like to emphasise **that it is composed of particles which are data. These data constitute the elementary components of information; taken singly, as its individual particles, they signify nothing, and thus such data do not automatically create information.**¹⁶ **Data become information when they reduce the recipient's state of uncertainty.** It must be noted, however,

¹²A number of ministerial definitions of dialogue emphasise that it is "(...) a process of exchanging information or positions with a view to reaching agreement on matters important to the employees of the given ministry". See: Ministry of National Defence, *Dialog społeczny*, at: <https://www.gov.pl/web/obrona-narodowa/dialog-spoeczny> (accessed: 1 July 2026).

¹³Definition of dialogue after *Słownik Języka Polskiego*, at: <https://sjp.pwn.pl/szukaj/dialog> (accessed: 11 December 2025).

¹⁴Aneta Załazińska, *Niewerbalna struktura dialogu*, Towarzystwo Autorów i Wydawców Prac Naukowych Universitas, Kraków 2006, pp. 1–21.

¹⁵*Słownik Języka Polskiego, Dyskurs*, at: <https://sjp.pwn.pl/szukaj/dyskurs> (accessed: 1 July 2026).

¹⁶Similarly, Andrzej Adamski indicates that having access to data does not always mean being able to apprehend the content of the information contained therein. Accordingly, codes, access keys and pairing keys of every kind are not information but merely constitute sets of data; more extensively in: Andrzej Adamski, *Przestępstwa komputerowe w nowym kodeksie karnym*, Warszawa 1998, p. 28.

that they are absorbed by each recipient individually, according to that recipient's own cognitive capacities.

Scholarship indicates that, in order to make a correct selection amid a deluge of millions of data, they must be chosen according to a certain established key. Only then, following a selection appropriate to the given subject, can a package of data become information. Diverse recommendations concerning the process of decoding correct information from data are therefore of value.¹⁷ Such processes most often determine which data are to be positively accepted so that information may ultimately be obtained. Noteworthy in this respect is the account offered by Pope Benedict XVI,¹⁸ according to whom **the only correct process of acquiring information should comprise three elements:**

1. a conscious choice made by a particular person (each person chooses differently);
2. an individual assessment of whether the data so selected pertain to the matter under examination and can serve the given cause creatively;
3. grounding the selected data in the values of natural law and respect for human dignity, so that they may be correctly interpreted.

A higher level in the application of information consists in creating knowledge out of information; information, in turn, can become a particle of knowledge only where certain conditions are met. Knowledge is attained by the recipient who, thanks to the information and by virtue of prior experience, is able to use it in accordance with its purpose.¹⁹ In other words, such a recipient acquires the ability to implement it in full and consistently with values. It should be noted here that a good deal of information is subject to manipulation, whether accidental or deliberate.

The correct process of transmitting information is normally effected through correct communication. This occurs where it is ensured that the given information reaches the recipient unaltered and genuinely reduces that recipient's uncertainty as to the subject conveyed, while at the same time carrying the values originally embedded in it. Information should therefore be presented so as to reflect as faithfully as possible the reality to which it pertains. It is worth recalling that, to achieve this, information supplied in scholarship should fulfil the aims of scholarship, the fundamental aim of which is to describe the truth. It is the Preamble

¹⁷It should be noted that, far more frequently, the average recipient of data does not subject them to positive verification but processes the data obtained through factors that distort them. As a result, one recipient may form from them information consistent with the sender's intentions, while for another the same data may depict a situation that is, at times, entirely the opposite. These negative filters include, in particular: political manipulation, recipients' traumas, political and religious fanaticisms, and — as is unfortunately still common — a lack of knowledge relating to the data.

¹⁸Joseph Ratzinger, *Służyć prawdzie*, Poznań 1983, p. 263.

¹⁹Jan Olszewski, *Obowiązki informacyjne w gospodarce jako element zwiększania konkurencji*, Rzeszów 2020, pp. 52–53.

to the Constitution of the Republic of Poland²⁰ that identifies truth as a universal value. Hence it may be concluded that even the smallest items of information should form particles leading to the truth — truth that arises in the recipient through the inflow of information and rests upon the values proper to it.

3. General Characteristics of the Law Governing Social Participation and an Attempt at Its Classification

Certain elements of the law of participation may already be found in Catholic Social Teaching (hereinafter: CST), which has its origins in the encyclicals of Leo XIII. **The fundamental features of CST are voluntariness, democracy, and the primacy of the human person over capital.**²¹ CST is developed extensively in the encyclicals of John Paul II, and in particular in *Laborem exercens* of 1981, which emphasises such elements of CST as human dignity, the need to ensure economic order, and the specific character of social work in the economic activity of Catholics. The introduction into practice of a developed law of participation, by contrast, is owed in Poland primarily to the European Union.

For many years the EU has regarded democracy in general terms — and, in particular, democracy in the workplace and in local communities — as a fundamental value of the European Union. Accordingly, various Community bodies are building very solid foundations for strengthening participation and dialogue in all Member States.

It has been recognised that well-designed participatory regulations should reflect the existing structure of society. They should also exert a creative influence on the development of every individual, above all by enhancing the quality of democracy, but also by creating a new kind of bond between authorities and employers of every kind and society, and even individual persons.

In implementing social participation, familiarity with the sources of law relating to this institution is fundamental. The legal sources underlying the institution of social participation — that is, those relating to all forms of cooperation of society among its own members or with the public sphere — are, under the influence of EU law, growing ever broader. They are therefore enumerated below in groups, and I mention only the most characteristic institutions, indicating their legal sources and merely outlining a

²⁰The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483, as amended).

²¹Monika Chomontowska, *Nauka społeczna Kościoła a gospodarka społeczna* [in:] “*Ekonomia Społeczna*” 2013, No. 3, p. 71. CST is developed extensively in the encyclicals of John Paul II, in particular the encyclical *Laborem exercens*, Vatican 1981, https://www.vatican.va/content/john-paul-ii/pl/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html (accessed: 1 July 2026). It discusses human dignity from the perspective of economic order and also addresses questions of social work and the activity of Catholics.

few of their features. It is worth emphasising that they already encompass international, EU and national law.

A characteristic element of the aforementioned norms is the emphasis on building cooperation between social partners. These forms may be divided into general ones (*sensu largo*), which lay the groundwork for future participation, and institutions *sensu stricto*, which establish it directly. The latter frequently employ the notion of “social participation” or use terms of a similar character in their nomenclature. Bearing in mind the aforementioned advantages and values that social participation brings, international organisations²² and, subsequently, national legislatures have for over thirty years undertaken a range of regulatory initiatives, in particular by creating institutions of informing, dialogue and participation. These regulations are also intended to ensure a balance among all groups within the social market economy.

Such groups include, above all, relations between employers and employees, and between public authorities and the communities subject to them territorially or substantively. It is worth noting in advance that, for a number of social groups, not even symbolic participatory institutions have yet been devised.

The solutions contained in the imposed regulations or opinions introduce, in the first instance, information duties supporting the creation of knowledge among socially vulnerable groups, in order ultimately to improve the actual practice of cooperation based on democracy in the workplace or in the place of residence. In order to present the account of participation as clearly as possible, several classifications are proposed in this area.

4. Types of Forms and Stages in the Creation of Participation: A Proposed Classification

The dynamic flourishing of law directly creating participation, or at least promoting its various forms, has led to a certain terminological chaos. In order to bring order to this state of affairs, it is advisable to outline a classification of the institution. Two divisions are presented below: the first according to the legal force of the legal act, the second according to the level of employee involvement.

²²Alongside the EU, an important role in promoting participation is played by the Council of Europe. In particular, Articles 3 and 11 of the European Charter of Local Self-Government, done at Strasbourg on 15 October 1985 (Journal of Laws 1994, No. 124, item 607), are frequently invoked in Poland. This pressure towards mutual informing through dialogue has resulted in the emergence in Poland of diverse legal sources for the creation of dialogue. They are drawn up by social milieus — for example, the so-called *White Book of Partnership Principles*, prepared by the Lewiatan Confederation together with other employers’ organisations and trade unions.

It should be recalled here that EU acts are divided into binding and non-binding ones.²³ Binding acts include regulations, directives and decisions. In the field of implementing participation, the directive predominates, owing to its distinctive teleological flexibility. It was deliberately chosen, since the cultural specificity of individual states meant that the postulates and objectives to be attained EU-wide by the target deadline had to be adapted to differing extents. Non-binding acts in the field of participation, by contrast, most often take the form of opinions and recommendations.

EU norms relating to participation **may also be divided according to the level of employee involvement**. Several groups may be distinguished here as well. The first group comprises acts imposing a relatively low level of involvement: most often, at the outset, specific information duties or rights to information are introduced.

Next come acts that already build upon the information resources supplied and create institutions of higher involvement supporting dialogue — for without adequate knowledge, dialogue on equal terms is impossible.

Acts of the highest (third) level already introduce concrete institutions of participation in practical operation. Examples include organisational separation or even the creation of co-ownership.

In classifying the levels set out above, it may be observed that the first regulatory group relates to employees of every kind. What is at stake, in the first instance, is supporting employees by keeping them currently informed of all matters material to the existence of the undertaking. The second task is to compel the creation of entities integrating the workforce. Further objectives of participatory regulation relate to employees and management alike and impose the communalisation of management within undertakings.

Alongside the above form, employee involvement may also take other forms falling within corporate governance. A fifth plane for the creation of participation arises through the establishment of organisational and legal instruments facilitating the transfer of part of the ownership to employees (for example, employee shareholding). Across all the aforementioned objectives, it is apparent that the foundations of a social market economy are to be built first, and that participation is subsequently to be strengthened in practice.

To illustrate the evolution of the process of creating the law of participation, I present only a fragment of it, one of considerable economic significance nonetheless, since it relates to employees of undertakings operating within the EU. This group was also the earliest to perceive the need to strengthen participation of every kind — a need signalled above all by trade unions. As practice to date has shown, once the regulatory process connected with participation had been initiated, trade unions began, in

²³Cf. Jan Raczyński, *ABC prawa unijnego w transporcie* (1). *Rodzaje regulacji prawnych i zasady ich ustanawiania* [in:] "Prawo i Finanse" 2003, No. 7–8, p. 39 et seq.

parallel with the legislature, actively to refine the existing legal solutions. From the very outset they have also postulated — and continue to postulate — the sealing of actual and even potential legal loopholes.²⁴ It should be noted that the more active trade unions raised the issue of participation at the international level many years ago, where it was usually presented by the International Labour Organization (ILO).²⁵

In what follows, the evolution of employee participation is described through a review of norms that incrementally increase the scale of employee involvement in management processes.

Analysing the subject of employee participation from the standpoint of the form of legal regulation, one may observe a certain specificity as regards the forms of legal acts. The rule here is that opinions and resolutions issued by the relevant institutions precede the adoption of a directive²⁶ or of its final text. One example is the Opinion of the European Economic and Social Committee on the *directive of the European Parliament and of the Council amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights*.

5. Laying the Foundations for Employee Participation through the Duty to Inform the Workforce of Undertakings

In retrospect, the first stage laying the groundwork for future active participation may be identified as EU law generating information duties towards employees. Above all, the broad provision of information to employees about the activity of the undertaking naturally brings the workforce to an awareness of its material managerial problems. Only at the next stage does the role of employee communities in co-decision-making within the given undertaking become stronger. Directives creating numerous information duties are particularly abundant. An example is Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 *establishing a general framework for informing and consulting employees in the European Community*.²⁷

²⁴For example, the Resolution of the European Trade Union Confederation of 22 October 2014 entitled “Towards a New Framework for More Democracy at Work”; the Position of the European Trade Union Confederation of 9–10 December 2020 on a new EU framework on information, consultation and board-level representation for European company forms and for companies making use of EU company law instruments enabling company mobility.

²⁵For example, in February 2010 the International Labour Organization produced a study entitled “A Comparative Overview of Terms and Notions on Employee Participation”; subsequently, in 2018, a further ILO study was produced entitled “Corporate Governance Models: Structure, Diversity, Evaluation and Prospects”.

²⁶Opinion of the European Economic and Social Committee — *Proposal for a directive of the European Parliament and of the Council amending Directive 2009/38/EC as regards the establishment and functioning of European Works Councils and the effective enforcement of transnational information and consultation rights* (COM(2024) 14 final — 2024/0006(COD)), OJ C, C/2024/4664.

²⁷OJ L 80, 23.3.2002, p. 29.

Directive 2002/14/EC operates in concert with Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 *on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees*.²⁸

The non-binding acts mentioned earlier, which first introduce and subsequently refine the subject matter of **informing the workforce**, include **opinions and resolutions**. Consistent with their designation, they normally have a postulative or advisory character. Examples of such acts in the field of information duties include, in particular: the European Parliament resolution of 15 January 2013 *with recommendations to the Commission on information and consultation of workers, anticipation and management of restructuring*;²⁹ and the European Parliament resolution of 16 December 2021 on democracy at work, setting out a European framework for employees' rights.³⁰ Among those most frequently invoked and, in practice, of greater importance is the Opinion of the European Economic and Social Committee of 31 August 2020 *on an EU framework for securing and strengthening the rights of workers to information, consultation and participation*, together with the directive on European Works Councils (2021/2005(INI)).³¹

6. EU Law Creating Participation through the Institution of Dialogue

A further stage in laying the foundations for participation consisted in the adoption of regulations encouraging, and at times even compelling, the conduct of dialogue in undertakings, but also in other entities (for example, in local and cross-border communities³²). An exemplary opinion justifying the need to create institutions of dialogue in European law is the Opinion of the European Economic and Social Committee of 29 October 2020 entitled *Social dialogue as an important pillar of economic sustainability and the resilience of economies, taking into account the influence of lively public debate in the Member States*.³³

7. EU Law Creating Duties Regarding Participation in Management

The third area of analysis comprises regulations creating a further stage of participation by introducing employee representation into the manage-

²⁸OJ L 122, 16.5.2009, p. 28.

²⁹OJ C 440, 30.12.2013, p. 23.

³⁰OJ C 251, 30.6.2022, p. 104.

³¹P9_TA(2021)0508, text at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0508_PL.html (accessed: 1 July 2026).

³²For example, the Resolution of 12 September 2013 *on cross-border collective bargaining and transnational social dialogue*, OJ C 93, 9.3.2016, p. 16.

³³OJ C 10, 11.1.2021, p. 14.

ment bodies of undertakings. This area consists in creating a specific legal institution, that of so-called participatory management,³⁴ with the involvement of the undertaking's workforce. This process, too, was preceded by various opinions, in particular the Opinion of the European Economic and Social Committee of 16 March 2016 entitled *Upgrading the Single Market: more opportunities for people and business*,³⁵ which called for employees to be involved more extensively in the management of undertakings. The role of local authorities was also emphasised here. In particular, the European Committee of the Regions stressed that the unification of the market may not take place at the expense of social cohesion, and that new provisions must take account of the specificity of individual regions and cities.³⁶ A decidedly more advanced tier of participatory management arises through the involvement of employees in so-called corporate governance. Attention was already drawn to this issue in the Opinion of the European Economic and Social Committee of 20 March 2013 *on employee involvement and participation as an essential component of good corporate governance and balanced solutions for overcoming the crisis*.³⁷

The final tier of participation appears where separate participatory bodies associating employees within undertakings are directly created. Examples of such acts include the resolution of 12 March 2009 *on employees' participation in companies with a European Statute and other accompanying measures*.³⁸

8. The More Important Legal Sources of Participation and Dialogue in Polish Law

Conduct exhibiting the features typical of new forms of participation has been present in the Polish legal system for over a decade. Significantly, however, these measures lack coherence, and I therefore present below several groups of participation and the factors producing this differentiation. In Polish law, as in EU law, the process of laying the foundations for the institution of social participation in undertakings began with the creation of legislative solutions establishing various information duties. The next stage consisted in institutionalisation proper, aimed at horizontally strengthening dialogue. Ultimately, these steps made it possible to implement regulations directly creating new forms of participation of various kinds. Since analyses of the right to information already exist in the Polish

³⁴It should be stated here that the notion of participatory management refers to a management style in which employees exert an active influence on decisions and processes within the organisation. In the context of EU law, such management is promoted in several directives which provide for the participation of employees or citizens in various areas, such as environmental protection, occupational safety and consumer protection.

³⁵OJ C 240, 1.7.2016, p. 43.

³⁶OJ C 240, 1.7.2016, p. 43.

³⁷OJ C 260, 7.9.2013, p. 126.

³⁸OJ C 87 E, 1.4.2010, p. 25.

literature,³⁹ I merely enumerate several of the more important regulations relating to dialogue, and discuss more extensively the most important acts directly creating new participatory institutions.

The review of Polish sources of participation begins with several of the more important acts of a general character. Fundamental to the creation of participation are, above all, the norms contained in the Constitution of the Republic of Poland,⁴⁰ which addresses such cooperation through the institution of dialogue. The significance of this institution is attested by the fact that it is placed as early as the Preamble.⁴¹ Moreover, the foundations of the economic system in Poland are also built on the basis of Article 20, which provides that *a social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland.*

Further, more detailed references to such cooperation through dialogue are to be found, among others, in the Act of 24 April 2003 *on Public Benefit Activity and Volunteering*,⁴² the Act of 6 December 2006 *on the Principles of Development Policy*,⁴³ and the Act of 11 July 2014 *on the Principles of Implementing Cohesion Policy Programmes Financed under the 2014–2020 Financial Perspective*.⁴⁴ As indicated earlier, a number of institutions already introduced into the law of EU Member States, including Poland, in the field of creating dialogic institutions have their source in EU law. It should be noted, however, that the indications flowing from directives are not always read correctly. This concerns, in particular, regulations connected with environmental protection and access to environmental information.⁴⁵ Significantly, EU regulations increasingly also provide for a duty to conduct special, virtually multi-level dialogic procedures⁴⁶ in complex matters —

³⁹Among others: Marzena Czarnecka, *Obowiązki informacyjne a zachowania konsumentów na rynku energii elektrycznej. Studium ekonomii prawa*, Warszawa 2018; Przemysław Mikłaszewicz, *Obowiązki informacyjne w umowach z udziałem konsumentów na tle prawa Unii Europejskiej*, Warszawa 2008; Jan Olszewski, *Obowiązki informacyjne w gospodarce jako element zwiększania konkurencji*, Rzeszów 2020.

⁴⁰The Constitution of the Republic of Poland of 2 April 1997: Journal of Laws 1997, No. 78, item 483, as amended.

⁴¹“(…) desiring to guarantee citizens’ rights for all time, and to ensure diligence and efficiency in the work of public bodies, recognizing our responsibility before God or our own consciences, hereby establish this Constitution of the Republic of Poland as the basic law for the State, based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities.”

⁴²Consolidated text: Journal of Laws 2025, item 1338.

⁴³Consolidated text: Journal of Laws 2025, item 198.

⁴⁴Consolidated text: Journal of Laws 2020, item 818.

⁴⁵An exemplary instance is Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 *laying down common provisions on the ERDF, the ESF, the Cohesion Fund, the EAFRD and the EMFF*, OJ L 347, 20.12.2013, p. 320.

⁴⁶Decision No A1 of 12 June 2009 *concerning the establishment of a dialogue and conciliation procedure concerning the validity of documents, the determination of the applicable legislation and the provision of benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council*, OJ C 106, 24.4.2010, p. 1.

procedures that are extensive where questions of substantial social impact are at stake.

9. Examples of Specific Polish Legislation Relating Directly to Participation

Legal solutions creating the basis for mechanisms of participation by the inhabitants of the Republic of Poland are, as in the legal orders of other EU states, subject to evolution. They are refined through in-depth study and examination of the problems arising in the practical application of the above institutions. The amendments undertaken, however, do not encompass a reform of entire legal acts *in generalis*, but are rather of a problem-specific or piecemeal character. It should be noted that legislative solutions of this type currently exist in Poland at both the central and the local-government level. The latter, in particular, remain defective in many respects. As observation, together with a review of the literature and legal writing, demonstrates, the absence of evolution at the local-government level is largely conditioned by political factors. This is apparent not only in the case of the *Act on Local Referendum*⁴⁷ (hereinafter: ALR). Although that Act has been amended on numerous occasions, this has as a rule involved *strictly* procedural changes. The situation was similar with the introduction into the Polish legal order of the institutions of citizens' legislative initiative and the participatory budget.⁴⁸ In addition, the excess of procedural aspects means that these basic institutions of participation still belong among exceptional local initiatives.⁴⁹ An unsuccessful act in the field of local-government law, intended by design to foster broad participation, is the amended Act of 20 February 2015 *on Community-Led Local Development*.⁵⁰ That Act establishes a range of duties incumbent on municipalities as regards the seeking of opinions. In particular, local communities are entitled thereunder to express views on all the more important planned local measures. Persons taking part in consultations of this kind appear, as it were, in the role of "advisers" whose opinion is sought on a specific matter.⁵¹ Their voices should be considered, albeit without any guarantee that they will be taken into account. Notwithstanding such lofty assumptions and the subsequent amendments, this regulation remains riddled with

⁴⁷ Act of 15 September 2000 *on Local Referendum* (consolidated text: Journal of Laws 2025, item 472).

⁴⁸ Act of 11 January 2018 *amending certain acts in order to increase the participation of citizens in the process of electing, functioning and supervising certain public bodies* (Journal of Laws 2018, item 130).

⁴⁹ Piotr Uziębło, *Krytyczna analiza rozwiązań ustawowych dotyczących partycypacji mieszkańców na szczeblu samorządowym (wybrane zagadnienia)* [in:] *Partycypacja w samorządzie terytorialnym — stan obecny i perspektywy*, eds. Katarzyna Olszewska, Krzysztof Sidorkiewicz, Krzysztof Starańczak, Piotr Uziębło, Elbląg 2021, p. 11.

⁵⁰ Consolidated text: Journal of Laws 2025, item 182.

⁵¹ <https://partycypacjaobywatelska.pl/strefa-wiedzy/abc-partycypacji/co-to-jest-partycypacja-obywatelska-2/> (accessed: 1 July 2026).

defects, with the result that the aspect of genuine participation is slight and, in some local-government units, colloquially speaking, dormant.

Regulations with considerable development potential in the field of local participation nevertheless merit illumination. An exemplary instance is the increasingly popular energy cooperatives. They are established on the basis of the Act of 16 September 1982 — the *Cooperative Law*,⁵² the Act of 10 April 1997 — the *Energy Law*,⁵³ and the Act of 20 February 2015 *on Renewable Energy Sources* (hereinafter: the RES Act).⁵⁴ It is worth noting that, alongside registration in the National Court Register, a special list of energy cooperatives is maintained by the Director of the National Support Centre for Agriculture (KOWR).⁵⁵ In order to encourage society to undertake initiatives creating cooperatives of this type, the legislature has provided several solutions supporting the process. The benefits relate to exemption from part of the charges (for example, the distribution charge; a cooperative may moreover count on exemption from excise duty) and to storage in the power grid for up to twelve months (albeit on specified conditions and up to 60% of the volume fed in). Finally, KOWR itself undertakes numerous initiatives supporting and promoting⁵⁶ the creation of such cooperatives.

Although the role of communities is growing, alongside the refinement of this institution bureaucratic impediments are emerging. They are visible in particular through the new information duties imposed on suppliers. From 2026, energy suppliers will be required to provide consumers with a considerably broader range of information than hitherto. This concerns, among other things, legible comparisons of available tariffs, cost forecasts at various levels of consumption, and an indication of the potential savings resulting from the choice of so-called dynamic tariffs or the installation of RES. As a result, consumers will in principle gain the tools for informed decision-making, and the market will become more transparent. According to the legislature's assumptions, bills and offers are to be simpler, comprehensible and free of the proverbial "small print". A further duty will consist in providing information on the carbon footprint of energy, that

⁵²Consolidated text: Journal of Laws 2026, item 521.

⁵³Consolidated text: Journal of Laws 2026, item 43.

⁵⁴Consolidated text: Journal of Laws 2026, item 68.

⁵⁵760 as at 1 July 2026: <https://www.gov.pl/web/kowr/wykaz-spoldzielni-energetycznych> (accessed: 1 July 2026). This area has seen very dynamic development over the past two years. Cf. the remarks of Łukasz Mroczynski-Szmaj, *Nowe oblicze spółdzielczości: spółdzielnie energetyczne szansą dla polskiej Energiewende? Polsko-niemiecki kontekst porównawczy* [in:] "Prawo i Więź" No. 5 (52) 2024, pp. 179–202, and idem, *Spółdzielnie i wspólnoty energetyczne — quo vadis, polski promeryzm?* [in:] Marcin Kraśniewski, Monika Namysłowska (eds.), *Wyzwania dla europejskiego prawa gospodarczego: uczniowie dla Profesor Marii Królikowskiej-Olczak*, Instytut Prawa Gospodarczego Sp. z o.o., Katowice 2025, pp. 391–406.

⁵⁶Examples include 24 training sessions in the years 2022–2024, as well as numerous informational publications: Joanna Stasiak-Panek, *Spółdzielnie energetyczne ważnym elementem energetyki rozproszonej na obszarach wiejskich* [in:] "Biuletyn informacyjny KOWR. Trendy, narzędzia, kierunki" No. 3/2024, pp. 12–14.

is, making available to customers data on the sources from which the electricity supplied to their homes originates and on its environmental impact. This solution is intended both to encourage the choice of green energy and to support EU climate objectives, which as a whole is to translate into the process known as the energy and climate transition.⁵⁷ Electricity suppliers will thus also be cast in the role of energy advisers, assisting customers in reducing their costs and their environmental impact. It should therefore be noted that the growing rights of prosumers and energy communities must be counted among the positives. They arise, among other reasons, because the very scale of the phenomenon reinforces the significance of citizen energy communities (CECs), that is, groups of consumers who jointly invest in renewable sources and share energy.

As is observed in the literature, from 2026 the regulations are to foster their development, among other things through more transparent settlement rules and the possibility of obtaining additional tax reliefs or support from public funds.⁵⁸ Positive changes have also been brought about by the reform of the aforementioned RES Act, in which several amendments favourable to the expansion of participation have recently been made.⁵⁹ It appears that the process of refinement should continue, since the above acts still contain various barriers — such as the requirement that the efficiency of electricity generation must make it possible to cover, over the course of a year, no less than 70% of the own needs of the energy cooperative and its members. As participants in such communities report, this volume requires extensive baseline investment; hence the preferential coefficient, which lapsed at the end of 2025, ought to be restored.⁶⁰ In

⁵⁷Cf. *Krajowy Plan w dziedzinie Energii i Klimatu*, version of 9 June 2026, at: <https://www.gov.pl/web/klimat/krajowy-plan-na-rzecz-energii-i-klimatu> (accessed: 1 July 2026). It is drawn up on the basis of Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, OJ L 328, 21.12.2018, p. 1.

⁵⁸Michał Perzyński, *Co zmienia się w prawie energetycznym od 2026 roku? Nowe obowiązki dla sprzedawców i uprawnienia konsumentów*, "Gazeta Prawna", 27 August 2025: <https://www.gazeta.prawna.pl/biznes/energetyka/artykuly/10919939,co-zmienia-sie-w-prawie-energetycznym-o-d-2026-roku-nowe-obowiazki-dla.html> (accessed: 1 July 2026).

⁵⁹Article 38e(1) has been amended and now provides that "An energy cooperative shall satisfy the following conditions jointly: — it conducts its activity in the area of no more than 3 directly adjoining municipalities; — where the object of its activity is the generation of: (a) electricity — the total installed electrical capacity of all renewable energy source installations does not exceed 10 MW, and their electricity generation efficiency makes it possible to cover, over the course of a year, no less than 70% of the own needs of the energy cooperative and its members; (b) heat — the total attainable thermal capacity does not exceed 30 MW; (c) biogas or agricultural biogas — the annual output of all installations does not exceed 40 million m³; (d) biomethane — the annual output of all installations does not exceed 20 million m³." See, among others, the Act of 17 August 2023 amending the Act on Renewable Energy Sources and certain other acts, Journal of Laws 2023, item 1762, and the Act of 9 October 2025 amending the Act on Promoting Electricity Generation in Offshore Wind Farms and certain other acts, Journal of Laws 2025, item 1535.

⁶⁰Pursuant to Article 41 of the Act of 17 August 2023 amending the Act on Renewable Energy Sources and certain other acts, energy cooperatives that filed an application for entry in the list by 31 December 2025 could satisfy the required condition at a reduced coefficient, namely 40%. Cf. Jan

practice, few new citizens and municipalities are able to engage in investment so actively as to attain this result, not least because the EU financial perspective is inexorably drawing to a close. It is nonetheless gratifying that further proposals have appeared in the Sejm aimed at eliminating the blockages still being identified in the mass creation of cooperatives of this type.⁶¹ Also worth adapting here are the Austrian solutions concerning citizen participation in the energy sector.⁶²

In closing the above regulatory review, it should be noted that the analysis has also demonstrated that, for a number of social groups in Poland, not even basic — indeed, not even symbolic — institutions that might be described as participatory have been devised. In my assessment, such groups include, *de facto*, children and school-age youth. The deficiencies are apparent above all as regards the creation of school cooperatives and so-called school shops. The entities currently in operation function primarily on the basis of custom. The regulation is virtually symbolic and incomplete in material respects. It discourages many “creators”, who fear infringing complex norms drawn from other regulations. As the author’s research has established, the vestigial regulation has hitherto caused teachers to fear that the decisions they take might be interpreted as contrary to law. There are likewise few new initiatives supporting student cooperatives. It is worth recalling their great social and formative potential in the years of the Polish People’s Republic, which resulted in persons prepared to run their own undertakings after 1989.

10. Concluding Remarks

An analysis of several EU and Polish regulations relating to participation reveals their evolution towards subjective and objective expansion. It should be assessed positively that these acts are, as a rule, also very thoroughly reasoned, the justifications usually referring to the need to create platforms for agreement and dialogue through ever broader provision of information to society and the practical implementation of transparency and openness in the activity of the administration. What may further be discerned is constant encouragement to create ever new initiatives promoting pro-social conduct. Increasing prominence is also

Węgrzyn, *Nowe przepisy dla spółdzielni energetycznych. Co zmienia się w 2026*, <https://www.gramwz.ielone.pl/trendy/20349250/nowe-przepisy-dla-spoldzielni-energetycznych-co-zmienia-sie-w-2026> (accessed: 1 July 2026).

⁶¹More extensively on this subject: Mieczysław Grodzki, Andrzej Półrończak, *Spółdzielnie w miastach chcą zniesienia ograniczeń OZE*, “Tęcza Polska. Miesięcznik Spółdzielczy” No. 1 (310), January 2025, p. 8.

⁶²Jacek Balcewicz, *Partycypacja po wiedeńsku* [in:] “Energia Gigawat” No. 8–9/2013: <http://gi.gawat.info/artukul/items/partycypacja-po-wiedensku.html> (accessed: 1 July 2026). There, citizens participate with their own private capital in the construction of solar power plants rather than reaching out for the common good.

given to the economic aspect and to the financial benefits that social participation brings to a particular community.⁶³

The practice of applying participatory norms examined by the author, together with an analysis of legal texts (particularly at the Polish level), nevertheless reveals scant engagement on the part of State bodies in the process of supporting participation, which results in a relatively low level of practical implementation of even binding European regulations. Excessive procedural complexity is moreover apparent in the acts examined, which constitutes a barrier in particular to potential bottom-up initiatives. On the other hand, the existing legal solutions do not compel the administration to provide genuine support for initiatives of this type. Nor do they sanction infringements of the law where central and local administration circumvents the duties that are to build the foundations of participation. Above all, there are still few active information measures devised in a manner that is transparent and comprehensible to all groups of addressees. Nor are there many platforms at the local level encouraging even basic discourse and dialogue; and what we encounter in practice is often merely façade-like.

One may thus conclude that the regulations presented in this study suffer from enduring and material deficiencies. In particular, objection should be raised to the use of excessively complex linguistic forms, as a result of which these acts are not “assimilable” by the average citizen. Most of the remarks presented here are merely postulative in character, since they more often present a vision of model participation than practical procedures for implementation and for overcoming organisational, financial and — above all — mental obstacles. Even the best-reasoned conceptions developed at EU level do not, after all, create elements that genuinely bind society together. In Poland in particular, there are still too few low-cost avenues for realising specific forms of participation.

Few organisations and undertakings, still less individual natural persons, possess the requisite potential to fulfil the aims that properly understood and applied participation ought to bring. The upshot of this state of affairs is the increasing frequency of participation that is short-lived or merely formal.

Alongside the aforementioned impediments to creating spaces for dialogue and, subsequently, participation, there is a visible insufficiency of provisions enabling the swift discharge of the administration’s duties as regards the top-down creation of various forms of participation. And even where such provisions do exist, scant engagement of society (or of employees) in most of the aforementioned participatory forms and platforms is still to be observed.

⁶³PwC, *A Year to Reimagine. Raport Zrównoważonego Rozwoju PwC w Polsce za rok finansowy 2024/25*, <https://www.pwc.pl/pl/pdf-nf/2025/raport-zrownowazonego-rozwoju-pwc-polska-z-a-rok-finansowy-2024-2025.pdf> (accessed: 1 July 2026).

Within the concluding remarks, alongside the enumeration of the above critical assessments, it is appropriate to present proposals capable of invigorating the still modest level of social participation in Poland. Several of them are set out below.

1. First, more active involvement of Polish lawyers in EU initiatives relating to participation is necessary. Greater engagement should translate into the creation of law better adapted to the achievements of Polish corporatism and cooperativism, through the taking into account of local cultural aspects.
2. A further postulate is the refinement of the legal provisions currently in force, which still create participatory institutions only to a limited extent. What is at stake here, in particular, are measures aimed at rendering information processes real — for instance, through the creation of new duties incumbent on the administration to prepare information capable of being apprehended and assimilated by all groups of addressees. Such measures should, at the same time, be supported by a concomitant duty to verify these processes through periodic assessment of the effects and results of the participatory mechanisms employed.
3. It is also advisable to develop in practice, and to implement in school statutes, a new low-cost procedure for activating the youngest citizens as well towards school participation.⁶⁴ Moreover, the process of continually seeking new areas of the economy in which social participation is lacking should always remain active.
4. In my assessment, the Polish legislature should draw more frequently on the adaptation of tried and tested foreign solutions. It is gratifying in this respect that a proposal has appeared in the Sejm to eliminate the barriers still being identified in the mass creation of the new type of energy cooperatives⁶⁵ (among other things by transposing several Austrian and German solutions relating to participation in the energy sector).⁶⁶

⁶⁴The proposed amendments to educational law by way of the addition of Articles 85a–85d should therefore be assessed positively. They provide for comprehensive regulation of school cooperatives by the Act of 29 May 2026 *amending the Act — Educational Law*, Journal of Laws 2026, item 904, which is to enter into force on 1 September 2026.

⁶⁵More extensively on this subject: Mieczysław Grodzki, Andrzej Półrończak, *Spółdzielnie w miastach chcą zniesienia ograniczeń OZE*, "Tęcza Polska. Miesięcznik Spółdzielczy" No. 1 (310), January 2025, p. 8.

⁶⁶Jacek Balcewicz, *Partycypacja po wiedensku* [in:] "Energia Gigawat" No. 8–9/2013; <http://gigawat.info/artikul/items/partycypacja-po-wiedensku.html> (accessed: 1 July 2026), and Łukasz Mroczynski-Szmaj, *Nowe oblicze spółdzielczości: spółdzielnie energetyczne szansą dla polskiej Energiewende? Polsko-niemiecki kontekst porównawczy* [in:] "Prawo i Więź" No. 5 (52) 2024, pp. 179–202.

5. Finally, the postulate is warranted of making budgetary provision for appropriate financial incentives for entities creating, from the ground up, activities and participatory forms of every kind.

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